

IN THE DISTRICT COURT OF THE UNITED STATES FOR
FOR THE SOUTHERN DISTRICT OF NEW YORK.
THE UNITED STATES OF AMERICA, PETITIONER,

v.

CORN PRODUCTS REFINING COMPANY, NATIONAL STARCH
COMPANY, ST. LOUIS SYRUP & PRESERVING COMPANY,
NOVELTY CANDY COMPANY, EDWARD T. BEDFORD, WIL-
LIAM J. MATHESON, FREDERICK T. FISHER, C. H. KEL-
SEY, A. B. BOARDMAN, GEORGE S. MAHANA, GEORGE M.
MOFFETT, WILLIAM H. NICHOLS, JR., A. A. SMITH,
JAMES SPEYER, E. BEVERLY WALDEN, C. M. WARNER,
THOMAS P. KINGSFORD, R. S. BRUNS, F. A. LOHMEYER,
EDWARD T. BEDFORD, 2nd, A. N. WATKINS, C. H. LOR-
ENZ, and LOUIS SUSS, DEFENDANTS.

FINAL DECREE.

WHEREAS, during the pendency of this suit, to-wit, on
May 14, 1915, this court entered a decree of injunction
herein, on the petition and the original and supplemental
answers of defendants Penick & Ford, Ltd., of New
Orleans, Louisiana, William S. Penick and James P. Ford,
and on consent of all the parties to the record, requiring,
among other things, that the defendant Corn Products
Refining Company should dispose of its interests in Penick
& Ford, Ltd., and dismissing from this cause defendants
Penick & Ford, Ltd., William S. Penick, James P. Ford

and Fred T. Bedford, but retaining jurisdiction of them for the purpose of enforcing such decree;

AND WHEREAS, on November 13, 1916, this court on final hearing entered a decree herein reading as follows:

This cause duly came on to be heard before the Honorable Learned Hand, District Judge, at the March, 1916, term of this Court, and was argued by Jesse C. Adkins, Esq., and Van Sinderen Lindsley, Esq., for the petitioner, and by Hon. Morgan J. O'Brien, James M. Sheean, Esq., Albert B. Boardman, Esq., and Preston Davie, Esq., for the defendants; and thereupon, after consideration thereof, in an opinion of the Court filed on the 24th day of June, 1916, it is now ORDERED, ADJUDGED AND DECREED

First. The Glucose Sugar Refining Company, and the Corn Products Company as originally organized and as subsequently conducted and until their merger with the defendant Corn Products Refining Company, were combinations in restraint of trade and commerce among the several states and with foreign nations in starch, glucose, and grape sugar made from corn, and their derivatives, contrary to the Act of Congress of July 2, 1890, generally known as the Anti-Trust Act.

Second. The defendant Corn Products Refining Company as originally organized in 1906 was, and has since been, and now is a combination in restraint of trade and commerce among the several states and with foreign nations in starch, glucose, and grape sugar made from corn and their derivatives, and in mixed syrup containing 85% or thereabouts of glucose, and as such has violated and now violates the Act of Congress of July 2, 1890, generally known as the Anti-Trust Act.

Third. The defendant Corn Products Refining Company upon its organization and thence hitherto has monopolized and attempted to monopolize, and is now monopolizing and attempting to monopolize, the trade and commerce among the states and with foreign

nations in starch, glucose, and grape sugar made from corn, and their derivatives, and has attempted and is now attempting to monopolize such trade in mixed syrups containing 85% or thereabouts of glucose; contrary to the aforesaid Act of Congress of July 2, 1890.

Fourth.—

(A) Defendants Edward T. Bedford, William J. Matheson and Charles M. Warner combined, with other persons, to form the defendant Corn Products Refining Company; since its organization in 1906 they have been directors thereof, and said Edward T. Bedford has been its president. Defendants E. Beverly Walden, George M. Moffett, George S. Mahana, Frederick T. Fisher, and A. A. Smith from the time of its organization have been officers and employees of defendant Corn Products Refining Company, and since June 19, 1906, said Walden and said Moffett and defendant Thomas P. Kingsford have been directors thereof. Since April 28, 1910, said Mahana has been a director thereof; since September 17, 1909, defendant Fisher has been a director thereof; and since March 28, 1911, defendant Smith has been a director thereof. Since its organization all of said defendants in this paragraph before mentioned have been and now are combined with defendant Corn Products Refining Company in said combination in restraint of trade and in said monopoly and attempt to monopolize, and in the unfair methods of competition set forth hereinafter, and have violated and are now violating said antitrust law.

