

ORIGINAL PETITION—FILED JULY 10TH, 1907.

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

THE UNITED STATES OF AMERICA,  
PETITIONER

*against*

THE AMERICAN TOBACCO COMPANY  
AND OTHERS, DEFENDANTS

*To the honorable the judges of the Circuit Court of the  
United States for the Southern District of New York,  
sitting in equity:*

THE UNITED STATES OF AMERICA, by Henry L. Stimson, its attorney for the Southern District of New York, acting under direction of the Attorney-General, brings this proceeding in equity against THE AMERICAN TOBACCO COMPANY; BRITISH-AMERICAN TOBACCO COMPANY, LIMITED; IMPERIAL TOBACCO COMPANY OF GREAT BRITAIN AND IRELAND, LIMITED; AMERICAN SNUFF COMPANY; AMERICAN CIGAR COMPANY; AMERICAN STOGIE COMPANY; HAVANA TOBACCO COMPANY; HAVANA AMERICAN COMPANY; P. LORILLARD COMPANY; R. J. REYNOLDS TOBACCO COMPANY; SPAULDING & MERRICK; R. A. PATTERSON TOBACCO COMPANY; BLACKWELL'S DURHAM TOBACCO COMPANY; S. ANAGYROS; MONOPOL TOBACCO WORKS; LUHRMAN & WILBERN TOBACCO COMPANY; THE JOHN BOLLMAN COMPANY; F. F. ADAMS TOBACCO COMPANY; JOHN W. CARROLL TOBACCO COMPANY; NALL & WILLIAMS TOBACCO COMPANY; NASHVILLE TOBACCO WORKS; DAY AND NIGHT TOBACCO COMPANY; PINKERTON TOBACCO COMPANY; R. P. RICHARDSON, JR., & CO., INCORPORATED; F. R. PENN TOBACCO COMPANY; WELLS WHITEHEAD TOBACCO COMPANY; LIPPERT-SCALES COMPANY; W. S. MATHEWS & SONS; T. C. WILLIAMS COMPANY; DAVID DUNLOP, INCORPORATED; W. E. GARRETT & SONS, INCORPORATED; DE VOE SNUFF COMPANY; STANDARD SNUFF COMPANY; H. BOLANDER; WEYMAN & BRO.; THE PORTO RICAN-AMERICAN TOBACCO COMPANY; UNITED CIGAR

STORES COMPANY; KENTUCKY TOBACCO PRODUCT COMPANY; AMSTERDAM SUPPLY COMPANY; MACANDREWS & FORBES COMPANY; J. S. YOUNG COMPANY; THE CONLEY FOIL COMPANY; THE JOHNSTON TIN FOIL AND METAL COMPANY; GOLDEN BELT MANUFACTURING COMPANY; MENGEL BOX COMPANY; MANHATTAN BRIAR PIPE COMPANY; INTERNATIONAL CIGAR MACHINERY COMPANY; GARSON VENDING MACHINE COMPANY; CRESCENT CIGAR AND TOBACCO COMPANY; FLORODORA TAG COMPANY; THOMAS CUSACK COMPANY; M. BLASKOWER COMPANY; R. D. BURNETT CIGAR COMPANY; CLIFF WEIL CIGAR COMPANY; CORPORATION J. & B. MOOS; THE J. & B. MOOS CO.; DUSEL, GOODLOE & CO.; J. J. GOODRUM TOBACCO COMPANY; JORDAN, GIBSON & BAUM, INCORPORATED; LOUISIANA TOBACCO COMPANY, LIMITED; THE SMOKERS' PARADISE COMPANY; CUBAN LAND AND LEAF COMPANY; PORTO RICAN LEAF TOBACCO COMPANY; FEDERAL CIGAR COMPANY; FEDERAL CIGAR REAL ESTATE COMPANY; JAMES B. DUKE; CALEB C. DULA; PERCIVAL S. HILL; GEORGE ARENTS; PAUL BROWN; ROBERT B. DULA; GEORGE A. HELME; ROBERT D. LEWIS; THOMAS J. MALONEY; OLIVER H. PAYNE; THOMAS F. RYAN; ROBERT K. SMITH; GEORGE W. WATTS; GEORGE G. ALLEN; JOHN B. COBB; WILLIAM E. HARRIS; WILLIAM H. MCALISTER; ANTHONY N. BRADY; BENJAMIN N. DUKE; H. M. HANNA; HERBERT D. KINGSBURY; PIERRE LORILLARD; RUFUS L. PATTERSON; FRANK H. RAY; GRANT B. SCHLEY; CHARLES N. STROTZ; PETER A. B. WIDENER; WELFORD C. REED; and WILLIAMSON W. FULLER.

Defendants, engaged in interstate and foreign trade and commerce in tobacco and articles manufactured therefrom or useful therein, are violating the provisions of the Act of Congress passed July 2, 1890, entitled "An act to protect trade and commerce," and subsequent acts. And this proceeding is instituted to prevent and restrain the hereinafter particularly described agreements, contracts, combinations and conspiracies in restraint of trade in such commodities among the several States and with foreign nations; the attempts to monopolize, and the contracts, combinations and conspiracies to monopolize and the existing monopolies of parts of trade and commerce among the several States and with foreign nations in such commodities; and the agreements, contracts, combinations and conspiracies by and between defendants and others engaged in importing such commodities and similar articles, intended to operate in restraint

of lawful and free competition in trade and commerce therein with foreign nations, and to increase the price of such imports.

On information and belief, your petitioner alleges and shows:

### I.

The American Tobacco Company is a corporation organized under the laws of New Jersey carrying on business in the Southern District of New York with its principal offices at No. 111 Fifth avenue, New York City, where its president, Defendant James B. Duke, may be found.

Its issued capital stock is.....	\$118,931,500
Preferred .....	\$78,689,100
Common .....	40,242,400
Bonded indebtedness (December 31, 1906)....	116,260,450

British American Tobacco Company, Limited, is a corporation organized under the laws of Great Britain and Ireland carrying on business in the Southern District of New York with offices at No. 111 Fifth avenue, New York City, where its principal officer, Defendant William R. Harris, chairman of the board of managers, may be found.

