

U. S. v. AMERICAN TOBACCO COMPANY  
THE UNITED STATES OF AMERICA, PLAINTIFF,  
VS.  
THE AMERICAN TOBACCO COMPANY AND OTHERS,  
DEFENDANTS.

DECREE.

Appeals having been taken by the plaintiff and certain defendants in this cause from the decree entered by this Court on the 15th day of December, 1908, the Supreme Court of the United States reversed said decree and issued its mandate filed herein on the 30th day of June, 1911, by which the said cause was remanded to this Court with directions to enter a decree in conformity with the opinion of the Supreme Court of the United States, and to take such further steps as might be necessary to fully carry out said directions. By the said opinion of the Supreme Court of the United States this Court was directed to "hear the parties by evidence or otherwise as it may deem proper, for the purpose of ascertaining and determining upon some plan or method of dissolving the combination, and of recreating out of the elements now composing it a new condition which shall be honestly in harmony with, and not repugnant to, the law, but without unnecessary injury to the public or the rights of private property." And this cause having come on to be finally heard pursuant to the order or decree of this Court, made and entered herein on August 3, 1911, on the mandate of the Supreme Court of the United States as aforesaid, The American Tobacco Company and the other defendants herein (except United Cigar Stores Company, The Imperial Tobacco Company (of Great Britain and Ireland), Limited, and R. P. Richardson, Jr., & Company, Incorporated), filed in this Court, on October 16, 1911, a petition proposing and embodying a plan or method of dissolving the combination, and of recreating out of the elements now composing it a new condition in harmony with, and not repugnant to, the law. Due notice was given to the parties hereto that the hearing on the said petition would be had on October 30, 1911, in Room 124

IN THE UNITED STATES CIRCUIT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK.

Equity No. 1-216.

of the Federal Building, in New York City, and thereafter, to wit: on the 19th day of October, 1911, the Imperial Tobacco Company (of Great Britain and Ireland), Limited, filed a petition.

At the time and place aforesaid, the plaintiff filed answers to the said petitions, embodying proposed modifications of, and additions to, the plan proposed in said petition of the American Tobacco Company and other defendants. The parties having been heard by counsel, and certain of the modifications of said plan included in the answers of the plaintiff not being opposed by the proponents of said plan, and others of said modifications included in said answer having been disposed of by this Court in its opinions delivered after said hearing;

Now, it is ordered, adjudged and decreed, that all the defendants—except Welford C. Reed, who died before the final hearing—heretofore became parties to and engaged in the combination assailed in the pleadings, which “in and of itself, as well as each and all of the elements composing it, whether corporate or individual, whether considered collectively or separately,” is “in restraint of trade and an attempt to monopolize, and a monopolization within the first and second sections of the Anti-Trust Act,” and which should be dissolved and a new condition brought about in harmony with and not repugnant to the law, either as a consequence of the action of this Court in determining an issue or in accepting a plan agreed upon.

And, it is further ordered, adjudged and decreed that said plan as modified by the consent of the parties, or through the action of this Court, as aforesaid, is as follows, to wit:

#### A. DISSOLUTION OF AMSTERDAM SUPPLY COMPANY.

Amsterdam Supply Company is a company engaged in the business of purchasing for a commission or brokerage, supplies, other than leaf tobacco, its principal customers being defendant corporations herein. It has \$235,000 at par of stock, all held in varying amounts by certain corporation defendants, one or the other of your Petitioners, and a surplus of \$127,058.74.

*It is proposed* that Amsterdam Supply Company be dissolved, converting its assets into cash and distributing them to its stockholders.

#### B. ABROGATION OF FOREIGN RESTRICTIVE COVENANTS.

Under the contracts of September 27, 1902, The Imperial Tobacco Company (of Great Britain and Ireland), Limited, and certain of its directors agreed not to engage in the business of manufacturing or selling tobacco in the United States; The American Tobacco Company and American Cigar Company and certain of their directors agreed not to engage in the business of manufacturing or selling tobacco in Great Britain and Ireland; and the American Tobacco Company, American Cigar Company and The Imperial Tobacco Company agreed not to engage in the business of manufacturing or selling tobacco in countries other than Great Britain and Ireland and the United States. Under the provisions of these contracts British-American Tobacco Company, Limited, was organized and took over the export business of The American Tobacco and The Imperial Tobacco Company, with factories, materials and supplies.

*It is proposed* that the covenants herein just described, as well as all covenants restricting the right of any company or individual in the combination to buy, manufacture or sell tobacco or its products, be rescinded by the affirmative action of the respective parties thereto who are parties to this suit, except such of said covenants, whether or not contained in the contracts of September 27, 1902, as (a), relate wholly to business in foreign countries and are covenants the benefit whereof has been assigned or transferred to other parties; or (b), are covenants exclusively between foreign corporations and relating wholly to business in or between foreign countries; and that the said contracts of September 27, 1902, be altogether terminated so far as they impose any obligations upon any of the parties thereto to furnish or to refrain from furnishing manufactured tobaccos to any party, each company to treat as its own, but only to the extent provided for in said contracts, all brands and

trade-marks which by said contracts it was given the right to manufacture and sell, the said rights having been perpetual and constituting in effect a conveyance of the brands and trade-marks used for the countries in which they were so used by each of said companies as aforesaid.

#### C. ABROGATION OF DOMESTIC RESTRICTIVE COVENANTS.

*It is proposed* that covenants given by vendor corporations, partnerships or individuals, or by stockholders of vendor corporations, to vendee corporations defendants herein, not to engage in the tobacco business or any other business in any way embraced in the combination, be terminated so that all such covenantors shall be at liberty to engage in the business of buying, manufacturing and dealing in tobacco and its products just as if such covenants had not been made.