(B) The defendants James Speyer and Clarence H. Kelsey became directors of the defendant Corn Products Refining Company on December 31, 1909; Defendant A. B. Boardman became such director March 22, 1910; William H. Nichols, Jr., became such director March 21, 1911.

(C) Defendants National Starch Company, St. Louis Syrup and Preserving Company, and Novelty Candy

Company are controlled through stock ownership by the defendant Corn Products Refining Company. Defendants E. Beverly Walden, R. S. Bruns, Frederick T. Fisher, and George M. Moffett are officers and directors of said National Starch Company. Defendants C. H. Lorenz, Louis Suss, and A. A. Smith are officers and directors of defendant St. Louis Syrup and Preserving Company. Defendants F. A. Lohmeyer, Benjamin Schneewind, C. W. Lohmeyer, Edward T. Bedford, 2nd., and A. N. Watkins are officers and directors of defendant Novelty Candy Company. Said corporate defendants and the Glucose Sugar Refining Company and Corn Products Company until their merger likewise have been and are combined with defendant Corn Products Refining Company in the combination in restraint of trade and in the monopoly and attempt to monopolize trade and in the unfair methods of competition aforesaid.

Fifth. The aforesaid unlawful combination shall be forever dissolved, and to that end and in order to restore competitive conditions and to bring about a situation in harmony with law, the factories, business, and assets of the Corn Products Refining Company shall be divided in such manner and into such parts of separate and distinct ownership as shall be necessary for that purpose.

Sixth. Within 120 days from the entry of this decree, or in case an appeal be taken therefrom to the Supreme Court of the United States and duly prosecuted, then within 120 days after the filing in this court of the mandate of the Supreme Court affirming the decree, a plan for carrying out such dissolution shall be filed by the defendants with the Federal Trade Commission as master in chancery under Section 7 of the Federal Trade Commission Act, and the said Commission shall thereupon hear all the parties and report to the court a plan which will effectually dissolve the combination and restore a condition in harmony with law. If the defendants shall fail to present such a plan

within the time stated, this court will take such further steps by receivership or otherwise as may then seem necessary to dissolve the unlawful combination and create a new situation in harmony with law.

Seventh.—

UNFAIR METHODS OF COMPETITION.

(A) PROFIT SHARING PLAN.

On November 12, 1906, defendant Corn Products Refining Company agreed to pay to each purchaser of glucose and grape sugar 10 cents per 100 pounds on all such articles bought from it during the six months ending December 31, 1906, provided the purchaser bought all his needs of those articles from the Corn Products Refining Company during the year 1907, such payments to be made January 1, 1908. The plan was continued through 1906, 1907, 1908, and 1909, the profits for 1909 not becoming due until the end of the year 1910. The profit varied, beginning at 10 cents per 100 pounds and afterwards 15 cents for each of the years 1907 and 1908, and for the year 1909, 5 cents. At the time this plan was adopted defendant Corn Products Refining Company was the only manufacturer of glucose and grape sugar in the United States and had the entire trade therein; but four other manufacturers, namely the Union Starch and Refining Company, the Clinton Sugar Refining Company, J. C. Hubinger Brothers Company, and Western Glucose Company, were preparing to manufacture glucose, and the two first named were nearly ready to begin.

(B) THE TRANSACTION WITH AMERICAN MAIZE PRODUCTS COMPANY AND STEIN, HIRSH AND CO.

