

Transcript of Record.

1 UNITED STATES OF AMERICA, } ss:
 Eastern District of Tennessee, Southern Division, }

Be it remembered that at a circuit court of the United States begun and held for the southern division of the eastern district of Tennessee, at the Federal building in the city of Chattanooga, within said district and the sixth circuit, on the first Monday, it being the 5th day of October, A. D. 1896—present and presiding, the Honorable Chas. D. Clark, district judge for the eastern and middle districts of Tennessee—among the proceedings had were the following, to wit:

THE UNITED STATES, by JUDSON HARMON, Its Attorney General, and James H. Bible, the United States Attorney for the Eastern District of Tennessee,

against

2 THE ADDYSTON PIPE & STEEL COMPANY, a Corporation Chartered and Doing Business under the Laws of the State of Ohio and a Resident of said State, with Its Principal Office in the City of Cincinnati, in said State; Dennis Long & Co., a Corporation (or Partnership) Chartered by and Doing Business under the Laws of the State of Kentucky, a Resident of said State, with Its Principal Office in the City of Louisville, Kentucky; Howard-Harrison Iron Company, a Corporation Chartered by and Doing Business under the Laws of the State of Alabama and a Resident of said State, with Its Principal Office at Bessemer, Alabama; Anniston Pipe & Foundry Company, a Corporation Chartered by and Doing Business under the Laws of the State of Alabama and a Resident of said State, with Its Principal Office at Anniston, Alabama; South Pittsburg Pipe Works, a Corporation Chartered by and Doing Business under the Laws of the State of Tennessee and a Resident of said State, with Its Principal Office at South Pittsburg, Tennessee; Chattanooga Foundry & Pipe Works, a Corporation Chartered by and Doing Business under the Laws of the State of Tennessee and a Resident of said State, with Its Principal Office at Chattanooga, Tennessee.

In Equity.
 No. 539.

Petition.

(Endorsed :) Filed Dec. 10th, 1896. Henry O. Ewing, clerk.

In the Circuit Court of the United States for the Southern Division
of the Eastern District of Tennessee. In Equity.

To the judges of the circuit court of the United States for the south-
ern division of the eastern district of Tennessee:

THE UNITED STATES, by JUDSON HANSON, Its Attorney General,
and James H. Bible, the United States Attorney for the Eastern
District of Tennessee, Brings This Its Petition
against

THE ADDYSTON PIPE & STEEL COMPANY, a Corporation Char-
tered by and Doing Business under the Laws of the State of
Ohio and a Resident of said State, with Its Principal Office in
the City of Cincinnati, in said State; Dennis Long & Co., a
Corporation (or Partnership) Chartered by and Doing Busi-
ness under the Laws of the State of Kentucky, a Resident of
said State, with Its Principal Office in the City of Louisville,
Kentucky; Howard-Harrison Iron Company, a Corporation
Chartered by and Doing Business under the Laws of the State
of Alabama and a Resident of said State, with Its Principal
Office at Bessemer, Alabama; Anniston Pipe & Foundry Com-
pany, a Corporation Chartered by and Doing Business under
the Laws of the State of Alabama and a Resident of said State,
with Its Principal Office at Anniston, Alabama; South Pitts-
burg Pipe Works, a Corporation Chartered by and Doing Busi-
ness under the Laws of the State of Tennessee and a Resident
of said State, with Its Principal Office at South Pittsburg, Ten-
nessee; Chattanooga Foundry & Pipe Works, a Corporation
Chartered by and Doing Business under the Laws of the State
of Tennessee and a Resident of said State, with Its Principal
Office at Chattanooga, Tennessee.

3 Petitioner charges:

1.

That defendants, and each of them, are and have been for seven
years engaged in the manufacture of cast-iron pipe, a commodity
in general use by the public throughout the country, and necessary
for drainage and sewerage purposes, and used especially by gas and
water companies and by municipal corporations.

2.

Defendants are all residents of that portion of the country where
pig iron and fuel and all elements entering into the production of
cast-iron pipe are cheaper, and where said cast-iron pipe can be
made at less cost to the manufacturer than any place else.

3.

