

UNITED STATES v. HIRAM NORCROSS.

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DIVISION OF THE WESTERN DISTRICT
OF MISSOURI.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

HIRAM NORCROSS, SOLE OWNER AND MANAGER OF AND
Operating as The Norcross Audit & Statistical Bureau,
Ash Grove Lime & Portland Cement Company, The

Bonner Portland Cement Company, Dewey Portland Cement Company, The Monarch Cement Company, Oklahoma Portland Cement Company, and The Western States Portland Cement Company, defendants.

In Equity No. 302.

FINAL DECREE

This cause came on to be heard at this term upon petition and answer and proofs and was argued by counsel, and upon consideration thereof it is *ordered, adjudged, and decreed* as follows:

1. That defendant Hiram Norcross, and the Norcross Audit & Statistical Bureau owned and operated by him, and the defendant corporations which subscribed to the service thereof, constituted and is a combination in unlawful restraint of interstate trade and commerce in Portland cement, in violation of Section 1 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), known as the Sherman Anti-trust Act.

2. That defendant Hiram Norcross, by organizing and maintaining said Norcross Audit & Statistical Bureau, and defendant corporations by subscribing to the service thereof, entered into and engaged in a combination in unlawful restraint of interstate trade and commerce in Portland cement, in violation of said Act of July 2, 1890.

3. That said combination be, and it hereby is, dissolved, and defendant Hiram Norcross and defendant corporations are collectively and individually perpetually enjoined, restrained, and prohibited from entering into, engaging in, or carrying into further effect said combination, or any understanding or agreement constituting a part thereof, or any similar combination or organization having the same purpose and effect.

4. That defendant Hiram Norcross, the Norcross Audit & Statistical Bureau, and defendant corporations are collectively and individually perpetually enjoined, restrained, and prohibited from observing or operating under a so-

called "Subscription Contract" with said Norcross Audit & Statistical Bureau, the terms and conditions of which are as follows:

The Company agrees:

I. That it will furnish THE BUREAU full and accurate information and data in respect to its cement stocks, production, sales, and shipments, its prices, terms, and conditions of all sales or offers to sell, together with all changes therein; and all relations, contractual or otherwise, with its customers and the trade.

II. That it will, and does hereby, give THE BUREAU and its authorized representatives and auditors, free access at all reasonable times to all its records, to the end that THE BUREAU may determine the accuracy and correctness of the information and data furnished as a basis for its reports.

The Bureau agrees:

A. That it will, at least once each month, thoroughly check and audit THE COMPANY'S records as herein contemplated.

B. That it will furnish THE COMPANY with a monthly report showing total cement stocks, production, and shipments to its principal market territory, to wit: The States of Oklahoma, Arkansas, Kansas, Missouri, Nebraska, and Iowa, of and by the subscribers to THE BUREAU, together with such other information and data from time to time as shall or may be of interest or value to THE COMPANY in determining its policy, conduct, or prices.

C. That it will treat all statistical information as confidential, and shall not, without permission, publish it in such form as to identify it with the company furnishing same.

D. That it will provide and furnish at its own expense suitable and adequate office quarters, help, facilities, forms, supplies, reports, and activities as shall be required by the majority in interest of its subscribers and necessary to the proper maintenance, conduct, service, and usefulness of THE BUREAU.

Provided, THE BUREAU'S average expenditures hereunder (not including the Manager's compensation) shall not be more than its receipts in excess of five hundred dollars (\$500.00) per month plus one-half ($\frac{1}{2}$) mill per barrel from all its subscribers.

E. That it will use its best endeavors to promote fair methods of competition and the open policy among its subscribers, to the end that each subscriber, large and small, may have equal opportunity to conduct his business with intelligence, based upon reliable data and information in respect to controlling conditions obtaining in the industry.

It is mutually agreed as follows:

X. That THE COMPANY will pay, and THE BUREAU will receive, for the services to be rendered, and information and data to be furnished, as herein provided and contemplated, and as full and complete remuneration therefor, the sum of THREE AND ONE-HALF ($3\frac{1}{2}$) MILLS PER BARREL for all cement shipped on and after August 25th, 1915, to the territory described in Paragraph "B," settlements to be made monthly on or before the 5th day of the calendar month next succeeding.