Its capital stock is.....	pounds sterling..	6,000,000
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The Imperial Tobacco Company of Great Britain and Ireland, Limited, is a corporation organized under the laws of Great Britain and Ireland carrying on business in Virginia and other States of the Union, with offices at Richmond, Va., where its general agent, Defendant Welford C. Reed, may be found.

Its capital stock is.....	pounds sterling..	18,000,000
Bonded indebtedness .....		2,065,000

American Snuff Company is a corporation organized under the laws of New Jersey carrying on business in the Southern District of New York, with principal offices at No. 111 Fifth avenue, New York City, where its president, Martin J. Condon, may be found.

Its capital stock is .....	\$25,000,000
Preferred .....	\$12,500,000
Common .....	12,500,000

American Cigar Company is a corporation organized under the laws of New Jersey carrying on business in the South-

ern District of New York, with offices at No. 111 Fifth avenue, New York City.

Its issued capital stock is.....	\$20,000,000
Preferred .....	\$10,000,000
Common .....	10,000,000
Guaranteed gold notes outstanding (December 31, 1906) .....	10,000,000

American Stogie Company is a corporation organized under the laws of New Jersey carrying on business in the Southern District of New York, with offices at No. 111 Fifth avenue, New York City.

Its issued capital stock is.....	\$11,855,000
Preferred .....	\$855,000
Common .....	11,000,000

Havana Tobacco Company is a corporation organized under the laws of New Jersey carrying on business in the Southern District of New York, with offices at No. 111 Fifth avenue, New York City.

Its issued capital stock is.....	\$34,494,920
Preferred .....	\$4,703,720
Common .....	29,791,200
Bonded indebtedness (December 31, 1906) .....	7,500,000

Havana American Company is a corporation organized under the laws of New Jersey, with offices at No. 111 Fifth avenue, New York City.

Its issued capital stock is .....	\$250,000
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P. Lorillard Company is a corporation organized under the laws of New Jersey, with offices at Jersey City, N. J.

Its issued capital stock is.....	\$5,000,000
Preferred .....	\$2,000,000
Common .....	3,000,000

R. J. Reynolds Tobacco Company is a corporation organized under the laws of New Jersey, with offices at Winston-Salem, N. C.

Its issued capital stock is .....	\$7,525,000
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Spaulding & Merrick is a corporation organized under the laws of New Jersey, with offices at Chicago, Ill.

Its issued capital stock is.....	\$100,000
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R. A. Patterson Tobacco Company is a corporation or-

ganized under the laws of Virginia, with offices at Richmond, Va.

Its issued capital stock is ..... \$150,000

Blackwell's Durham Tobacco Company is a corporation organized under the laws of New Jersey, with offices at No. 111 Fifth avenue, New York City, and Durham, N. C.

Its issued capital stock is ..... \$1,000,000

S. Anargyros is a corporation organized under the laws of New York, carrying on business in the Southern District of New York, with offices at No. 111 Fifth avenue, New York City.

Its issued capital stock is ..... \$450,000

Menopol Tobacco Works is a corporation organized under the laws of New York, carrying on business in the Southern District of New York, with offices at No. 111 Fifth avenue, New York City.

Its issued capital stock is ..... \$40,000

Luhrman & Wilbern Tobacco Company is a corporation organized under the laws of New Jersey, with offices at Middletown, Ohio.

Its issued capital stock is ..... \$902,000

The John Bollman Company is a corporation organized under the laws of New Jersey, with offices at San Francisco, Cal.

Its issued capital stock is ..... \$200,000

F. F. Adams Tobacco Company is a corporation organized under the laws of Wisconsin, with offices at Milwaukee, Wis.

Its issued capital stock is ..... \$400,000

John W. Carroll Tobacco Company is a corporation organized under the laws of New Jersey, with offices at Lynchburg, Va.

Its issued capital stock is ..... \$418,000

Nall & Williams Tobacco Company is a corporation organized under the laws of Kentucky, with offices at Louisville, Ky.

Its issued capital stock is ..... \$116,000

Nashville Tobacco Works is a corporation organized under the laws of Tennessee, with offices at Nashville, Tenn.

Its issued capital stock is ..... \$120,000



Day & Night Tobacco Company is a corporation organized under the laws of Ohio, with offices at Cincinnati, Ohio.  
Its issued capital stock is..... \$400,000

Pinkerton Tobacco Company is a corporation organized under the laws of Ohio, with offices at Zanesville, Ohio.  
Its capital stock is..... \$100,000

R. P. Richardson, jr., & Co., Incorporated, is a corporation organized under the laws of New Jersey, with offices at Reidsville, N. C.  
Its capital stock is..... \$300,000  
Bonded indebtedness (December 31, 1906)..... 200,000

F. R. Penn Tobacco Company is a corporation organized under the laws of North Carolina, with offices at Reidsville, N. C.  
Its capital stock is..... \$262,500

Wells Whitehead Tobacco Company is a corporation organized under the laws of North Carolina, with offices at Wilson, N. C.  
Its issued capital stock is..... \$150,000

Liipfert-Scales Company is a corporation organized under the laws of North Carolina, with offices at Winston, N. C.  
Its issued capital stock is..... \$400,000

W. S. Mathews & Sons is a corporation organized under the laws of New Jersey, with offices at No. 111 Fifth avenue, New York City, and Louisville, Ky.  
Its issued capital stock is..... \$400,000

T. C. Williams Company is a corporation organized under the laws of Virginia, with offices at Petersburg, Va.  
Its issued capital stock is..... \$400,000

David Dunlop, Incorporated, is a corporation organized under the laws of New Jersey, with offices at Petersburg, Va.  
Its issued capital stock is..... \$150,000

W. E. Garrett & Sons, Incorporated, is a corporation organized under the laws of Pennsylvania, with offices at Philadelphia, Pa., and Yorklyn, Del.  
Its issued capital stock is..... \$600,000

De Voe Snuff Company is a corporation organized under the laws of New Jersey, with offices at Spottswood, N. J.  
Its issued capital stock is..... \$50,000

Standard Snuff Company is a corporation organized under the laws of the State of Tennessee, with offices at Nashville, Tenn.

