

UNITED STATES v. ALLEN BROTHERS CO.

AT A STATED TERM OF THE UNITED STATES CIRCUIT COURT FOR THE SECOND CIRCUIT, HELD IN THE SOUTHERN DISTRICT OF NEW YORK, AT THE UNITED STATES COURT AND POST OFFICE BUILDING, IN THE BOROUGH OF MANHATTAN, CITY OF NEW YORK, ON THE 10th DAY OF MAY, 1909.

PRESENT: Hon. CHARLES M. HOUGH, *Judge*.

THE UNITED STATES OF AMERICA, PETITIONER,

VS.

ALLEN BROTHERS CO. AND OTHERS, DEFENDANTS.

In Equity 4-49.

WHEREAS, a petition in equity was filed in the above entitled cause on the Chancery side of this Court on the 16th day of April, 1909, wherein and whereby it hath been represented to the Judges of our Circuit Court of the United States for the Southern District of New York, sitting in equity, on the part of the United States of America, petitioner, that the defendants mentioned in

said petition and each of them did, in violation of the provisions of Sections 1 and 2 respectively, of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," enter into an agreement, combination and conspiracy to restrain the trade and commerce among the several States and Territories of the United States, and to control, regulate and monopolize said trade and commerce in the manufacture of manila, fiber and other papers and in the distribution, sale and shipment thereof among the said several States and Territories of the United States, as is more particularly alleged in said petition; and in pursuance of said agreement, combination and conspiracy to restrain, control, regulate and monopolize said trade and commerce as aforesaid, said defendants did cause to be organized an unincorporated association known as the F. & M. Association, and did adopt and maintain for and on behalf of said association a constitution and by-laws in writing which provided, among other things, that the said corporation and partnership defendants should severally be admitted to membership in such association, and have proportionate interests in the profits of the same in accordance with a rating ascertained by determining the ration of the output of such merchandise by each member during its best six of the twelve months just previous to the formation of the said association to the total output of all of the members during each of their best six of the twelve months just previous to the formation of said association; that said association should have certain designated officers with certain prescribed functions; that the headquarters and offices of said association should be maintained in the City of New York in the Southern District of New York; that the members of said association should furnish to the aforesaid officers true daily reports of all orders received for, and shipments made by them respectively of such merchandise manufactured by them; that the aforesaid officers should preserve all the reports, books, papers and records pertaining to the business

thereof, and should have power and authority to visit and inspect the mills and factories and examine the books and business of said members; that meetings of representatives of said members should be held at said city of New York, in said Southern District of New York, every quarter, at which meetings the prices at which such merchandise should be sold by said members during the coming quarter, should be agreed upon and fixed by said representatives, which prices should not be changed or departed from during such period, otherwise than by unanimous consent of said members; that at each such quarterly meeting the aggregate output of said merchandise by said members and the share thereof allotted to each member should be prescribed for the ensuing quarter; that no member should produce and ship such merchandise in excess of its said allotment for such quarter unless it purchased the right to do so from some other member falling short of its allotment; that said association should have a contingent fund made up in part of contributions by the several members in the nature of admission fees in proportion to their aforesaid ratings, and in other part by monthly additions as herein-after mentioned; that said several members should contribute monthly five dollars, for each ton of such merchandise shipped by them respectively during said month, to a general fund, from which fund the expenses of said association were to be paid, and twenty-five cents for each ton of such merchandise so shipped was to be transferred to the said contingent fund and the balance should be distributed monthly among said members in accordance with their said ratings; that the interest of any member in said contingent fund should be forfeited upon such members withdrawing from said association; that prior to the formation of said association, and the adoption of its aforesaid constitution and by-laws, said members thereof were separate and distinct from each other and were engaged in manufacturing and shipping the aforesaid merchandise in competition, in interstate trade and commerce, and but for such unlawful agreement, combina-

tion and conspiracy would and should have continued their aforesaid business on a strictly competitive basis; that after the formation of said unlawful agreement, combination and conspiracy as aforesaid, said defendants from time to time within the last two years, and within the Southern District of New York, in the jurisdiction of this Court, in pursuance of the aforesaid unlawful agreement, combination and conspiracy did certain acts having for their purpose and object the limitation of the production of such merchandise by said members, and the establishment of artificial prices thereof to the consumers thereof, and the elimination of competition between said members, as will more particularly appear by said petition; that in the formation and in the furtherance of said unlawful agreement, combination and conspiracy, the individual defendants named in said petition acted respectively for and on behalf of and with the knowledge and consent of the corporation and copartnership defendants named in said petition with which they are and were respectively connected; and that each and all of said acts and doings in the premises were and are contrary to equity and good conscience, and that said agreement, combination and conspiracy is unlawful and in derogation of the common rights of the People of the United States, and in violation of the Act of Congress of July 2, 1890; and