#### D. DISINTEGRATION OF ACCESSORY COMPANIES.

##### (1) THE CONLEY FOIL COMPANY.

The Conley Foil Company has a capital stock of \$825,000 at par, all of one class, of which The American Tobacco Company owns \$495,000 at par, the balance being held by persons not defendants nor connected with the defendants. It is engaged in the business of manufacturing tin foil, a product used largely by tobacco manufacturers, but having other uses as well. The Conley Foil Company has a plant in New York City, and it owns all the stock and bonds of The Johnston Tin Foil and Metal Company, which has a plant in St. Louis. The value of the output for the year 1910 of The Conley Foil Company was \$1,780,526.85, with a net profit of \$273,299.82, and The Johnston Tin Foil and Metal Company had an output for the year 1910 of the value of \$676,520.05, and net profits of \$66,255.16. On December 31, 1910, The Conley Foil Company had tangible assets (excluding its securities of The Johnston Tin Foil and Metal Company) of \$1,215,231, and The Johnston Tin Foil and Metal Company had assets of the value of \$379,802.11. The Conley

Foil Company has a surplus exceeding the value of the securities of The Johnston Tin Foil and Metal Company.

*It is proposed* that The Conley Foil Company cancel the bonds of The Johnston Tin Foil and Metal Company, held by it, to wit: \$100,000 par value; and distribute to its stockholders its holdings of stock of The Johnston Tin Foil and Metal Company, to wit: 3,000 shares, all of one class.

The American Tobacco Company, being a stockholder of The Conley Foil Company, will participate in this distribution, and will in turn distribute its dividend, as well as its stock in The Conley Foil Company, to its common stockholders as hereinafter set forth.

##### (2) MACANDREWS & FORBES COMPANY.

MacAndrews & Forbes Company is a company having a common capital stock of \$3,000,000 at par, of which The American Tobacco Company owns \$2,112,900 at par, the balance being held by persons not defendants nor connected with defendants (except less than 3-1/3% of the common stock held by R. J. Reynolds Tobacco Co.), and \$3,758,300 at par of six per cent. non-voting preferred stock, of which The American Tobacco Company holds \$750,000 at par, the balance being held by persons not defendants nor connected with defendants. It is engaged in the production of licorice paste, with two plants, one at Camden, New Jersey, and the other at Baltimore, Maryland. It had tangible assets, December 31, 1910, of the value of \$5,683,824.89 (including \$2,118,448.36, licorice root, with plants for its collection in foreign countries), and its sales for the year 1910 were of the value of \$4,427,023.44. MacAndrews & Forbes Company succeeded to the business MacAndrews & Forbes, a partnership, who were pioneers in this country in the production of licorice paste, and who had, for many years before any acquisitions of other business, and before they had any connection with the other defendants herein, more than fifty per cent. of all the licorice paste business of the United States.

*It is proposed* that a new corporation be organized called the J. S. Young Company, and that it shall acquire the Baltimore plant of MacAndrews & Forbes Company with the assets used therein and in connection therewith, of a total value of \$1,000,000, and the brands of licorice paste manufactured in said Baltimore plant; that is issue in payment therefor, with the goodwill connected therewith, \$1,000,000 at par of seven per cent. preferred non-voting stock, and \$1,000,000 at par of common stock; that MacAndrews & Forbes Company distribute the common stock of the J. S. Young Company as a dividend to its common stockholders, charging the amount thereof to its surplus account; that MacAndrews & Forbes Company offer to its preferred stockholders proportionately to exchange the seven per cent. preferred stock of the J. S. Young Company at par for their preferred stock of MacAndrews & Forbes Company; that so far as the preferred stock of MacAndrews & Forbes Company is thus exchanged, it be retired; that so far as this preferred stock of the J. S. Young Company is not forthwith thus exchanged, MacAndrews & Forbes Company be enjoined from using it to exercise, or otherwise exercising or attempting to exercise, influence or control over the J. S. Young Company; and with the further provision that on or before January 1, 1915, the whole of this preferred stock of the J. S. Young Company, not theretofore taken out of the treasury of MacAndrews & Forbes Company by exchange as aforesaid, be disposed of by MacAndrews & Forbes Company.

This would give to MacAndrews & Forbes Company a licorice business, including Spanish licorice and powdered goods, of the net selling value, based upon the year 1910, of \$2,514,184.64, of which \$2,214,127.51 arise from sales of one brand, to wit, the old "Ship" brand. The J. S. Young Company, upon the basis of the business for the year 1910, would have an output of the net selling value of \$1,201,109.86.

The American Tobacco Company being a holder of the common stock of MacAndrews & Forbes Company, will

participate in the distribution above provided and will in turn distribute its dividend, as well as its stock in MacAndrews & Forbes Company, to its common stockholders as hereinafter set forth.

### (3) AMERICAN SNUFF COMPANY.

American Snuff Company is a manufacturer of snuff. It holds all of the stock of De Voe Snuff Company, to wit: \$50,000 at par; and one-half, to wit, \$26,000 at par, of the stock of National Snuff Company. It owns no other interest in any company manufacturing or selling snuff.

*It is proposed* that there be organized two new snuff companies, one to be called the George W. Helme Company and the other Weyman-Bruton Company, and that American Snuff Company convey to these two companies respectively factories, with the brands manufactured in them, as follows: to the George W. Helme Company the factories at Helmetta, New Jersey, and Yorklyn, Delaware, except Factory No. 5; to Weyman-Bruton Company the factories at Chicago and Nashville, also all the stock of De Voe Snuff Company, and the one-half of the stock of National Snuff Company held by American Snuff Company. Based upon the business for the year 1910 and the assets at the end of the year, with proper provision for leaf, materials, cash and book accounts for the two vendee companies, this would leave the three companies equipped as follows:

#### Manufacturing tangible assets:

American Snuff Company	\$5,075,969.72
George W. Helme Company	4,909,000.40
Weyman-Bruton Company	3,691,588.20

#### Sales value during 1910:

American Snuff Company	5,520,422.15
George W. Helme Company	4,494,556.66
Weyman-Bruton Company	4,297,486.71

#### Net income:

American Snuff Company	1,591,280.49
George W. Helme Company	1,259,280.98
Weyman-Bruton Company	1,293,759.39

<sup>1</sup> American Snuff Company holds securities not connected with the snuff business, to wit: stock and bonds of the American Tobacco Company, preferred stock of American Cigar Company, aggregating in book value \$2,530,216.69, upon which