In the early part of 1908, the defendant Corn Products Refining Company threatened American Maize Products Company with an invasion of the business of the Royal Baking Powder Company if it continued its starch and glucose business, and in consideration of Corn Products Refining Company agreeing to refrain

from entering the baking powder business, the American Maize Products Company agreed to sell one-half of the starch and glucose manufactured by it to the Corn Products Refining Company and to limit its output of starch and glucose and to cease its efforts to secure a reduction in east-bound glucose freight rates. Pursuant to said arrangement, American Maize Products Company did limit its output of starch and glucose and ceased its effort to secure a reduction of said freight rates, and Corn Products Refining Company in 1908 and 1909 bought from American Maize Products Company a large part of the glucose made by American Maize Products Company, which it sold through Stein, Hirsh and Company, falsely as brokers for "bogus independent" manufacturers and as "bogus independent" manufacturers of glucose, to customers of the Clinton Sugar Refining Company, the J. C. Hubinger Brothers Company, and of the Union Starch and Refining Company, at lower prices than those at which such companies were selling their glucose, and at prices lower than those at which defendant Corn Products Refining Company was selling openly to its customers.

(C) DEFENDANTS' ENTRY INTO THE CANDY BUSINESS.

In 1907, Corn Products Refining Company secretly bought control of the Manniere-Yoe Syrup Company, with a factory at Chicago, and in 1908 caused the latter to manufacture and sell certain grades of candy made largely of glucose at or below cost, for the purpose of causing injury to the National Candy Company, the construction of whose glucose factory at Clinton it had tried to stop. Corn Products Refining Company continued this plan throughout 1909, meanwhile denying ownership or interest in the Manniere-Yoe Syrup Company, but making threats to the National Candy Company and to other manufacturing confectioners to go into the candy business, unless the former limited its output of glucose, and the latter bought their glucose principally from Corn Products Refining Company.

In January, 1910, in execution of these threats, Corn Products Refining Company openly acquired defendant Novelty Candy Company and transferred to it, the candy factory of Manniere-Yoe Syrup Company and other candy factories at Jersey City, Pittsburg, and Memphis. It thereupon caused Novelty Candy Company to sell candy in three out of its four plants at cost or less.

(D) PRICE CONTROL.

(1) Price Campaign.

In 1910 and 1911 the defendants, having sufficient producing capacity to supply 90 per cent or more of the demand, attempted to drive down the price of their main products, starch and glucose, below a fair profit, meanwhile making up the profits necessary for their own dividends by the sales of their package starches, grape sugar, and their other specialities.

During a portion of this period Corn Products Refining Company sold glucose at or below cost, and during the whole of 1910 it lowered the price of glucose and starch to a profit of not more than four cents a bushel. This profit was lower than had existed before in the industry and was less than a fair profit; it was, and was known to be, an insufficient return upon capital to induce capital to embark in the business. The independent manufacturers were compelled to follow these low prices, and at times were compelled to sell at less than cost.

(2) Price Manipulation of Grape Sugar.

Before January, 1912, defendant Corn Products Company sold grape sugar at a differential of 14 cents per 100 pounds more than glucose, although the cost of production was no more than glucose. At that time it decreased such differential to 9 cents to discourage the production of grape sugar by American Maize Products Company, and thereafter, to the conclusion of the testimony in this case, it manipulated the differential of grape sugar for the same purpose.

(E) CONTROL OF THE SYRUP TRADE.

In 1907 the defendant Corn Products Refining Company adopted a policy to drive out of business mixers of mixed syrup containing 85% or thereabouts of glucose, for the purpose of monopolizing such trade in the United States, and for this purpose began to lessen the difference in prices between glucose and syrup so that the independent mixers would have small opportunity to buy the glucose and sell the mixed product at a profit. In 1909 and for the years 1910 and 1911, Corn Products Refining Company sold Karo syrup at a loss. In February, 1912, without adequate warning Corn Products Refining Company discontinued making and selling syrups in private brands of grocers and others, for the purpose of having its own brands dominate the syrup market as much as possible.

(F) RELATIONS WITH RAILROADS.

(1) Eastbound Glucose Rate.

Defendant Corn Products Refining Company and its officials, by private communications and importunities to the railroad officials, secured an increase in the eastbound freight rates on glucose in May, 1907, and by further private communications and importunities to the railroad officials, including their presidents, as well as in open meetings and by secretly furnishing the railroads with facts and arguments with which to meet the protests of the independent manufacturers, prevented the reduction of rates as promised by the railroads with facts and arguments with which to Refining Company, as a part of its agreement with the American Maize Products Company, hereinbefore mentioned, procured the American Maize Products Company to cease its efforts to secure a reduction in said rates. The advantage thus obtained continued until the Interstate Commission, in August, 1912, ordered said rates reduced.