Y. That the undersigned is only one of several subscribers to THE BUREAU, and that this subscription agreement may, upon thirty (30) days' written notice, be cancelled for misconduct on the part of THE BUREAU or its Manager, provided complaint of such shall have been filed with THE BUREAU, an investigation thereof shall have been made, and five (5) or more subscribers shall express in writing a desire for such cancellation and make provisions for paying unaccrued obligations of THE BUREAU that can not be canceled.

Z. That this contract shall, unless sooner canceled as herein provided, extend from date hereof to and including December 31st, 1916, and its provisions shall be binding upon the successors and assigns of the respective parties hereto, but it shall not be assigned by THE BUREAU without written consent of THE COMPANY.

5. Defendant Hiram Norcross, operating as the Norcross Audit & Statistical Bureau or otherwise, and defendant corporations which subscribed to the service of said Bureau are collectively and individually perpetually enjoined, restrained, and prohibited from agreeing to make or receive, and from making and receiving, pursuant to any agreement, reports of the following character, and from collecting and disseminating through said Bureau, or any agency hereafter organized to succeed or perform services like unto those performed by said Bureau, the information specified in the following reports, or either or any of them:

FORM NO. 1.—*Daily Report of Quotations for specific work, made by subscribers to the Bureau*

- (a) Party quoted and destination of shipment.
- (b) Number of barrels specified.
- (c) Price per barrel f. o. b. destination.
- (d) When quotation expires.
- (e) Description of work.

FORM NO. 2.—*Daily Sales Report, made by subscribers to the Bureau*

SALES

- (a) Order number.
- (b) Customer sold and destination of shipment.
- (c) Number of barrels sold for prompt delivery to dealers.
- (d) If specific work contract, number of barrels sold and date of expiration of contract.
- (e) Price f. o. b. destination.

ADDITIONAL DATA PERTAINING TO SPECIFIC CONTRACTS SHOWN ABOVE

- (f) Order number.
- (g) Name of contractor.
- (h) Description of work and remarks.

CANCELLATIONS

- (i) Order number.
- (j) Name of customer and destination.

(k) Number of barrels canceled.

FORM No. 3.—*Daily Shipping Report made by subscribers to the Bureau.*

- (a) Order number.
- (b) Name of customer and destination of shipment.
- (c) Car number.
- (d) Number of barrels shipped.

FORM No. 4.—*Report of diversions made by subscribers covering diversions in transit after a car has been reported to the Bureau as having been shipped to another customer*

- (a) Car number.
- (b) Date shipped.
- (c) Number of order on which it was first reported shipped.
- (d) Name of customer diverted to and destination.
- (e) Number of order to which shipment was diverted.
- (f) Date of diversion.

FORM No. 5.—*Monthly report made by subscribers to the Bureau*

SHIPMENTS

- (a) Into Kansas, Missouri, Nebraska, Iowa, Oklahoma, Arkansas.
- (b) Total number of barrels shipped into the six States.
- (c) Total number of barrels shipped into all territory.

PRODUCTION

- (d) Cement.
- (e) Clinker.

STOCK ON HAND

- (f) Cement.
- (g) Clinker.

FORM No. 6.—*Monthly summary of statistics compiled by the Bureau and sent to subscribers*

SHIPMENTS

- (a) Total shipments of cement into each State by all subscribers for the month as compared with the same month of the previous year.

(b) Total shipments of cement into each State by all subscribers for the year to date as compared with the same period of the previous year.

PRODUCTION

(c) Total production of cement and clinker by all mills for the current month as compared with the same month of the previous year.

(d) Total production of cement and clinker by all mills during current year to date of report.

STOCK ON HAND

(e) Stock of cement and clinker on hand by all mills at the end of the current month as compared with the same month of the previous year. Also the stock on hand at the beginning of the current month for the current year and the previous year.