WHEREAS, all of the defendants named in said petition duly appeared herein, to wit, on the 16th day of April, 1909, by Sol M. Stroock, Esq., their solicitor; and

WHEREAS, upon the consent of Henry A. Wise, Attorney for the United States in and for the Southern District of New York, solicitor for the complainant, and Sol M. Stroock, Esq., solicitor for the defendants, it was on the 16th day of April, 1909, duly ordered that the issues in this case be heard upon the petition only, and that the filing of an answer and a replication be waived, and that such hearing should take place upon the 16th day of April, 1909; and

WHEREAS, the issues in said case thereupon duly came on to be heard upon the application of the aforesaid

United States Attorney for the relief prayed for in the aforesaid petition; and

WHEREAS, upon the said hearing the United States of America was represented by Henry A. Wise, Esq., its attorney and counsel; and

WHEREAS, all of the defendants mentioned in the aforesaid petition, with the exception of the Fletcher Paper Company and Allen M. Fletcher, were represented by Sol M. Stroock, Esq., their solicitor and counsel, and the aforesaid defendants Fletcher Paper Company and Allen M. Fletcher appeared by their counsel, Russell, Campbell, Buckley & Ledyard, and after hearing argument pro and con and due deliberation having been had, it is

ORDERED, ADJUDGED and DECREED that the combination mentioned and described in the petition herein is an unlawful combination and conspiracy in restraint of trade and commerce among the States and with foreign nations and an attempt to monopolize the same, and that each and all of the acts and doings set forth in the petition herein were and are contrary to equity and good conscience, and that the said agreement, combination and conspiracy was and is unlawful and in derogation of the common rights of the people of the United States and in violation of the Act of Congress of July 2, 1890, and the Acts supplemental thereto and amendatory thereof; and it is further

ORDERED, ADJUDGED and DECREED that a permanent injunction issue out of this Court upon the aforesaid petition perpetually enjoining and restraining each, every and all of the defendants named in the aforesaid petition, together with their counsellors, attorneys, solicitors, trustees, agents, clerks, employees, servants and workman, and each and every of them, and each and every of their respective directors, officers, agents, servants and employees, and all persons acting under or through them or in their behalf or claiming so to act from further operating under the aforesaid constitution and by-laws of the aforesaid F. and M. Association, or from further participating in said association, or from doing any act in pursuance of or for the purpose of carrying out said

agreement, combination and conspiracy in restraint of trade and commerce, as set forth in the petition herein, or from doing any act in pursuance of or for the purpose of carrying out said monopoly or attempt to monopolize said trade and commerce as set forth in the petition herein, or from continuing the said agreement, combination and conspiracy made between the said defendants as set forth in the petition herein, or from making, executing or carrying out any such contract, combination, conspiracy, agreement or understanding as is in the petition herein set forth in the future; or from carrying out any such said contract, combination and conspiracy by the means described in the petition herein; and they and each of them are hereby required to desist and withdraw from all connection with the same, and that they and each of them, and all, each and every of their respective directors, officers, agents, servants and employees, and all persons acting under or through them or in their behalf, or claiming so to act, be, and that they are perpetually enjoined, restrained and prohibited from entering into or taking part in or performing any agreement, contract, combination or conspiracy, the purpose or effect of which will be as to trade and commerce in fiber, manila and other papers, manufactured by them, between and among the several States and Territories and the District of Columbia, a restraint, monopolization of, or an attempt to monopolize trade and commerce in violation of the provisions of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and the Acts amendatory thereof, either by agreeing or contracting together or with one another expressly or impliedly, directly or indirectly, substantially in the manner in said petition set forth with respect to the manufacture, price, sale, shipment and distribution of manila, fiber and other papers manufactured, sold and distributed by them or any of them; or by similarly agreeing or contracting together or with one another expressly or impliedly, directly or indirectly as to the prices at which the said paper or any part or grade thereof shall be sold;

or as to the persons or corporations to whom it shall be sold; or as to the amount or quantity of such paper or any grade thereof which shall be manufactured, sold or distributed by them or any of them, or with a view to the imposition of any penalty, burden or condition upon any of defendants in connection with the manufacture, sale, or disposition of such paper manufactured by them or any of them; or to contribute to any such or substantially similar pool or general fund as in said petition set forth any part of the proceeds of the sale of any such papers, or to maintain any such pool or general fund made up from such contributions.

C. M. HOUGH,
United States District Judge.