Its issued capital stock is..... \$281,600

H. Bolander is a corporation organized under the laws of Illinois, with offices at Chicago, Ill.

Its issued capital stock is..... \$135,000

Weyman & Bro. is a corporation organized under the laws of New Jersey, with offices at Chicago, Ill.

Its issued capital stock is..... \$500,000

The Porto Rican-American Tobacco Company is a corporation organized under the laws of New Jersey, with offices at No. 111 Fifth avenue, New York City.

Its issued capital stock is.....\$1,799,600

United Cigar Stores Company is a corporation organized under the laws of New Jersey, with offices at New York City.

Its issued capital stock is..... \$1,650,000

Preferred ..... \$750,000

Common ..... 900,000

Bonded indebtedness (December 31, 1906)..... 2,850,000

Kentucky Tobacco Product Company is a corporation organized under the laws of New Jersey, with offices at Louisville, Ky., and No. 111 Fifth avenue, New York City.

Its issued capital stock is..... \$1,000,000

Amsterdam Supply Company is a corporation organized under the laws of New Jersey, with offices at No. 111 Fifth avenue, New York City.

Its issued capital stock is..... \$225,000

MacAndrews & Forbes Company is a corporation organized under the laws of New Jersey, with offices at No. 111 Fifth avenue, New York City.

Its issued capital stock is..... \$7,000,000

Preferred ..... \$4,000,000

Common ..... 3,000,000

J. S. Young Company is a corporation organized under the laws of Maine, with offices at Baltimore, Md.

Its issued capital stock is..... \$800,000

Preferred ..... \$500,000

Common ..... 300,000

The Conley Foil Company is a corporation organized under the laws of New Jersey, with offices at New York City. Its issued capital stock is..... \$375,000

The Johnston Tin Foil and Metal Company is a corporation organized under the laws of New Jersey, with offices at St. Louis, Mo. Its issued capital stock is..... \$300,000  
Bonded indebtedness (December 31, 1906)..... 100,000

Golden Belt Manufacturing Company is a corporation organized under the laws of New Jersey, with offices at No. 111 Fifth avenue, New York City. Its issued capital stock is..... \$700,000

Mengel Box Company is a corporation organized under the laws of New Jersey, with offices at Louisville, Ky., and No. 111 Fifth avenue, New York City. Its issued capital stock is..... \$1,973,200

Manhattan Briar Pipe Company is a corporation organized under the laws of New York, with offices at No. 111 Fifth avenue, New York City. Its issued capital stock is..... \$350,000

International Cigar Machinery Company is a corporation organized under the laws of New Jersey, with offices at No. 111 Fifth avenue, New York City. Its capital stock is..... \$10,000,000

Garson Vending Machine Company is a corporation organized under the laws of New Jersey, with offices at No. 111 Fifth avenue, New York City. Its issued capital stock is..... \$50,000

Crescent Cigar and Tobacco Company is a corporation organized under the laws of Louisiana, with offices at New Orleans, La. Its issued capital stock is..... \$20,000

Florodora Tag Company is a corporation organized under the laws of New Jersey, with offices at No. 111 Fifth avenue, New York City. Its issued capital stock is..... \$10,000

Thomas Cusack Company is a corporation organized un-



der the laws of New Jersey, with offices at No. 111 Fifth avenue, New York City.

Its issued capital stock is..... \$250,000  
     Preferred ..... \$100,000  
     Common ..... 150,000

M. Blaskower Company is a corporation organized under the laws of Nevada, with offices at San Francisco, Cal.

Its issued capital stock is..... \$500,000  
     Preferred ..... \$250,000  
     Common ..... 250,000

R. D. Burnett Cigar Company is a corporation organized under the laws of Alabama, with offices at Birmingham, Ala.  
 Its issued capital stock is..... \$15,000

Cliff Weil Cigar Company is a corporation organized under the laws of Virginia, with offices at Richmond, Va.  
 Its issued capital stock is..... \$50,000

Corporation J. & B. Moos is a corporation organized under the laws of New Jersey, with offices at Chicago, Ill.  
 Its issued capital stock is..... \$150,000

The J. & B. Moos Co. is a corporation organized under the laws of New Jersey, with offices in Cincinnati, Ohio.  
 Its capital is..... \$200,000

Dusel, Goodloe & Co. is a corporation organized under the laws of New Jersey, with offices at Philadelphia, Pa.  
 Its issued capital stock is..... \$72,000

J. J. Goodrum Tobacco Company is a corporation organized under the laws of Georgia, with offices at Atlanta, Ga.  
 Its issued capital stock is..... \$60,000

Jordan, Gibson & Baum, Incorporated, is a corporation organized under the laws of Tennessee, with offices at Memphis, Tenn.  
 Its issued capital stock is..... \$50,000

Louisiana Tobacco Company, Limited, is a corporation organized under the laws of Louisiana, with offices at New Orleans, La.  
 Its issued capital stock is..... \$50,000

The Smokers' Paradise Company is a corporation organ-

ized under the laws of New Jersey, with offices at Atlantic City, N. J.

Its issued capital stock is..... \$75,000

Cuban Land and Leaf Company is a corporation organized under the laws of New Jersey, with offices at No. 111 Fifth avenue, New York City.

Its issued capital stock is..... \$100,000

Porto Rican Leaf Tobacco Company is a corporation organized under the laws of New Jersey, with offices at No. 111 Fifth avenue, New York City.

Its issued capital stock is..... \$500,000

Federal Cigar Company is a corporation organized under the laws of Pennsylvania, with offices at No. 111 Fifth avenue, New York City.

Its issued capital stock is..... \$250,000

Federal Cigar Real Estate Company is a corporation organized under the laws of Pennsylvania, with offices at No. 111 Fifth avenue, New York City.