Each of these vendee corporations will pay for the property and business conveyed to it by the issue of \$4,000,000 at par of seven per cent. voting preferred stock, and \$4,000,000 at par of common stock. American Snuff Company will thus receive the \$16,000,000 at par of these stocks into its treasury and will distribute to its common stockholders, as a dividend, the common stock aggregating \$8,000,000, to be charged to its surplus account. American Snuff Company will offer to its preferred stockholders proportionately to exchange these seven per cent. preferred stocks of the George W. Helme Company and the Weyman-Bruton Company for their preferred stock of American Snuff Company at par. So much of the preferred stock of American Snuff Company as is thus exchanged, will be retired. As to so much of the preferred stocks of the George W. Helme Company and the Weyman-Bruton Company as is not forthwith thus exchanged, American Snuff Company to be enjoined from voting it, or using it to exercise, or otherwise exercising, or attempting to exercise, influence or control over the George W. Helme Company or the Weyman-Bruton Company; and on or before January 1, 1915, all of these preferred stocks of the George W. Helme Company and the Weyman-Bruton Company not theretofore taken out of the treasury of American Snuff Company by exchange as aforesaid, to be disposed of by American Snuff Company.

The American Tobacco Company, being a holder of the common stock of American Snuff Company, will participate in the distribution above provided, and will, in turn, distribute its dividend, as well as its stock in American Snuff Company, including that to be acquired from P. Lorillard Company, to its common stockholders as hereinafter set forth.

American Snuff Company received in interest and dividends during the year 1910 \$176,680. It is proposed that American Snuff Company sell or otherwise dispose of these securities within three years, and that in the meantime they be held under an injunction as is provided in this paragraph with respect to securities of the George W. Helme Company and Weyman-Bruton Company to be temporarily held by it. It also owns all, to wit: \$100,000 at par of the stock of Garrett Real Estate Co., which will be dissolved and liquidated.

#### (4) AMERICAN STOGIE COMPANY.

American Stogie Company is a corporation whose only asset is all of the issued stock of Union-American Cigar Company, which latter company has cigar factories located at Pittsburgh, Allegheny, Lancaster and Newark. Its total production, based upon business for the year 1910, is only 1.58 per cent. of the entire production of cigars in the United States in volume, and, as these Petitioners believe, about the same percentage in value. American Stogie Company has \$976,000 at par of seven per cent. cumulative preferred stock, of which American Cigar Company owns \$40,000 at par, and none of the other defendants own any; it has \$10,879,000 at par of common stock, of which American Cigar Company owns \$7,303,775 at par, and none of the other defendants own any. There are accumulated and unpaid dividends on the preferred stock to the amount of \$399,000 as of December 31, 1910.

*It is proposed* that American Stogie Company dissolve, with leave granted to the trustees in dissolution to either convert the assets into cash, and distribute them among the stockholders according to their rights, or to effect such reorganization as they may be able to effect, provided, that in either event there shall be a separation into at least two different ownerships of the factories and businesses now owned and operated by Union-American Cigar Company. If the dissolution is followed by a conversion of the assets of American Stogie Company into cash, American Cigar Company will take such cash as it may receive into its treasury; if it receives upon such dissolution securities of cigar manufacturing concerns, it will distribute such as a dividend to its common stockholders, to be charged to its surplus as hereinafter set forth.

#### (5) AMERICAN CIGAR COMPANY.

American Cigar Company is a manufacturer of cigars. It has various factories of its own, and it owns all or a part of the stock of several companies engaged in the

manufacture of cigars, all of which companies have been organized by it and which have received from it conveyances of part of its business, operating in this way as separate corporations for trade purposes. Among these companies is Federal Cigar Company.

American Cigar Company also owns a part of the stock of Havana Tobacco Company, which controls factories manufacturing cigars in Havana; and a part of the stock of Porto Rican-American Tobacco Company, engaged in the manufacture of cigars and cigarettes in Porto Rico; and half of the stock of Porto Rican Leaf Tobacco Company, engaged in growing tobacco in Porto Rico. American Cigar Company itself uses large quantities of Porto Rican grown leaf. Neither American Cigar Company nor any of the companies in which it is interested, except Havana Tobacco Company and Porto Rican-American Tobacco Company, is engaged in the manufacture of cigars outside of the United States.

American Cigar Company, including with its production the production of companies of which it owns in whole or in part the stock, has, in volume, based on the business for the year 1910, 13.36 per cent. of the cigar business of the United States, and in value, as your Petitioners believe, substantially the same percentage. Havana Tobacco Company has, directly or indirectly, control of 24.06 per cent. of the total production of cigars in Cuba; 46.00 per cent. of the total exportation of cigars from Cuba to all countries of the world, including the United States; and 38.15 per cent. of the total exportation of cigars from Cuba to the United States.

*It is proposed* that American Cigar Company dispose of properties belonging to it, and thus disintegrate its business as follows:

(a) That it sell to The American Tobacco Company for cash its stock, being all thereof, of Federal Cigar Company, at a fair price, to wit: \$3,965,616.05;

(b) That it sell to The American Tobacco Company, for cash, the stock it owns of Porto Rican-American Tobacco

Company, to wit: \$657,600 at par, at a fair price, to wit: \$350 per share, or \$2,301,600;

(c) That American Cigar Company dispose of any interest in American Stogie Company by receiving cash proceeds of its stock in dissolution thereof, if American Stogie Company upon dissolution converts its assets into cash; or by distributing as a dividend to its common stockholders out of its surplus the securities which it receives upon the dissolution of American Stogie Company, if it receives such.

All stocks thus to be acquired by The American Tobacco Company from American Cigar Company are to be disposed of by The American Tobacco Company as hereinafter set out.