Petitioner further charges that defendants are the only persons
engaged in the manufacture of cast-iron pipe, and who have
capacity to supply the demand and fulfill the contracts, in the fol-
lowing States and Territories, to wit: Alabama, Arizona, California,

Colorado, North Dakota, South Dakota, Florida, Georgia, Idaho, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Indian Territory, North Carolina, South Carolina, New Mexico, Minnesota, Michigan, Tennessee, Texas, Illinois, Wyoming, Indiana, Ohio, Utah, Washington, Oregon, Iowa, West Virginia, Nevada, Oklahoma and Wisconsin, being 36 States and Territories, and embracing that portion of the United States that is most rapidly developing, and where said cast-iron pipe is most largely used. There are a few other pipe works located in the above Territory, but for want of capacity they are unable to compete with defendants, and by reason of the conduct on the part of defendants hereinafter mentioned, they have been practically driven out of the market in said Territory.

4.

Petitioner charges, upon information that it believes to be true, that defendants, in order to monopolize the trade in cast-iron pipe, especially in the above named States and Territories, and force the price of the same to an unreasonable and exorbitant rate, and destroy all competition in regard thereto, and force the public
 4 to pay exorbitant and unreasonable prices for said cast-iron pipe, did, on or about the 28th day of December, 1894, in the city of Chattanooga, Tennessee, by and through their regular appointed and qualified officers, agents and representatives, enter into a contract or combination, in the form of trust or conspiracy, in restraint of trade or commerce among the several States and Territories above named, in regard to the manufacture and sale of said cast-iron pipe, which said fraudulent and criminal conspiracy was entered into in violation of law, and in defiance of the same, and was intended by defendants to enable them to defraud the public in the purchase and use of the pipe manufactured by them. The name of this criminal and unlawful conspiracy is the "Associated pipe works," and its members are the defendants above named. Petitioner charges, upon information and belief, that defendants are now, and have been since said 28th day of December, 1894, operating their shops in obedience to and according to the agreement entered into on said date, and are now engaged in selling and shipping from their shops said cast iron pipe into other States and Territories than the States and Territories in which defendants reside, and under contracts entered into with citizens of such other States and Territories.

5.

Petitioner further charges that it was a part of said fraudulent and criminal combination and conspiracy aforesaid, that there should be no competition among defendants as to any work done or pipe furnished in any of the States and Territories above named, and in order to make effectual this criminal purpose, it was agreed that upon all work done in the territory named, a "bonus" should be charged on every ten of pipe sold, the amount of said "bonus" being determined by how much the combination could force the customer to pay, and petitioner here charges that defendants have

collected a "bonus" ranging from three to nine dollars on every ton of pipe sold since the date the trust was formed. The "bonus" represents the amount charged for pipe over and above a reasonable and fair price for same, and above the price that defendants would be willing to sell for, if the trust or combination did not exist, and they have to compete with each other for the work.

Petitioner charges that the output of the shops belonging to the six defendants above named, amounts to about 220,000 tons of pipe annually, and this multiplied by the average "bonus" received, of six dollars per ton, amounts to one million three hundred and twenty thousand dollars, so your honors may get some idea of the immense benefits derived by defendants from their fraudulent, criminal and unlawful combination, and see to what extent the public has been, and is being, robbed and plundered by reason of the existence of the trust aforesaid.

Petitioner is informed and believes, and upon such information charges, that the amount of pipe sold and shipped by defendants for this year, 1896, will exceed said amount of 220,000 tons, nearly all of which has been sold and shipped according to the terms and under the agreement entered into between defendants on said 28th day of December, 1894; and defendants are still and now engaged in the sale and shipment of the same to the States and Territories other than in which they reside.

6.

The above-named States and Territories were designated by defendants in their conspiracy as "pay territory" and all territory not included in the above was called "free territory." In "pay territory," except as to certain cities, known as "reserved cities" where all the pipe was to be furnished, by some particular shop, a "bonus" of so much per ton was fixed on all pipe sold and either of defendants were allowed to solicit work and furnish pipe at any price it saw proper, but it had to account to the pool or trust, for the "bonus" agreed upon for that particular State. It made no difference at what price the work was done, and these "bonuses" were remitted from one to another every two weeks, each sharing in the profit represented by the "bonus," although they may have had nothing to do with the work. This arrangement kept one from competing with the other, the incentive not to do so being that they would divide the "bonus" received, and, as petitioner charges, prevented the public from obtaining the pipe at a fair and reasonable price.

7.