Its issued capital stock is..... \$30,000

All of the individual defendants except Fuller and Reed have been for a long time directors of The American Tobacco Company, attend the meetings of the board at 111 Fifth avenue, New York City, participate in the direction and management of its business, and are responsible therefor. Except as shown they may be found in the southern district of New York.

Defendant James B. Duke has been since its organization president of The American Tobacco Company, is one of the board of managers of the British-American Tobacco Company, Limited, and a director of the American Snuff Company and of defendant The Imperial Tobacco Company.

The defendants John B. Cobb, Caleb C. Dula, Robert B. Dula, William R. Harris, and Percival S. Hill are vice-presidents of The American Tobacco Company.

The defendant John B. Cobb is president of the American Cigar Company, a director of the American Snuff Company, and one of the managers of the British-American Tobacco Company, Limited.

The defendant William R. Harris is chairman of the

board of managers of the British-American Tobacco Company, Limited, and a director of The Imperial Tobacco Company of Great Britain and Ireland, Limited.

The defendant Caleb C. Dula is a director of the American Snuff Company.

The defendant Hill is a director of the American Snuff Company, British-American Tobacco Company, Limited, and president of S. Anargyros, Blackwell's Durham Tobacco Company, The John Bollman Company, and Monopol Tobacco Works.

The defendant Fuller was a director of The American Tobacco Company during the years 1900, 1901, 1902, and 1903, and stipulated not to engage in the tobacco business in England, as hereinafter described.

The defendant W. C. Reed is agent in the United States for The Imperial Tobacco Company of Great Britain and Ireland, Limited, with offices at Richmond, Va.

## II.

Tobacco has been a staple product of American farms since the first white settlements in Virginia. Its cultivation has gradually extended from a small district there until the annual planting within the United States now covers 800,000 acres, lying chiefly in Kentucky, North Carolina, Virginia, Wisconsin, Ohio, Tennessee, Pennsylvania, Connecticut, Maryland, South Carolina, New York, Massachusetts, Florida, and Georgia; and to its production, transportation, manufacture, sale, and distribution throughout the world much capital and the time and labor of many hundred thousand people are devoted. The cured leaf and articles manufactured therefrom for a long time have been important articles of interstate and foreign commerce. The amounts grown annually differ greatly, and accurate statistics are not obtainable, while estimates are far apart. According to census returns the domestic crop of 1859 exceeded 400,000,000 pounds and that of 1899, 800,000,000 pounds. The average crop for the last three years has probably been around 800,000,000 pounds and 35 to 40 per cent of the world's production, to most of which the American leaf is greatly superior in quality.

The plant is especially affected by cultivation, soil and climate; and radically different types, each with varieties, have been developed. Its principal use is for making many kinds of cigars and kindred rolls, cigarettes, snuff, and preparations for chewing (plug) and smoking, for each of which a particular sort of leaf is essential.

Speaking generally and omitting some insignificant in quantity, domestic tobaccos may be grouped into eight classes:

1. *The cigar type*—annual production approximately 180,000,000 pounds—grows in Wisconsin, Ohio, Pennsylvania, New England, New York, Florida, and Georgia, and is consumed domestically chiefly for cigars and, to a limited extent, for “scrap,” recently popular both for chewing and smoking.

Defendants purchase about 20 per cent of this.

2. *The burley type*—annual production approximately 185,000,000 pounds—grows in the central and northeastern sections of Kentucky and a few counties of Indiana, Ohio, and West Virginia. It is consumed mostly by domestic concerns for smoking and plug.

Defendants purchase of this about 90 per cent.

3. *The bright yellow type*—annual production approximately 180,000,000 pounds—grows in Virginia, North and South Carolina, and is principally used for smoking and plug.

Defendants purchase of this 75 to 80 per cent.

4. *The dark western type*—annual production approximately 130,000,000 pounds—grows in the central and western sections of Kentucky and in Tennessee, and is used in the domestic manufacture of snuff and some grades of plug. Much of it is exported.

Defendants purchase of this about 40 per cent.

5. *The dark Virginia type*—annual production approximately 50,000,000 pounds—grows in the central section of Virginia, is used domestically for snuff and plug, and is largely exported.

Defendants purchase of this 35 to 40 per cent.

6. *The Green River and Upper Cumberland types*—annual production approximately 50,000,000 pounds—grow in

the Green River district of Kentucky and nearby parts of Tennessee. They are used domestically for snuff and plug, and are largely exported.

Defendants purchase of this 50 to 60 per cent.

7. *The Maryland and eastern Ohio types*—annual production approximately 25,000,000 pounds—grow in Maryland and eastern Ohio, and are mostly exported.

8. *The Virginia air-cured type*—annual production about 8,000,000 pounds—grows in the vicinity of Richmond, Va., and is consumed by domestic manufacturers for smoking.

Defendants purchase of this 90 per cent or more.

The annual exportation of domestic leaf tobacco is around 300,000,000 pounds, of which it may be broadly said: One-third goes to England, principally for the use of defendants The Imperial Tobacco Company and the British-American Tobacco Company, having been purchased here by their special agencies. One-third goes to France, Italy, Spain, Portugal, Austria-Hungary and Japan where the manufacture and sale of tobacco is a Government monopoly these countries having purchased the same here through their special agencies. And the remainder is distributed throughout the world.

Leaf is now being imported at a rate exceeding 35,000,000 pounds annually—the major part from Cuba and the East Indies, with increasing quantities from Turkey. The consumption, domestic and foreign, of manufactured tobacco has grown rapidly during the last decade.

In the usual ways through many years there grew up abroad and in the United States establishments for the manufacture and sale of tobacco products. Prior to 1890 many were in successful operation in England and in the different States, notably at Chicago, Detroit, St. Louis, Cincinnati, Louisville, Baltimore, Richmond, Durham, Pittsburg, Philadelphia, and New York City, and were separate and independent. They purchased leaf in the various States where it grew or through large dealers and warehousemen who had so purchased, transported it to their plants, manufactured, and then sold, shipped, and distributed the products throughout the world to independent uncontrolled jobbers, wholesalers, retailers, and others, all as a part of interstate and foreign commerce,

and in active and open competition. Some had become large and successful, but none purchased or used more than a small part of the annual crop, or manufactured, sold, or distributed a very large portion of the total output. The prices of raw material and finished product were established by operation of natural and usual laws, and trade and commerce therein developed unrestrained.