#### E. DISTRIBUTION BY THE AMERICAN TOBACCO COMPANY OF STOCKS OWNED OR TO BE ACQUIRED BY IT.

##### (1) IMMEDIATE DISTRIBUTION OF STOCKS.

The American Tobacco Company will buy from P. Lorillard Company, for cash at par, the 11,247 shares of the preferred stock of American Snuff Company held by P. Lorillard Company, and will receive, as the sole common stockholder of P. Lorillard Company, and by way of dividends 34,594 shares of the common stock of American Snuff Company held by P. Lorillard Company.

The American Tobacco Company will distribute among its common stockholders by way of dividends, and to be charged to its surplus, all of its securities of the following described classes, whether now owned by it or bought by it from American Cigar Company, as hereinbefore set forth, or bought by it from P. Lorillard Company, as just hereinbefore set forth, or received by it by way of dividends from any of the accessory companies defendant, as hereinbefore set forth, to wit:

American Snuff Company common stock;  
American Snuff Company preferred stock;  
George W. Helme Company common stock;  
Weyman-Bruton Company common stock;  
MacAndrews & Forbes Company common stock;

J. S. Young Company common stock;  
The Conley Foil Company stock;  
The Johnston Tin Foil and Metal Company stock;  
R. J. Reynolds Tobacco Company stock;  
Corporation of United Cigar Stores stock;  
British-American Tobacco Company, Limited, ordinary shares;

Porto Rican-American Tobacco Company stock;

American Stogie Company stock (or what is received by way of dividends from American Cigar Company upon dissolution of American Stogie Company).

Including the amount to be paid to American Cigar Company and P. Lorillard Company for such of these securities as are to be acquired by The American Tobacco Company from them respectively, and excluding those to be acquired by way of dividends, and which, therefore, do not affect the surplus of The American Tobacco Company, never having been set up on its books, these securities had a book value as of December 31, 1910 of, \$35,011,865.03. The earning capacity of all the above securities thus to be distributed, based upon the results of the year 1910, is \$9,860,410.76, though not all thereof was distributed as dividends.

## (2) DEFERRED DISPOSITION OF STOCKS.

The American Tobacco Company will sell or otherwise dispose of, or distribute by way of dividends to its common stockholders out of its surplus at the time existing, before January 1, 1915, of all its holdings of the following securities:

British-American Tobacco Company, Limited, non-voting preference shares;

The Imperial Tobacco Company (of Great Britain and Ireland), Limited, ordinary shares;

Corporation of United Cigar Stores bonds;

MacAndrews & Forbes Company non-voting preferred stock.

During the time these securities are left in the treasury of The American Tobacco Company, The American To-

bacco Company to be enjoined from voting any thereof that under the terms thereof might be voted, or using any thereof to exercise, or otherwise exercising or attempting to exercise, influence or control over the said companies which issued the said securities respectively, and from gaining possession of any of the said companies by buying in at a foreclosure had under any of the securities, for any default with respect thereto or otherwise.

## F. SALE BY THE AMERICAN TOBACCO COMPANY OF MANUFACTURING ASSETS AND BUSINESS TO COMPANIES TO BE FORMED.

### (1)

There will be organized a new corporation called Liggett & Myers Tobacco Company, and a new corporation called P. Lorillard Company, and The American Tobacco Company will sell, assign and convey to these two companies factories, plants, brands and businesses, and capital stocks of tobacco manufacturing corporations, as follows:

#### TO LIGGETT & MYERS TOBACCO COMPANY.

Liggett & Myers Branch of The American Tobacco Company, engaged in the manufacture of plug tobacco at St. Louis, with the brands connected therewith;

Spaulding & Merrick, a company in which The American Tobacco Company owns, and has always owned, all the stock, engaged in Chicago in the manufacture of fine cut tobacco and smoking tobacco;

Allen & Ginter Branch of The American Tobacco Company, engaged in the manufacture of cigarettes at Richmond, Virginia, and the brands connected therewith (this does not include the brand "Sweet Caporal," made partly there and partly at New York);

Chicago Branch of The American Tobacco Company, a factory at Chicago engaged in the manufacture of smoking tobacco, with the brands connected therewith;

Catlin Branch of The American Tobacco Company, a factory at St. Louis engaged in the manufacture of smoking tobacco, with the brands connected therewith;

Nall & Williams Tobacco Company, a company of which The American Tobacco Company owns all the stock, en-

gaged in the manufacture of plug and smoking tobacco at Louisville, Kentucky;

The John Bollman Company, a company engaged in the manufacture of cigarettes at San Francisco; of this corporation The American Tobacco Company owns ninety per cent. of the stock, which it is proposed to turn over to the Liggett & Myers Tobacco Company;

Pinkerton Tobacco Company, a corporation engaged in the manufacture of scrap tobacco, (a kind of smoking tobacco) at Toledo, Ohio; of this corporation The American Tobacco Company owns 77½ per cent. of the stock, which it is proposed to turn over to the Liggett & Myers Tobacco Company;

W. R. Irby Branch of the American Tobacco Company at New Orleans, engaged in the manufacture of cigarettes and smoking tobacco, the principal brands being "Home Run" and "King Bee";

The Duke-Durham Branch of The American Tobacco Company, engaged in the manufacture of cigarettes and smoking tobacco at Durham, N. C.; principal cigarette brands, "Piedmont" and "American Beauty"; principal smoking tobacco brand, "Duke's Mixture";

Two little cigar factories located, the one at Philadelphia, and the other at Baltimore, branches of The American Tobacco Company; principal brand, "Recruits."