(2) Barrel and Tank Rates Clinton to St. Louis.

In 1909 at the secret solicitation of defendant Corn Products Refining Company and without the knowledge

of the Clinton Sugar Refining Company, the railroads increased the tank rates from both Chicago and Clinton to St. Louis to 10 cents; the purpose of Corn Products Refining Company was to injure its competitors, the Clinton Sugar Refining Company and the National Candy Company, which owned several factories in St. Louis.

(G) STARCH AGREEMENT OF 1906.

In 1906, Corn Products Refining Company through its representatives, Walden and Reichman, entered into an informal understanding with the representatives of Douglas & Company, Peil Brothers Starch Company, and J. C. Hubinger Brothers Company, their competitors, to maintain the price of starch. The Corn Products Refining Company in 1909 attempted to induce its competitor, and particularly the Clinton Sugar Refining Company, to restrict their production. The defendant Walden in November, 1906, offered A. E. Staley, certain bulk prices on starch in consideration of his not preparing or grinding corn in the manufacture of starch.

(H) INTENT BEHIND THESE METHODS.

All the expedients hereinbefore specified in this Seventh Article of this decree were undertaken and intended to prevent others from giving to the public equal service at equal terms with the defendant Corn Products Refining Company, and to maintain and secure the market without continued competition in service and price. Each of said expedients was an unfair method of competition and was intended to and did assist the defendant in maintaining its monopoly.

Eighth. The corporate defendants, all the individual defendants, as the directors or employees of the corporate defendants, and the defendants, Edward T. Bedford, William J. Matheson, Charles M. Warner, E. Beverly Walden, George M. Moffet, George S. Mahana, Frederick T. Fisher, and A. A. Smith, individually, are jointly and severally hereby enjoined from

continuing or resuming any of the unfair methods of competition specified in the Seventh Article of this decree, if undertaken with the intent specified in subdivision (H) of said Seventh Article; provided that nothing herein contained shall enjoin or restrain defendants from selling or offering for sale any of their products at prices made in good faith to meet competition, or from changing differentials in price between their different products, if and when done in good faith because of different costs of manufacturer or sale, or different consumptive demands, or different competitive conditions, as between such products, or in any respect enjoin or restrain fair, free and *bona fide* competition.

Ninth. Jurisdiction of the cause is retained for the purpose of making such further orders as may be necessary to carry this decree into effect and secure the dissolution of the combination and monopoly hereinabove adjudged to be unlawful. In case the defendants or any of them see fit to appeal from this decree the supersedeas bond is fixed at \$50,000.00, to be approved by a judge of this court.

Tenth. The petitioner shall recover its taxable costs, and have execution therefor, against the defendant Corn Products Refining Company, but this decree is not to be taken as indicating what the final incidence of such costs should be as between said Corn Products Refining Company and any of the individual defendants.

Dated New York City, November 13, 1916.

LEARNED HAND,
District Judge.

AND WHEREAS, the defendants thereupon took an appeal to the Supreme Court of the United States, during the pendency of which the decree entered by this court on November 13, 1916, was suspended;

AND WHEREAS, on motion of the defendants their aforesaid appeal has been dismissed and the cause has been

remanded to this court for further proceedings in accordance with law:

NOW THEREFORE, it is ORDERED, that the decree hereinabove set forth, entered on November 13, 1916, excepting Sections Sixth and Ninth thereof, be reinstated as the final decree in this cause and that the decree hereinabove referred to, entered on May 14, 1915, also be continued in full force and effect.

And the parties having agreed upon and submitted to the court a plan for carrying into effect the order contained in Section Fifth of said decree of November 13, 1916, that the combination and monopoly therein adjudged unlawful be dissolved, and the court having considered and approved the plan, it is FURTHER ORDERED, in accordance therewith, as follows:

1. Defendant Corn Products Refining Company, with all reasonable diligence and in any event not later than January 1, 1921, shall, subject to the approval of the court, sell and dispose of its plant at Granite City, Illinois, to a person or persons (including corporations) not controlled by or affiliated with the Corn Products Refining Company or any of its officers, directors, agents, or affiliated corporations; and, if such purchaser be a corporation, none of the defendants, and no officer, director or stockholder of the Corn Products Refining Company or affiliated corporations, shall have any substantial interest in the stock or other securities of such purchaser, and said Corn Products Refining Company or affiliated corporations shall not have any officers or directors in common with such purchaser, nor shall any defendant be such purchaser: PROVIDED, That only persons or corporations intending to continue the business shall be eligible as purchasers.