During that time many competing buyers sought the leaf tobacco; they visited the farm and assembled at convenient markets where the planter sent it for public sale. They represented many separate and independent large dealers, speculators, manufacturers, warehousemen, and others. No one of them bought in sufficient quantities to control the market, and active open competition amongst them assured reasonable prices according to quality, demand, and supply. When so purchased the leaf was shipped to various points in other States and abroad to manufacturers, dealers, warehousemen, and others. Other articles useful and necessary in manufacturing tobacco products, such as tin foil and licorice, were likewise bought and sold in the open market, and distributed as a part of interstate and foreign commerce by makers, importers, and dealers, acting independently.

Smoking and plug tobacco, snuff, and cigarettes satisfactory in quality can be cheaply fabricated in large plants by machinery; and to successfully produce and market them even in fair competition would necessitate a considerable investment. During ten years prior to 1890 the manufacture of domestic cigarettes was revolutionized and the cost reduced to a minimum by introduction of patented machines, and a few firms, corporations, and individuals were enabled to acquire control. Cigars do not so readily yield to ordinary factory methods—the individuality of the workman being of special importance—and the business of making and marketing them under favorable conditions may be successful without large capital.

Within recent years it became customary for tobacco manufacturers to pack their goods in small parcels ready for consumers, marked with distinguishing devices, trade names, or brands. By advertisement and otherwise consumers are taught to recognize and demand articles by such distinctive names and marks; and many well-known brands command purchasers without special reference to their actual manu-



facturer. As sometimes expressed, the tobacco business is "a matter of brands"—they are the symbols which indicate to consumers the particular articles desired; and the well-advertised popular ones have in a sense come to be staples in the jobbing and retail tobacco trade, without which such merchants could only with great difficulty, if at all, build up or maintain successful business.

Interstate and foreign trade and commerce in leaf tobacco, its manufactured products and articles necessary therefor, for a long time grew and expanded along the general lines described, and but for the combinations, conspiracies, attempts to monopolize, and other unlawful practices hereinafter stated, would have so continued, to the great advantage of planters, consumers, and the general public.

### III.

Before 1890 the aggregate annual output of five separate manufacturing concerns amounted to 5,000,000 pounds of smoking tobacco and 95 per cent of all cigarettes produced in the United States. They were Allen & Ginter, a Virginia corporation, with factory at Richmond, Va.; W. Duke, Sons & Co., a North Carolina corporation, with factories at Durham, N. C., and New York City; Kinney Tobacco Company, a New York corporation, with factory at New York City; W. S. Kimball & Co., partnership and corporation, with factory at Rochester, N. Y., and Goodwin & Co., trade name of Charles Emery, with factory at Brooklyn, N. Y. Each of the five— independent and in unrestrained competition with all others likewise engaged—had established a successful, profitable, and expanding business. In competition they purchased leaf in different States where requisite types grew, shipped it as part of interstate commerce to their factories, and extensively advertised, sold, and distributed the finished products through their own traveling agents, drummers, wholesalers, retailers, and others, in the ordinary way as parts of interstate and foreign commerce in all the States and in foreign countries.

Defendants James B. Duke, B. N. Duke, George Arents, George W. Watts, and others, owners, officers, directors, and agents of the five concerns, believing cooperation would yield large profits, determined to bring it about, destroy existing competition among them, and through combinations and

agreements in restraint thereof to exclude all others, secure control of and monopolize interstate and foreign trade and commerce in cigarettes. Accordingly a preliminary agreement was made, and in January, 1890, they incorporated The American Tobacco Company under the laws of New Jersey with \$25,000,000 capital (\$10,000,000 8 per cent preferred, \$15,000,000 common); for the stock allotted to each, at valuations far in excess of real worth, the five old concerns immediately conveyed to the new corporation their business of manufacturing, selling, dealing in, and distributing tobacco and cigarettes as going concerns, and all property and rights used in connection therewith wherever situated, including among other things good will and exclusive right to use their names; and their principal owners, managers, and directors agreed not thereafter to engage in the business of manufacturing, buying, selling, or dealing in tobacco or its products. The stock was allotted and received as follows:

Allen & Ginter.....	\$7,500,000
\$3,000,000 preferred, \$4,500,000 common.	
W. Duke, Sons & Co.,.....	\$7,500,000
\$3,000,000 preferred, \$4,500,000 common.	
Kinney Tobacco Company.....	\$5,000,000
\$2,000,000 preferred, \$3,000,000 common.	
W. S. Kimball & Co.....	\$2,500,000
\$1,000,000 preferred, \$1,500,000 common.	
Goodwin & Co.....	\$2,500,000
\$1,000,000 preferred, \$1,500,000 common.	

The articles of incorporation declare the purposes of The American Tobacco Company as follows:

The objects for which the company is formed are to cure leaf tobacco, and to buy, manufacture, and sell tobacco in all its forms, and to establish factories, agencies, and depots for the sale and distribution thereof, and to transport or cause the same to be transported, as an article of commerce, and to do all things incidental to the business of trading and manufacturing aforesaid. The portion of the business of said company which is to be carried on out of said State (New Jersey) is to cure leaf tobacco, and to buy, manufacture, and sell tobacco in all its forms, to establish factories, agencies, and depots for the sale and distribution thereof, and to transport the same as an arti-

cle of commerce, and to do all other things incidental to the business of the company which must necessarily be transacted out of said State. The company proposes to carry on its operations in all the other States and Territories in the United States and in Canada and in Great Britain and in all foreign countries. (By amendment in 1901 it was given power to guarantee securities of other corporations.)