#### TO P. LORILLARD COMPANY.

All the rights of The American Tobacco Company in the present P. Lorillard Company, to wit: all the common stock and \$1,596,100 at par out of a total issue of \$2,000,000 of eight per cent. preferred stock; it is contemplated that as a part of these reorganizations the Lorillard Company, as at present constituted, be wound up and the new company be organized, taking over the assets of the P. Lorillard Company;

S. Anargyros, a company engaged in the manufacture of cigarettes, in which The American Tobacco Company owns all the stock, and of which it has always owned all the stock;

Luhrman & Wilbern Tobacco Company, a company engaged in the manufacture of scrap tobacco (a kind of smoking tobacco), of which The American Tobacco Company owns, and has for many years owned, all the stock;

Philadelphia Branch B at Philadelphia, Wilmington Branch B at Wilmington, Penn Street Branch at Brooklyn, Danville Branch B at Danville and Ellis Branch B at Baltimore, branches of The American Tobacco Company manufacturing little cigars, the principal brand being "Between the Acts";

Federal Cigar Company, a company all of whose stock is, and has always been, owned by American Cigar Company, but which, as hereinbefore provided, is to be purchased for cash by The American Tobacco Company. each of these conveyances to include proper and adequate storage houses, leaf tobacco and other materials and supplies, provision for book accounts, including in each case a ratable proportion of the cash held by The American Tobacco Company on December 31, 1910, so that each of the new corporations will be fully equipped for the conduct of the business of manufacturing and dealing in tobacco.

#### (2) RESOURCES AND CAPITALIZATION OF COMPANIES AND PROVISIONS FOR EXCHANGING AND RETIRING SECURITIES OF AMERICAN TOBACCO COMPANY.

The American Tobacco Company has securities issued and outstanding as follows:

6% bonds .....	\$25,882,650
4% bonds (including outstanding 4% bonds of Consolidated Tobacco Co.) .....	51,354,100
6% preferred stock .....	78,689,100
Common stock .....	40,242,400

The American Tobacco Company in October, 1904, immediately after the merger, had an outstanding issue of its own four per cent. bonds and the Consolidated Tobacco Company four per cent. bonds which it assumed, amounting to \$78,689,100, but it has purchased on the market and retired \$27,335,000 at par of these four per



cent. bonds, charging the amount thus expended to surplus. The six per cent. bonds and four per cent. bonds aforesaid are what are ordinarily known as debenture bonds, and are issued under a trust indenture which imposes a general charge on the property, income and earnings of the company in favor, first, of the six per cent. bonds, and, second, of the four per cent. bonds. The American Tobacco Company, after the reduction of the surplus through the acquisition by it of four per cent. bonds as aforesaid, had on December 31, 1910, a surplus of \$61,119,991.63, which will be increased by the surplus earnings of the current year. The distribution of securities herein provided for to be forthwith made, would diminish the said surplus by \$35,011,865.03, the book value of securities to be so distributed. This book value is less than actual value, but in view of the fact that none of the assets of The American Tobacco Company are overvalued, the advance of the book value of the securities to be distributed as hereinbefore set forth to their actual value, would operate at the same time to increase the surplus of the Company, and so its surplus, after such distribution, would remain just the same as though the advance to actual value had not been made on the books of the Company.

The properties to be conveyed to the Liggett & Myers Tobacco Company and P. Lorillard Company, based upon conditions as of December 31, 1910, the last completed year, including in such conveyances the proper and proportionate storage houses, leaf tobacco, supplies and materials and cash, but without anything for value of brands, trademarks, formulæ, recipes and goodwill, but including stocks of companies, are of the value of \$30,607,261.96 to Liggett & Myers Tobacco Company, and \$28,091,748.86 to P. Lorillard Company. So far as these conditions shall be changed before the day of the conveyance, any deficiency is to be made good in cash, so that these two companies will have said amounts in tangible assets, as aforesaid, useful, and such as have been used, in the manufacture of the brands to be conveyed to them respectively,

and cash. The American Tobacco Company will be left with tangible assets, including stocks of companies employed in manufacturing tobacco and its products, cash and bills and accounts receivable, of the value of \$53,408,498.94 as of December 31 1910. The profits earned during the year 1910 on the brands and businesses to be conveyed by The American Tobacco Company to Liggett & Myers Tobacco Company amounted to \$7,468,172.02, and the profits on the brands and businesses to be conveyed by The American Tobacco Company to P. Lorillard Company amounted to \$5,264,729.38.

It is proposed that the value of the brands, trademarks, recipes, formulæ and goodwill to be sold to each of these companies, be determined by their earning capacity, based upon the results for the year 1910, so that each shall have an earning capacity of 11.02 per cent. per annum upon its total property, including both tangible property and brand value and goodwill. Upon this basis the consideration to be paid by the Liggett & Myers Tobacco Company will be \$30,607,261.96, value of tangible assets as above stated, and \$36,840,237.04, value of brands, trademarks, recipes, formulæ and goodwill, making a total of \$67,447,499; and the consideration to be paid by the P. Lorillard Company will be \$28,091,748.86, value of tangible assets as above stated, and \$19,460,752.14, value of brands, trademarks, recipes, formulæ and goodwill, making a total of \$47,552,501. The brands, trademarks, recipes, formulæ and goodwill of The American Tobacco Company, on December 31, 1910, were of the book value of \$101,324,964.07. The payments for brand value, etc., to The American Tobacco Company to be made by Liggett & Myers Tobacco Company and P. Lorillard Company, as aforesaid, makes an aggregate of \$56,300,989.18, and would thus leave the book value of brands, trademarks, recipes, formulæ and goodwill retained by The American Tobacco Company at \$45,023,974.89, which added to the \$53,408,498.94 of tangible manufacturing assets to be retained by The American Tobacco Company, will make the total book value of manufacturing property to be retained

by that Company \$98,432,473.83, upon which its earnings, based upon the results for the year 1910, would be \$11,369,809.82, or 11.55 per cent.

The Liggett & Myers Tobacco Company and the P. Lorillard Company would pay for these conveyances, therefore, the aggregate as aforesaid, to wit:

Liggett & Myers Tobacco Company	\$67,447,499
P. Lorillard Company	47,552,501
Aggregating	115,000,000

or each with its earnings on the business for the year 1910 so capitalized that said earnings represent 11.02 per cent. upon the capital.