To make said fraudulent and unlawful criminal conspiracy effectual, and in order to deprive the public of their right to obtain soft-iron pipe at a fair and reasonable price, petitioner further charges that it was a part of the agreement that defendant should, at once, notify all parties to whom they had made quotations, withdrawing the same, and accept no orders after that date on quotations

4
6 sent out before the conspiracy was entered into, and petitioner charges that said defendants did, at once, withdraw said quotations where they had sent them out, and at once prepared new quotations for the territory embraced in their combine, advancing the price of pipe from three to nine dollars on every ton, and this too, at a time of untold financial depression, and when there had been no increase in the wages of labor, or the cost of any of the materials used in the manufacture of said pipe, and they have been receiving this price for their pipe from that date to the present time.

8.

It was furthermore a part of said fraudulent combination, which petitioner avers has been strictly carried out, that all the pipe for certain cities in the above-named territory was to be divided between defendants. For instance, Anniston pipe works was to supply Atlanta; Howard-Harrison Iron Company Birmingham and St. Louis; Chattanooga foundry & pipe works, Chattanooga and New Orleans; South Pittsburg pipe works, Omaha; Dennis Long & Co., Louisville and certain cities in Indiana; while Addyston Pipe & Steel Co. was to supply Cincinnati and certain other cities in Ohio and Kentucky. Petitioner does not pretend to give all the cities allotted under said criminal agreement.

Petitioner charges that when an inquiry was received by defendants for work in any of the "reserved cities" they, of course, knowing which of defendants was to have the job, would at once ask the defendant to whom the city was allotted what price to "protect" as it was called, meaning thereby to ask said shop to notify it what its bid would be, so that a higher bid might be sent in. On receipt of such an inquiry the defendant that was to do the work would at once notify all the other defendants the price it intended to bid, or at which it wanted "protection," and the other defendants would each send in a bid at some higher figures, insuring the job to the defendant agreed upon, and insuring to themselves a division of a large "bonus" and making the price to the consumer unfair and unreasonable, and destroying all competition in regard thereto.

9.

Petitioner further shows and charges that the kinds of contracts secured by defendants are, in the main, contracts to furnish pipe to gas and water companies, and to municipal corporations for sewerage and other purposes, which said contracts, after advertisements for bids, are let to the lowest bidders. Petitioner would
7 show to the court that said gas and water companies and said municipal corporations, together with the public generally, being entirely ignorant of the fraudulent and unlawful manner by which defendants make their bids and secure said contracts, and having been so ignorant since said combination was entered into, and having no knowledge of such combination, have been applying in good faith to each of defendants to furnish a bid at which it would do certain work, and since said date of Dec. 23th, 1891, said defendants have been fraudulently and criminally securing about the entire

work in the territory named, and at the exorbitant and unreasonable prices above mentioned.

10.

Petitioner charges upon information it believes to be true, that there are no other pipe works in the territory where the conspiracy exists between defendants, that were able to handle the large contracts for pipe, which defendants have secured since the combination existed, by reason of the want of capacity and money to carry on said work on the part of such shops not in the combination.

Petitioner further shows and charges that defendants have large sums of money, aggregating many millions of dollars, invested in the manufacture of pipe, and are able, many of them alone, to fill contracts of any size, and in fact have furnished pipe where the job amounted to over one hundred thousand dollars, and by reason of the fraudulent and unlawful manner in which they secured the contract, have divided a bonus of not less than seven dollars on each ton of pipe furnished in said large contracts, so petitioner charges that by reason of the great wealth of defendants, and the inability of any and all others engaged in manufacturing pipe in the territory above named, and by reason of the unlawful means resorted to by defendants, they have created a monopoly in the sale of cast-iron pipe in said territory and have crippled and destroyed all smaller concerns engaged in the manufacture of pipe.

11.

Petitioner would further show to the court, and charge that defendants, on or about the 27th day of May, 1895, to enable them to realize greater profits to themselves on the sale of their pipe, and to make the monopoly in their territory on the use and sale of the same, more complete, and to more fully effectuate the conspiracy entered into on said 28th day of December, 1891, adopted what they called the "auction pool" plan for bidding on work in the "pay territory." To carry this out, each of defendants selected one man, and the six men selected constituted an executive committee, which said committee was to be located in some central city, at present at Chicago, to whom all inquiries for pipe were to be referred. On receipt of such inquiry, this committee, in a room with no one present but themselves, secretly and fraudulently bid for the job, the one agreeing to pay the greatest amount of "banns" of course to receive it. By this secret, and fraudulent and criminal manner, petitioner charges all the work done by defendants since June 1, 1895, has been secured. After this "auction pool" was over, as to each particular job, each of the defendants was notified whose representative had bid the most, and the amount of the bid, and this bid was sent by the defendant securing the job at the "auction pool" to the party wanting the pipe, the other defendants all sending in a bid for a higher price, carrying out their criminal agreement to "protect" each other, and securing the job to the highest bidder at the "auction pool," thus reversing the order of things, by giving the job to the highest, instead of the lowest bidder, the deluded customer

of course being ignorant as to the manner in which he is being swindled.