The defendant James B. Duke has been president of the company since its organization. The first board of directors was composed of defendants James B. Duke, B. N. Duke, George Arents, and George W. Watts (who have remained thereon continuously), William H. Butler, Charles G. Emery, Lewis Ginter, Francis S. Kinney, William S. Kimball, and John Pope. Each owned an interest and participated in managing one of the acquired concerns, and was selected according to preliminary arrangement.

Having in the ways and for the purposes described acquired the five old concerns, The American Tobacco Company began and has continued to operate and control all their affairs in concert and agreement; and that corporation then became and with added acquisitions has ever since been itself a combination in restraint of trade and commerce between the States and with foreign nations. All necessary leaf tobacco was thereafter purchased by a single department, through direct agents and representatives, in the localities and markets within the different States where the same grew or was exposed for sale; the total output was likewise sold, shipped, transported, and distributed by one department; and interstate and foreign trade and commerce in cigarettes and leaf tobacco and its products were hindered and restrained.

In the year 1890 The American Tobacco Company made extraordinary profits, out of which were paid large dividends on its stock, preferred and common, and the effectiveness of the combination was demonstrated. Its output for 1890 was:

Cigarettes .....	number	2,410,520,000
Cheroots and little cigars.....	do.....	30,093,000
Smoking tobacco .....	pounds..	5,526,163

(The leaf necessary therefor was less than 15,000,000 pounds.)

For the same year, totals for the United States were:  
 Cigarettes .....number... 2,505,167,610  
 Smoking tobacco .....pounds... 69,829,445

## IV.

About the first of 1891 and subsequently The American Tobacco Company, its officers and directors, defendants, James B. Duke, B. N. Duke, George Arents, and George W. Watts, and all others then, thereafter, and now acting as such, together with sundry persons, firms, partnerships, and corporations who became associates, entered into and ever since have been and are now parties to and engaged in contracts, combinations, and conspiracies (as hereinafter more particularly pointed out) in unlawful restraint of trade and commerce in leaf tobacco and articles manufactured therefrom or necessary therefor, among the several States and Territories of the United States and with foreign nations, and through means thereof and otherwise are unlawfully attempting to monopolize and have monopolized such trade and commerce.

The above-specified contracts, combinations, and conspiracies to which all defendants are parties have existed since about the 1st of January, 1891, and have been continuously maintained, acted upon, and are now kept in force for the express purpose and with the effect of destroying competition, unreasonably and unlawfully hindering and restraining interstate and foreign commerce in tobacco and its products and things necessary or useful in their manufacture; and with the further purpose and effect of inducing and forcing persons formerly engaged therein to refrain therefrom, preventing others from engaging therein, and of monopolizing and attempting to monopolize such interstate trade and commerce.

The American Tobacco Company throughout the period specified has been party to said unlawful contracts, combinations, conspiracies, attempts to monopolize, and monopolies, and one of the principal agencies and instrumentalities for effecting the purposes aforesaid.

In order to bring about the desired ends and with the above-enumerated purposes, defendants, their associates and predecessors, have adopted such means as seemed expedient; to enumerate all of them would too much encumber this

petition. But, among others, the general lines of action, practice, operation, manipulation, and management hereinafter described have been and are now being followed, and unless prohibited will be continued hereafter.

Defendants, with expanding purpose to dominate the tobacco industry, have progressively absorbed competitors and driven them out of commerce by oppressively attacking and threatening to attack them with ferocious competition and unfair trade methods and then buying them in, or through offers of irresistible sums of money—all of which their overmastering power and resources in combination made possible. And by the exercise of such power and resources they have deterred and prevented and are now preventing and deterring others from becoming competitors and have made effective competition with themselves impossible.

Defendants have through offers greatly in excess of real values systematically induced, and by bringing to bear against or threatening their opponents with unusual and irresistible competition have compelled formidable competing and opposing concerns to sell and convey to them their business of manufacturing, selling, and dealing in tobacco or its products with good will, brands, and exclusive right to use their names in connection therewith, and the owners, managers, directors and stockholders experienced and skilled tobacco men to obligate themselves to refrain from engaging or being interested in such business without defendants' consent. Plants so secured have generally been promptly abandoned; but the names and brands of these and other old concerns have been and are used in connection with the products of plants operated by defendants and they have been sold as though fabricated by the original makers.

Defendants have by agreements, combinations, and conspiracies with owners, stockholders, directors, officers, and agents, and by paying therefor greatly in excess of real values or by issuing in exchange stock in one of defendant corporations, acquired a controlling interest in many opposing corporations and have thereafter elected their directors; and by agreements and conspiracies with such directors and other officers and agents have destroyed competition between them which would otherwise exist and secured conduct of the business of all in combination and agreement.

Defendants have frequently procured the organization of

a corporation with wide powers and then caused conveyance thereto of the business and assets of a competing concern under some arrangement which secured to them a controlling interest in the stock, and have thus retired a rival, destroyed competition, and brought about combination and union of opposing interests, and rendered opportunity for an outsider to enter the trade and commerce more and more difficult, until now such opportunity scarcely exists.

Defendants have entered into unlawful contracts, combinations, and conspiracies to drive out opponents, exclude all others, and apportion amongst themselves the trade and commerce in tobacco throughout the world and to define the regions in which, undisturbed, each might operate.

Defendants have concealed and are now concealing their ownership of controlled companies, have procured and permitted and are now procuring and permitting the same to be held out and advertised as wholly independent and without connection with them, the "Trust," or any "Combination," intending thereby to mislead, deceive, and defraud the public and more effectually cripple existing competitors and keep out new ones.

Defendants have unlawfully acquired control and monopoly of trade and commerce in articles necessary or useful in manufacturing tobacco products, such as licorice, tin foil, and others, in order to destroy competition with them and the opportunity therefor, and thereby secure a more complete mastery of the tobacco industry, cripple existing competitors and destroy opportunities for any new ones.

Defendants have resorted to unfair trade methods; have imitated and made false and untruthful statements concerning rival brands; have by misrepresentations sought to induce competitors' customers to abandon them, and in divers unfair ways have endeavored to destroy them; and for the purpose of destructive competition have reduced prices of their goods in certain localities below cost of production and in others have bid up raw material beyond real values.