Liggett & Myers Tobacco Company and P. Lorillard Company will issue securities to cover such capitalization in the aggregate as follows: To an amount equal to one-half of the outstanding six per cent bonds of The American Tobacco Company, that is, \$26,441,325 at par in seven per cent bonds, to an amount equal to one-half of the outstanding four per cent. bonds of The American Tobacco Company, that is, \$25,677,050 at par in five per cent. bonds; to an amount equal to one-third of the outstanding preferred stock of The American Tobacco Company, that is, \$26,229,700 at par, in seven per cent. cumulative voting preferred stock; which, upon liquidation of the Company, shall be paid at par with accrued unpaid dividends, before any amount shall be paid to common stock, with balance of assets distributable ratably to the common stock; and the balance of said \$115,000,000, that is, \$36,651,925 in common stock; the seven per cent. bonds and the five per cent. bonds to mature at the time fixed respectively for the maturity of the six per cent. bonds and the four per cent. bonds of The American Tobacco Company now outstanding, and to be issued under an indenture of substantially like tenor and terms with the present indenture of The American Tobacco Company under which its six per cent. bonds and four per cent. bonds were issued, the seven per cent. bonds to have priority in charge over the five per cent. bonds in the same way that the six per cent. bonds of The American Tobacco Com-

pany have priority of charge over the four per cent. bonds. Thus the capitalization of the Liggett & Myers Tobacco Company and P. Lorillard Company will be as follows:

	Liggett & Myers.	Lorillard.	Total.
7% bonds	\$15,507,837	\$10,933,488	\$26,441,325
5% bonds	15,059,589	10,617,461	25,677,050
7% preferred stock	15,383,719	10,845,981	26,229,700
Common stock	21,496,354	15,155,571	36,651,925
	67,447,499	47,552,501	115,000,000

All of these securities of the Liggett & Myers Tobacco Company and the P. Lorillard Company to be turned over to The American Tobacco Company in payment of the purchase price for the factories, plants, brands and businesses and capital stocks of tobacco manufacturing corporations so as to be conveyed to Liggett & Myers Tobacco Company and P. Lorillard Company respectively as hereinbefore set out.

These securities will be disposed of by The American Tobacco Company as follows:

The common stock will be offered for cash at par to the holders of the common stock of The American Tobacco Company in proportion to their holdings, and any not purchased by the person thus entitled thereto shall be sold to persons other than the individual defendants, to the end that such offer of common stock of the two new companies to the common stockholders of The American Tobacco Company shall not be used by the individual defendants to increase their ownership therein beyond the proportion of their holdings of the common stock of The American Tobacco Company.

To each holder of the six per cent. bonds of The American Tobacco Company, an offer shall be made to acquire his bonds for cancellation, and to give in exchange therefor, as to one-half thereof, new seven per cent. bonds of Liggett & Myers Tobacco Company and P. Lorillard Com-

pany at par, and in payment for the other half thereof, cash at the rate of \$120 and accrued interest for each \$100 face value of the bonds.

To each holder of the four per cent. bonds of The American Tobacco Company, an offer shall be made to acquire his bonds for cancellation, and to give in exchange therefor, as to one-half thereof, new five per cent. bonds of Liggett & Myers Tobacco Company and P. Lorillard Company at par, and, in payment for the other half thereof, cash at the rate of \$96 and accrued interest for each \$100 face value of the bonds.

To each holder of the preferred stock of The American Tobacco Company, an offer shall be made to acquire one-third of his stock for cancellation in exchange for an equal amount at par of Liggett & Myers Tobacco Company and P. Lorillard Company.

On account of the larger capitalization of the Liggett & Myers Tobacco Company as compared with the P. Lorillard Company, each class of the new securities will issue in the proportion of 58.65 per cent. thereof of Liggett & Myers Tobacco Company securities and 41.35 per cent. thereof of P. Lorillard Company securities. The stocks will be issued in shares of \$100, and coupon bonds in denominations of \$1,000, and registered bonds in larger denominations, and in denominations of \$100 and \$50, and in actual issue fractions will be eliminated.

The common stocks of the two Companies aforesaid are to be sold as above set out prior to March 1, 1912, with three years to be allowed for the retirement of the bonds and preferred stock of The American Tobacco Company, as above set out. Pending such, the said seven per cent. bonds, five per cent. bonds, and seven per cent. preferred stocks of the Liggett & Myers Tobacco Company and the P. Lorillard Company, together with an amount in cash, or in securities owned by The American Tobacco Company, at their book value, or partly in cash and partly in such securities, equal to the amounts required if all such sales and exchanges are made, will be deposited with the Guaranty Trust Company of New York, the trustee in

the indenture under which the six per cent. bonds and the four per cent. bonds of The American Tobacco Company are issued, as the agency to effect the purchase and exchange. Such deposit will be made, not to secure, nor create a trust fund for the bonds, but for the purpose of sequestrating and taking from the control of The American Tobacco Company the securities and cash so deposited. During the time of such deposit, the securities shall be in the name of, as well as in the custody of, said Trust Company, with any voting rights attaching thereto, but The American Tobacco Company shall receive from the Trust Company all dividends and interest collected by it on account of such securities; and the American Tobacco Company shall have the right at any time and from time to time to sell, at such price as it may determine, and direct the delivery of any of such securities (except the securities of Liggett & Myers Tobacco Company and P. Lorillard Company), the consideration therefor to go into the hands of said Trust Company; or to withdraw any of such securities (except securities of Liggett & Myers Tobacco Company and P. Lorillard Company) for the purpose of distribution among its common stockholders, if its surplus at the time permits; or to substitute other securities of like book value for the securities so deposited (except as to the securities of Liggett & Myers Tobacco Company and P. Lorillard Company); or to alter the relative proportion of cash and securities; it being the intent of this provision that there shall be sequestrated from the control of The American Tobacco Company, all the securities of the Liggett & Myers Tobacco Company and P. Lorillard Company, and an additional amount of cash or other securities equal, upon the purchase basis aforesaid, to the value of the four per cent. bonds and the six per cent. bonds of The American Tobacco Company at the time outstanding. At the end of the three years, if there are any of such securities of the Liggett & Myers Tobacco Company or P. Lorillard Company in the hands of such trust company undisposed of by such exchange as afore-

said, then The American Tobacco Company shall apply to this Court for an order as to the disposition thereof. Nothing contained in this provision, and nothing done under this provision, shall be construed as providing for the creation of, or as creating, any lien or security on anything deposited with the trust company in favor of the six per cent. bonds or the four per cent. bonds of The American Tobacco Company outstanding, or otherwise.