12.

As an example of the unequalled and unmitigated criminal conduct on the part of defendants, and the great amounts of money they have swindled the public out of, by reason of their trust and criminal conspiracy, petitioner will give one instance, among the many hundred, which it charges to be true in every particular. The municipal corporation of the city of St. Louis, Mo., wanted about 5,000 tons of cast-iron pipe during the early part of the present year of 1896. Under the "auction pool" system, as petitioner is informed and believes, and so charges, the "reserved cities," hereinbefore mentioned were left practically the same as under the fixed "bonus" system, there being a different arrangement agreed upon as to the bonus, in some way, but the pipe for the particular cities named to be supplied as originally agreed upon. Under the agreement, the pipe for the city of St. Louis was still to be furnished by defendants, Hoard-Harrison Iron Company. Allowing a reasonable and fair profit, the price of the pipe wanted by St. Louis was at that time, at the shops at Bessemer, Ala., from \$13 to \$15 per ton. The freight to St. Louis from Bessemer was \$3 per ton, so that defendant, Hoard-Harrison Iron Co., could afford to sell said 5,000 tons of pipe delivered in St. Louis at from \$16 to \$18 per ton. The city of St. Louis made inquiry of defendants for the pipe, and requested them to send in bids for the work, and when said inquiries were received by defendants they were at once forwarded to the "auction pool" for the mysterious action of the executive committee aforesaid, acting for defendants. The character of the bidding at this "auction pool," and behind closed doors, is not known to petitioner, and whether the same was free, fair (?) and open, and very animated, and whether each defendant, as represented by its member of said executive committee, was taking care of itself, or whether all were bent and united on swindling the city of St. Louis to their common profit, may never be known; but one thing is certain, and petitioner so charges, defendant, Howard-Harrison Iron Company was the highest bidder at the "auction pool" and the job was knocked down to it at the price of \$24 per ton, and thereupon it sent in its bid at this price. All the other defendants sent in bids of "protection" at a higher figure. Petitioner further charges that when the bids were received by the city of St. Louis, they were opened and compared, in good faith, by a committee that represented the people of the city of St. Louis, and that he was anxious to procure the pipe for this large contract at as low price as possible; and petitioner charges that said city of St. Louis was utterly ignorant as to the conspiracy between defendants and is ignorant of the fraudulent and corrupt means adopted by them, whereby all competition in bidding for the job had been destroyed, and ignorant of the complete monopoly that defendants had brought about in the territory above named, which said monopoly petitioner charges was so complete and brought about by

the means, aforesaid, as to prevent other persons and corporations from engaging in fair competition with them in the sale of said cast-iron pipe, and insured to defendants almost the exclusive right of dealing in the same, and appropriating to themselves said exclusive privilege, and restricting and restraining others in the exercise of the right that was open to them before this criminal conspiracy and unlawful and unauthorized trust was entered into between defendants.

So that the contract was awarded to defendant Howard-Harrison Iron Company at the price of \$24 per ton delivered in the city of St. Louis. Petitioner charges that a fair and reasonable price for this pipe was only \$16 to \$18 per ton at that time, and in fact defendants were selling the same at this price in "free territory," where they had competition, and where that conspiracy did not exist, on the identical date at which the sale was made to the city of St. Louis.

Petitioner shows to the court and charges that the extortion in this single contract, and the profit realized to defendants in the shape of "bonus," which was divided between them, amounted to between \$30,000 and \$40,000, and this is only one contract among the hundred which petitioner charges were secured in the same way. Petitioner charges that the pipe for this contract was shipped from Bessemer in the State of Alabama to St. Louis in the State of Missouri, and defendants are now severally engaged in shipping pipe to other States than the States in which they reside under an in pursuance of the conspiracy aforesaid.

13.