They have been able by enormous resources and power, in combination to manipulate markets and the prices for leaf tobacco to their own advantage, to break down existing opposition, and render success in opposition to them hopeless.



They have secured control of many—and are diligently seeking to extend it to all others—of the ordinary agencies through which manufactured tobacco and its products as a part of interstate and foreign commerce are distributed, jobbers, wholesalers, and retailers; among other ways, by acquiring outright ownership, by allowing special confidential commissions, by advancing large sums of money, giving unusual credit and otherwise financing them, and by threats to withhold the goods of the combination unless given special treatment and preference and if the goods of other manufacturers are dealt in.

With intent to carry out the purposes and objects above described, defendants have done and procured the doing of many things, some of which are those hereinafter specified.

#### V.

In February, 1891, defendant, The American Tobacco Company, acquired, through purchase of all the capital stock of and subsequent conveyance from the National Tobacco Works, a Kentucky corporation engaged in interstate and foreign trade and commerce in leaf tobacco and in manufacturing, selling, and distributing tobacco products throughout the United States and abroad in competition with it, all conveyor's business of manufacturing and selling, dealing in and distributing plug tobacco as a going concern, all assets, property, and good will and the exclusive right to use the corporate name, giving therefor, greatly in excess of real values, \$600,000 cash and \$400,000 preferred and \$800,000 common stock.

F. J. Pfingst, Edward F. Kessler, Basil Doerhoefer, John Doerhoefer, and Marcus Doerhoefer, as Pfingst, Doerhoefer & Company, had long successfully engaged in manufacturing plug tobacco at Louisville, Ky., and in interstate and foreign commerce as purchasers and dealers in leaf and its products. About January 1, 1891, the partnership business was transferred to the National Tobacco Works, organized therefor, with \$400,000 capital stock, all of which was issued to the partners, and this they sold to defendant, The American Tobacco Company. They also agreed with conveyee to enter its service in managing the business and property acquired, and each further agreed that for ten years he would not engage in or carry on, directly or indirectly, or he con-

cerned or interested in carrying on, or permit or suffer the use of his name, in connection with the business of manufacturing or selling tobacco in any form.

This plant is now operated as a branch of The American Tobacco Company.

In March, 1891, defendant, The American Tobacco Company, acquired from Philip Whitlock, for a long time engaged in interstate trade and commerce in leaf tobacco and manufacturing products thereof (especially cheroots, cigars, and cigarettes), at Richmond, Va., and in selling and distributing them throughout the United States and abroad in competition with it, all his business of manufacturing and selling cheroots, cigars, and cigarettes, together with all property used in the same and the exclusive right to use his name in connection therewith, by paying therefor, greatly in excess of real values, \$300,000. Whitlock agreed with the purchaser to enter its employ for three years and for twenty years not to engage in or carry on, directly or indirectly, the business of manufacturing, selling or distributing tobacco or its products.

This plant is now operated as a branch of The American Tobacco Company.

In April, 1891, defendant, The American Tobacco Company, acquired from Marburg Brothers, a firm long successfully engaged in interstate and foreign commerce in leaf tobacco and manufacturing products thereof (especially smoking and snuff), at Baltimore, Md., and in selling and distributing the same throughout the United States and abroad in competition with defendants, all the partnership business of manufacturing and selling, dealing in and distributing smoking tobacco and all property used in the same and the exclusive right to use the name of the firm or partners in connection therewith, by giving therefor, greatly in excess of real values, \$164,637.65 cash, \$1,230,000 preferred and \$1,845,000 common stock.

Charles L. Marburg, William A. Marburg, Albert Marburg, and Theodore Marburg, who composed the firm, experienced tobacco men, each agreed not to engage in the manufacture, sale, or distribution of tobacco products in the United States without purchaser's consent.

This plant is operated as a branch of The American Tobacco Company.

In April, 1891, defendant, The American Tobacco Company, acquired from G. W. Gail & Ax, a partnership long successfully engaged in interstate and foreign commerce in leaf tobacco and manufacturing products thereof. (especially smoking), at Baltimore, Md., and in selling and distributing the same throughout the United States and abroad, in competition with defendants, all the partnership business of manufacturing and selling smoking tobacco as a going concern, and all property used in the same, and the exclusive right to use the name of the firm or the partners in connection therewith, by giving therefor, greatly in excess of real values, \$77,582.66 cash, \$705,000 preferred and \$1,055,000 common stock. George W. Gail, Ernst Schmeisser, George W. Gail, jr., and Christian Ax, who comprised the firm, experienced tobacco men, each agreed not to engage or become interested in the business of manufacturing, selling, or distributing tobacco or its products in the United States without purchaser's consent.

This plant was closed and abandoned soon after its acquisition.

The output of the American Tobacco Company for 1891 was—

Cigarettes .....	number..	2,788,778,000
Cheroots and little cigars.....	do....	40,009,000
Smoking .....	pounds..	13,813,355
Fine cut.....	do....	560,633
Snuff .....	do....	383,162
Plug .....	do....	4,442,774
Total output for the United States, 1891—		
Cigarettes .....	number..	3,137,318,596
Smoking .....	pounds..	76,708,300
Fine cut.....	do....	16,968,870
Plug and twist.....	do....	166,177,915
Snuff .....	do....	10,674,241

## VI.

In May, 1892, defendant, The American Tobacco Company, acquired from S. Hershheim Brothers & Company, a partnership long successfully engaged in interstate and foreign commerce in leaf tobacco and manufacturing products thereof (especially paper cigarettes) at New Orleans, La., and in selling, dealing in, and distributing the same through-

out the United States and abroad in competition with defendants, all the firm business as a going concern with plant, factory, and all assets and property used in connection with the same, together with the good will and the exclusive right to use the name and that of the partners in connection therewith, by giving therefor, greatly in excess of real values, \$269,961.33 cash, \$100,000 preferred and \$150,000 common stock. Simon Hershheim, Isidore Hershheim, Joseph Hershheim, and Sigmond Belmont, members of the firm and experienced tobacco men, each agreed with the purchaser that he would not for ninety-nine years, directly or indirectly, engage in the manufacture or sale of paper cigarettes.