#### G. VOTING RIGHTS TO PREFERRED STOCK.

By proper amendment of the certificate of incorporation of The American Tobacco Company, the preferred stock will be given full voting rights.

#### H. CERTAIN INCIDENTAL PROVISIONS.

(1)

P. Lorillard Company is a New Jersey company, with \$3,000,000 of common stock, all of which is owned by The American Tobacco Company, and \$2,000,000 of eight per cent. preferred stock. Of this preferred stock The American Tobacco Company holds \$1,596,100 at par, and there is held by others \$403,900 at par. Under the laws of New Jersey the present P. Lorillard Company may be dissolved by the holders of two-thirds of the outstanding stock and upon such dissolution the preferred stock is entitled to be paid at par, the balance of the assets going to the common stock. In view of the fact, however, that the preferred stock of the present P. Lorillard Company is an eight per cent. preferred stock with abundant assets and earnings to make the principal and income secure, it is deemed fair to the holders of this outstanding \$403,900 of preferred stock that they be given an opportunity to take, at their option, either cash at par, which they are legally entitled to, or the seven per cent. preferred stock of the proposed new P. Lorillard Company. As the preferred stock of the new P. Lorillard Company is to be a seven per cent. preferred stock, the holders of said \$403,900 of said present preferred stock will be offered stock of the new company at the rate of \$114.25 for each share. It is therefore proposed that the new P. Lorillard

Company provide for an additional amount of preferred stock sufficient to take care of \$403,900 preferred stock, on that basis, to wit: \$114.25 in new seven per cent. preferred stock for each \$100 of said stock, amounting to 461,600 at par of preferred stock in addition to that set out hereinbefore. In view of the fact that in the statements hereinbefore made as to earnings of the P. Lorillard Company there is included only such part of the earnings of the present P. Lorillard Company as accrued to the proportion of its stock held by The American Tobacco Company, this increase of preferred stock would increase proportionately the profits of the P. Lorillard Company, and does not derange any of the figures hereinbefore given, or given in any of the Exhibits hereto and hereinafter referred to.

(2)

American Snuff Company manufactures and sells a brand of snuff called "Garrett," which has a large sale in the Southern and Southwestern sections of the country. Originally this brand was manufactured at Yorklyn, Delaware, and in part packed in Philadelphia. Several years ago American Snuff Company determined, on account of freight rate conditions, to manufacture this brand at Clarksville, Tennessee, and pack it at Memphis, Tennessee, and that the factories at Yorklyn, Delaware, should be given up to the manufacture of other brands. It has yet, though, been unable to produce in Clarksville, Tennessee, goods similar to the goods heretofore and now made by it at Yorklyn, Delaware, although the experiment is still in progress, and with hope of success. Under the plan hereinbefore outlined, the brand "Garrett" snuff is allotted to American Snuff Company, and the factories other than one factory at Yorklyn, Delaware, are allotted to George W. Helme Company; your Petitioners pray that in the approval and adoption by this Court of this plan, American Snuff Company and George W. Helme Company be permitted to manufacture brands the one for the other, for a period not exceeding one year from March 1, 1912, each company paying to the other as consideration for

such manufacture, the cost thereof plus five per cent.; the necessity of paying five per cent. above cost is sufficient inducement to each company to manufacture its own goods as soon as American Snuff Company is able to manufacture "Garrett" snuff of the requisite character and kind in its Clarksville factory, thus leaving the Yorklyn factories, other than No. 5, for the manufacture by the George W. Helme Company of its own brands.

This Court, having heard the parties as directed by the Supreme Court of the United States, it is further ascertained and determined, and

Ordered, adjudged and decreed that said plan hereinabove set forth is a plan or method which, taken with the injunctive provisions hereinafter set forth, will dissolve the combination heretofore adjudged to be illegal in this cause, and will re-create out of the elements now composing it a new condition which will be honestly in harmony with, and not repugnant to, the law, and without unnecessary injury to the public or the rights of private property.

It is further ordered, adjudged and decreed that the said plan as hereinabove set forth be, and it is hereby, approved by this Court, and the defendants herein are respectively directed to proceed forthwith to carry the same into effect.

The necessities of the situation in the judgment of this Court requiring the extension of the period for carrying into execution said plan to a further time not to exceed sixty days from December 30, 1911,

It is further ordered, adjudged and decreed that the defendants be allowed until February 28, 1912, to carry said plan into execution.

It is further ordered, adjudged and decreed that the defendants, their officers, directors, servants, agents and employees be, and they are hereby, severally enjoined and restrained as follows:

From continuing or carrying into further effect the combination adjudged illegal in this cause, and from entering into or forming any like combination or conspiracy, the effect of which is or will be to restrain commerce in

tobacco or its products or in articles used in connection with the manufacture and trade in tobacco and its products, among the States or in the territories or with foreign nations, or to prolong the unlawful monopoly of such commerce obtained and possessed by the defendants, as adjudged herein in violation of the Act of Congress approved July 2, 1890, either:

1. By causing the conveyance of the factories, plants, brands or business of any of the fourteen corporations among which the properties and businesses now in the combination are to be distributed, to wit: The American Tobacco Company, Liggett & Myers Tobacco Company, P. Lorillard Company, American Snuff Company, George W. Helme Company, Weyman-Bruton Company, R. J. Reynolds Tobacco Company, British-American Tobacco Company, Limited, Porto Rican-American Tobacco Company, MacAndrews & Forbes Company, J. S. Young Company, The Conley Foil Company, The Johnston Tin Foil and Metal Company and United Cigar Stores Company, to any other of said corporations; by placing the stocks of any one or more of said corporations in the hands of voting trustees or controlling the voting power of such stocks by any similar device; or

2. By making any express or implied agreement or arrangement together or one with another like those adjudged illegal in this cause, relative to the control or management of any of said fourteen corporations, or the price or terms of purchase, or of sale, of tobacco or any of its products, or the supplies or other products dealt with in connection with the tobacco business, or relative to the purchase, sale, transportation or manufacture of tobacco, or its products or supplies or other products dealt with as aforesaid, by any of the parties hereto, which will have a like effect in restraint of commerce among the states, in the territories and with foreign nations to that of the combination, the operation of which is enjoined in this cause; or by making any agreement or arrangement of any kind with any other of such corporations under which trade or business is apportioned be-

tween such corporations, in respect either to customers or localities.