Petitioner charges upon information that it believes to be true, that the defendants, Howard-Harrison Iron Company, Anniston Pipe & Foundry Co., South Pittsburg pipe works, and Chattanooga foundry & pipe works, some time prior to December 28, 1894, had entered into a contract or combination in the form of a trust or conspiracy in restraint of trade and commerce between the several States, which was similar in terms to the conspiracy entered into on said 28th day of December, 1894, and the four defendants last named had been operating under the same prior to that date, but in order to make their monopoly complete the two other defendants were admitted to the trust on said 28th day of December, 1894, and the purpose of admitting them was to destroy all competition between them and insure a complete monopoly in the sale of pipe, and all of defendants herein are now operating under said trust.

14.

Petitioner charges that the contract, combination, trust or conspiracy aforesaid, under which defendants are now operating is in restraint of trade and commerce between and among the several States and has resulted in a monopoly to them in the manufacture and sale of cast-iron pipe in the territory named; is an unlawful combination, trust and conspiracy, and in open violation of the act of Congress of July 2, 1890, and petitioner brings this suit to restrain the violation hereinbefore set forth and

prevent defendants from continuing the sale and transportation of said cast-iron pipe from the States in which they reside into other States and for the purposes of having any of said cast-iron pipe, belonging to either of said defendants and being in course of transportation by them or either of them from one State to another, forfeited to petitioner and seized and confiscated as provided by law.

15.

Petitioner further charges that inasmuch as the conspiracy aforesaid was entered into in this division and district of your honor's court and defendants are all parties to the same, that the ends of justice require that they each be brought before the court in answer to this petition.

Wherefore your petitioner prays:

I.

That it be allowed to file this petition, and upon the filing of the same, that under the fiat of your honor an injunction or restraining order be granted enjoining and restraining defendants or either of them from selling and transporting cast-iron pipe into other than the States in which they reside under any contract or agreement, entered into with citizens of such other States, by virtue of the combination, trust or conspiracy now existing between the defendants.

II.

That each of the defendants be made parties hereto, by subpoena directed to the marshal of the district where they reside, accompanied with a copy of such injunction or restraining order as your honor may grant.

III.

That defendants be required to answer this petition fully but not on oath, as their answers under oath are waived.

IV.

That all cast-iron pipe sold and transported by defendants after this date, under and in pursuance of the combination, trust and conspiracy, charged in this petition, to any other State than
12 the State in which the defendant so selling and transporting said cast-iron pipe resides, be forfeited to your petitioner, and seized and confiscated in the manner provided by law.

V.

And upon the hearing let a decree pass dissolving the trust, combination and unlawful conspiracy now existing between defendants and perpetually enjoining them from operating under the same and from selling and transporting said cast-iron pipe into other States than in which they reside.

Petitioner prays for general relief, and states that this is the first application for extraordinary process in this cause.

JAMES H. BIBLE,
U. S. Attorney for the Eastern District of Tennessee.

STATE OF TENNESSEE, }
Hamilton County. }

James H. Bible makes oath that the facts stated in the foregoing petition as of his own knowledge, are true, and those stated on information he believes to be true, and that he brings this petition under the direction of the Hon. Judson Harmon, Attorney General of the United States.

JAMES H. BIBLE.

Sworn to and subscribed before me this 10th day of December, 1896.

F. X. RANDELL,
Notary Public.

[SEAL.]

Chancery Subpoena.

(Endorsed:) Filed Dec. 16, 1896. Henry O. Ewing, clerk.

UNITED STATES OF AMERICA, }
Southern Division of the Eastern District of Tennessee, } ss:

The President of the United States of America to the marshal of the district of Kentucky, Greeting:

You are hereby commanded to summon Dennis Long & Co., if to be found in your district, to be and appear in the circuit court of the United States for the eastern district of Tennessee, aforesaid, at Chattanooga, on the first Monday in February next, to answer
13 a certain bill in chancery, filed and exhibited in said court against them by the United States by Judson Harmon, its Attorney General, and James H. Bible, the United States attorney for the eastern district of Tennessee.

Hereof you are not to fail under the penalty of the law thence ensuing.

And have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 10th day of Dec., A. D. 1896, and the 121st year of the Independence of the United States of America.

Attest:

[SEAL.]

HENRY O. EWING, Clerk.

Memorandum.

The said defendants are required to enter their appearance in this suit in the clerk's office of said court, on or before the first Monday in Feb'y, 1897, otherwise the bill may be taken *pro confesso*.

HENRY O. EWING, Clerk.