6. That defendant corporations are collectively and individually perpetually enjoined, restrained, and prohibited from agreeing, among themselves, or with other manufacturers of cement, to cancel and/or from canceling pursuant to such agreement contracts which may exceed, or may be believed to exceed, the actual requirements of specific construction work undertaken or definitely projected, or are duplicate contracts held by other manufacturers for cement intended for the same construction work; and from agreeing with each other, or with other manufacturers of cement, to collect, and/or from collecting, pursuant to such agreement, and distributing among manufacturers of cement, information with reference to such contracts.

7. That defendant corporations are collectively and individually enjoined, restrained, and prohibited from hereafter agreeing among themselves, or with other manufacturers of cement, to do any of the following acts:

(a) To establish uniform mill base prices for their product.

(b) To establish arbitrary freight basing points other than the points from which shipments are actually made.

(c) To sell their product f. o. b. point of delivery exclusively.

(d) To establish uniform charges for bags, or uniform credits for bags returned in good condition.

(e) To establish a uniform rate of discount or uniform terms for payment of bills within a specified period.

(f) To limit the quantity of cement to be shipped to a dealer within a specified period of time.

(g) To prohibit the diversion or so-called misuse of cement sold on specific job contracts.

(h) To establish and maintain a uniform differential in the price of cement sold to dealers and contractors.

(i) To fix or suggest the amount of commission or profit dealers should be required to make in sales of cement.

(j) To regulate or limit the amount of production of cement, and/or the amount of stock to be kept on hand.

(k) To limit the time within which quotations on cement must be accepted and deliveries made, and to refuse to grant extensions in time of deliveries.

(l) To make changes in prices effective as of the date quotations are written, to avoid "price tipping."

(m) To guarantee prices against decline.

(n) To make uniform charges for bin tests, and/or to require the purchaser to pay for such tests.

8. That nothing herein shall be construed as prohibiting the defendants from maintaining or subscribing to a traffic bureau to furnish rates or rules of transportation that may be contained in any public schedule or tariff, but all rates furnished shall be the actual rates between points of actual shipment and delivery, and shall not be based on any point or points other than those of actual shipment and delivery.

9. That nothing herein shall be construed as prohibiting defendant corporations from maintaining or subscribing to a credit bureau for the sole purpose of furnishing, upon specific requests, information as to the credit of persons and corporations purchasing, or attempting to purchase, cement, but the defendants are collectively and individually perpetually enjoined, restrained, and prohibited from agreeing to refuse to make sales to particular customers

and/or from agreeing upon circumstances or conditions which shall exclude customers from being extended credit.

10. That nothing contained in this decree shall be construed as prohibiting any defendant from doing or performing any of the foregoing acts, or from selecting its own trade, or from disposing of its own product to such persons and on such terms as it may choose if done individually and without combining, conspiring, or agreeing with any other manufacturer of cement.

11. That the injunctions herein contained against defendant bureau and the defendant corporations shall apply to and be binding upon such Bureau and corporations and their respective officers, directors, agents, and employees and all other persons, firms, or corporations acting under, for, or in behalf of them or any of them, or claiming so to act.

12. That jurisdiction of this case is retained for the purpose of enforcing this decree and of enabling the United States to apply to the court for a modification or enlargement of its provisions on the ground that they are inadequate, and the defendants, or either of them, to apply for its modification on the ground that its provisions have become inappropriate or unnecessary.

It was represented by counsel for the defendants and not controverted by the Government, (a) that since the beginning of this suit the defendants, The Bonner Portland Cement Company and The Western Portland Cement Company, have sold and disposed of all of their physical assets and are engaged in liquidating their affairs and distributing their assets among their stockholders and are no longer engaged in the business of manufacturing cement; and (b) that subsequent to the bringing of this suit the defendant Hiram Norcross abandoned and dissolved the Norcross Audit & Statistical Bureau; and that the defendant corporations ceased to become subscribers thereto and ever since said date the practices set forth in this decree in respect to the Norcross Bureau and its activities, and the action of the defendants as subscribers thereto have wholly ceased.

That plaintiff shall have and recover from the defendant its costs.

ALBERT L. REEVES,
United States District Judge.

April 2, 1924.