2. Defendant Corn Products Refining Company, with all reasonable diligence and in any event not later than January 1, 1921, shall, subject to the approval of the court, sell and dispose of its plant at Davenport, Iowa, to a person or persons (including corporations) not controlled by or affiliated with the Corn Products Refining

Company or any of its officers, directors, agents, or affiliated corporations; and if such purchaser be a corporation, none of the defendants, and no officer, director or stockholder of the Corn Products Refining Company or affiliated corporations, shall have any substantial interest in the stock or other securities of such purchaser, and said Corn Products Refining Company or affiliated corporations shall not have any officers or directors in common with such purchaser, nor shall any defendant be such purchaser: PROVIDED, That only persons or corporations intending to continue the business shall be eligible as purchaser, unless otherwise ordered by the court.

3. Defendant Corn Products Refining Company, with all reasonable diligence and in any event not later than January 1, 1921, shall, subject to the approval of the court, sell and dispose of its entire interest in the stock or other securities of the National Starch Company with its plant at Oswego, New York, to a person or persons (including corporations) not controlled by or affiliated with the Corn Products Refining Company or any of its officers, directors, agents, or affiliated corporations; and if such purchaser be a corporation, none of the defendants, and no officer, director or stockholder of the Corn Products Refining Company or affiliated corporations, shall have any substantial interest in the stock or other securities of such purchaser, and said Corn Products Refining Company or affiliated corporations shall not have any officers or directors in common with such purchaser, nor shall any defendant be such purchaser: PROVIDED, That only persons or corporations intending to continue the business shall be eligible as purchasers.

4. Defendant Corn Products Refining Company, with all reasonable diligence and in any event not later than January 1, 1921, shall, subject to the approval of the court, sell and dispose of its entire interest in the stock and other securities of the Novelty Candy Company with plants at Chicago, Illinois, and Jersey City, New Jersey, to a person or persons (including corporations) not controlled by or affiliated with the Corn Products Refining

Company or any of its officers, directors, agents, or affiliated corporations; and, if such purchaser be a corporation, none of the defendants, and no officer, director, or stockholder of the Corn Products Refining Company or affiliated corporations, shall have any substantial interest in the stock or other securities of such purchaser, and said Corn Products Refining Company or affiliated corporations shall not have any officers or directors in common with such purchaser, nor shall any defendant be such purchaser.

5. Defendant Corn Products Refining Company, pending its compliance with the four sections last preceding, shall not cause or permit the assets and properties, tangible or intangible, of the National Starch Company or the Novelty Candy Company to be substantially changed or diminished, nor the plants at Granite City or at Davenport to be turned to different use or diminished in capacity: PROVIDED, HOWEVER, That the ordinary and usual business activities of the National Starch Company and the Novelty Candy Company and of the plant at Granite City shall be continued.

6. In the event that the defendant Corn Products Refining Company shall not have disposed of the plants at Granite City and Davenport and of all the stock or other securities held by it in the National Starch Company and the Novelty Candy Company on or before January 1, 1921, as hereinabove required, the same shall be sold at public auction to the highest bidder in such manner and at such time and place as may be agreed upon between the United States and the Corn Products Refining Company, and in default of such agreement then under the order and direction of this court: PROVIDED, HOWEVER, That for good reasons the Corn Products Refining Company may, upon reasonable notice to the United States, apply to the court for an extension of time within which to effect a sale.

7. The object of this decree is to restore competitive conditions in trade and commerce in starch, glucose, and grape sugar, made from corn and their derivatives, and in mixed syrups, and therefore in the event that such

competitive conditions shall not have been established in the opinion of the Attorney General at the expiration of three years from the entry of this decree, then and in that case the United States shall have the right to such further relief herein as shall be necessary to restore such competitive conditions and to bring about a situation in harmony with law; and this court reserves all necessary jurisdiction for that purpose and otherwise to carry this decree into effect.

LEARNED HAND,
District Judge.

Dated March 31, 1919.