3. By any of said fourteen corporations retaining or employing the same clerical organization, or keeping the same office or offices, as any other of said corporations.

4. By any of said fourteen corporations retaining or holding capital stock in any other corporation any part of whose stock is also retained and held by any other of said corporations; *provided*, however, that this prohibition shall not apply to the holding by the Porto Rican-American Tobacco Company and American Cigar Company of stock in Porto Rican Leaf Tobacco Company, nor shall it apply to the holding of stock of the National Snuff Company, Limited, by Weyman-Bruton Company and British-American Tobacco Company, Limited.

5. By any of said fourteen corporations doing business directly or indirectly under any other than its own corporate name or the name of a subsidiary corporation controlled by it; *provided*, however, that in case of a subsidiary corporation the controlling corporation shall cause the products of such subsidiary corporation which are sold in the United States and bear the name of the manufacturer, to bear also a statement indicating the fact of such control.

6. By any of said fourteen corporations refusing to sell to any jobber any brand of any tobacco product manufactured by it except upon condition that such jobber shall purchase from the vendor some other brand or product also manufactured and sold by it; *provided*, however, that this prohibition shall not be construed to apply to what are known as "combination orders" under which some brand or product may be offered to a jobber or dealer at a reduced price on condition that he purchase a given quantity of some other brand or product.

It is further ordered, adjudged and decreed that during a period of five years from the date hereof, each of said fourteen corporations hereinbefore named, its officers,

directors, agents, servants and employees, are hereby enjoined and restrained as follows:

1. None of the said fourteen corporations shall have any officer or director who is also an officer or director in any other of said corporations.

2. None of said fourteen corporations shall retain or employ the same agent or agents for the purchase in the United States of tobacco leaf or other raw material, or for the sale in the United States of tobacco or other products, as that of any other of said corporations.

3. None of said fourteen corporations shall directly or indirectly acquire any stock in any other of said corporations, or purchase or acquire any of the factories, plants, brands or business of any other of said corporations, or make loans or otherwise extend financial aid to any other of said corporations.

The provisions of this decree shall apply only to trade and commerce in or between the several states and territories and the District of Columbia, and trade and commerce between the United States and foreign nations.

It is further ordered, adjudged and decreed that British-American Tobacco Company, Limited, and The Imperial Tobacco Company (of Great Britain and Ireland), Limited, shall not act as agent for each other, nor employ a common agent, for the purchase of leaf tobacco in the United States, and neither of said two companies shall unite with any of the said fourteen corporations among which the properties and businesses now in the combination are to be distributed, in the employment of a common agent for the purchase of tobacco leaf in the United States.

It is further ordered, adjudged and decreed that each of the twenty-nine individual defendants in this suit be enjoined and restrained from at any time within three years from the date of this decree, acquiring, owning or holding, directly or indirectly, any stock, or any legal or equitable interest in any stock in any one of said fourteen corporations, except British-American Tobacco Company, Limited, in excess of the amount to which he will be entitled

under the provisions of the plan when the same shall have been carried out as proposed as the present owner of the amount of stocks in said several companies shown by the affidavits of said several defendants filed herein on the 16th day of November, 1911; *provided*, however, that any of said defendants may, notwithstanding this prohibition, acquire from any other or others of said defendants, or in case of death from their estates, any of the stock held by such other defendant or defendants in any of said corporations.

It is further ordered, adjudged and decreed that the new companies whose organization is provided for in the plan hereinbefore set forth, to wit: Liggett & Myers Tobacco Company, P. Lorillard Company, George W. Helme Company, Weyman-Bruton Company and J. S. Young Company, shall, after their formation and by appropriate proceeding, be made parties defendant to this cause and subject to the provisions of this decree and bound by the injunctions herein granted.

It is further ordered, adjudged and decreed that any party hereto may make application to the Court for such orders and directions as may be necessary or proper in relation to the carrying out of said plan, and the provisions of this decree.

It is further ordered, adjudged and decreed that the costs of this action shall be paid by the defendants other than R. P. Richardson, Jr., & Company, Incorporated, as to whom the suit has heretofore been dismissed, and the payment by the defendant The American Tobacco Company of the reasonable costs and counsel fees of the committees organized for the protection of the six per cent. bonds, four per cent. bonds and preferred stock of The American Tobacco Company, is hereby approved.

It is further ordered, adjudged and decreed that the defendants The American Tobacco Company, MacAndrews & Forbes Company, American Snuff Company, and each of them, and their and each of their officers, directors, servants, agents and employees, be severally enjoined and restrained as in said plan set forth, from

voting stocks, exercising influence or control over other companies or gaining possession of other companies through the use of securities temporarily held by them respectively under said plan in each and every case in which it is provided in and by the said plan that any of said three last named defendants shall be so enjoined.

It is further ordered, adjudged and decreed that such books and papers of the defendants The American Tobacco Company and S. Anargyros, or either of them, as relate to the suit of The Ludington Cigarette Machine Company *vs.* S. Anargyros and The American Tobacco Company, or the subject matter thereof or any part thereof, be preserved by the said defendants respectively until after the accounting, if any shall take place in said suit, and said suit be finally determined and ended.

It is further ordered, adjudged and decreed that jurisdiction of this cause is retained by this Court for the purpose of making such other and further orders and decrees, if any, as may become necessary for carrying out the mandate of the Supreme Court.

November 16, 1911.

E. HENRY LACOMBE,  
*Circuit Judge.*

ALFRED C. COXE,  
*Circuit Judge.*

H. G. WARD,  
*Circuit Judge.*

WALTER C. NOYES,  
*Circuit Judge.*