This plant has long been closed and abandoned.

In February, 1895, defendant, The American Tobacco Company, acquired from the Consolidated Cigarette Company, a New York corporation long successfully engaged in interstate and foreign commerce in leaf tobacco and manufacturing products thereof (especially cigarettes) at New York City, and in selling, dealing in, and distributing the same throughout the United States and abroad in competition with defendants, all its business of manufacturing cigars and cigarettes and of selling and distributing the same throughout the United States, together with the good will and the exclusive right to use the corporate name, by giving therefor, greatly in excess of real values, \$288,485.34 cash. Benjamin Lichtenstein, Adolph Moonelis, Solomon K. Lichtenstein, Alexander Lichtenstein, and Henry Moonelis, all the stockholders in vendor corporation, agreed with the vendee not to engage in the manufacture or sale of cigars or cigarettes.

This plant was permanently closed shortly after its acquisition.

In March, 1895, defendant, The American Tobacco Company acquired from Herman Ellis, long successfully engaged at Baltimore, Md., in interstate and foreign commerce in leaf tobacco and in manufacturing products thereof (especially cigars, cheroots, and cigarettes) and in selling, dealing in, and distributing the same throughout the United States and abroad in competition with defendants, his business as a going concern, factory, plant, and all property used in connection with the same, and the good will and exclusive right to use his name in connection therewith, by giving

therefor, greatly in excess of real values, \$147,206.46 cash. Herman Ellis, agreed with purchaser for ten years not to engage in the manufacture, sale, or distribution in the United States of tobacco or its products, and to enter its service.

This plant is operated as a branch of The American Tobacco Company, manufacturing little cigars.

In March, 1895, defendant, The American Tobacco Company, acquired the business of Thomas H. Hall, manufacturer of little cigars and cigarettes at New York City, and engaged in interstate and foreign commerce therein, with the plant and all assets used in connection with same, good will and right to use his name, paying therefor greatly in excess of real values, \$549,165.48 cash. Hall for many years had been in active competition with the defendants. The sale was made through a committee (Hall being *non compos*), and they agreed that he would not within twenty years engage in the manufacture or sale of little cigars or cigarettes.

This plant was permanently closed shortly after its acquisition.

In April, 1895, defendant, The American Tobacco Company, acquired from The H. W. Meyer Tobacco Manufacturing Company, a New York corporation long successfully engaged in interstate and foreign commerce in leaf tobacco and manufacturing products thereof (especially smoking and plug) at New York City, and in selling and distributing the same throughout the United States and abroad in competition with defendants, all its business of manufacturing and selling, dealing in and distributing tobacco, all property used in the same, and the exclusive right to use the corporate name in connection therewith, by giving therefor, greatly in excess of real values, \$351,915.78 cash. Henry W. Meyer, the principal stockholder and an experienced tobacco man, and the vendor corporation each agreed for twenty years not to engage in or carry on, directly or indirectly, or be concerned or interested in carrying on, or permit or suffer the use of his name in connection with the business of manufacturing, selling, or distributing tobacco.

This factory has long been closed and the business discontinued.

In October, 1895, defendant, The American Tobacco Company, acquired from James G. Butler Tobacco Company, a

Missouri corporation long successfully engaged in interstate and foreign commerce in leaf tobacco and manufacturing products thereof (especially plug) at St. Louis, Mo., and in selling and distributing the same throughout the United States and abroad in competition with the defendants, all its business of manufacturing and selling tobacco as a going concern, with all property used in the same and the exclusive right to use the corporate name, by giving therefor, greatly in excess of real values, \$2,919.11 cash, \$192,000 preferred and \$273,000 common stock. James G. Butler, principal stockholder, and the Butler corporation each agreed for twenty years not to engage directly or indirectly in the manufacture, sale, or distribution of manufactured tobacco in any form within the United States without purchaser's consent.

This factory was long since closed and the business discontinued.

In May, 1896, defendant, The American Tobacco Company, acquired from A. H. Motley Company, a North Carolina corporation long successfully engaged in interstate and foreign commerce in leaf tobacco and products thereof (especially plug) at Reidsville, N. C., and in selling and distributing the same throughout the United States and abroad in competition with defendants all its business of manufacturing and selling long cut and plug tobacco as a going concern, all assets used in the same and the exclusive right to use the corporate name, by giving therefor, greatly in excess of real values, \$24,000 cash. A. H. Motley and A. H. Motley, jr., principal stockholders, and A. H. Motley Company each agreed for twenty years not to engage directly or indirectly in the manufacture, sale, or distribution of long cut or plug cut tobacco within the United States.

This plant has been closed and the business discontinued.

In November, 1897, defendant, The American Tobacco Company, acquired all the business of the American Eagle Tobacco Company, a Michigan corporation, of manufacturing and selling long cut, plug cut, and fine cut tobacco as a going concern, with all property used in the same and the exclusive right to use the corporate name, by giving therefor, greatly in excess of real values, \$60,000 cash. The American Eagle Tobacco Company had long been engaged in interstate and foreign commerce in leaf tobacco and manufactur-



ing products thereof (especially plug) at Detroit, Mich., and in selling and distributing the same throughout the United States and abroad in competition with defendants. The principal stockholders each agreed not to engage directly or indirectly in the manufacture, sale, or distribution of tobacco products in the United States.

The business has long since been discontinued and the plant closed.

In July, 1898, defendant, The American Tobacco Company, acquired from Herman Mandelbaum, who for a long time had been successfully engaged in interstate and foreign commerce in leaf tobacco and manufacturing products thereof (especially cigars and all-tobacco cigarettes) at New York City, and in selling and distributing them throughout the United States and abroad in competition with defendant all his business of manufacturing, selling, and dealing in cigars and all-tobacco cigarettes, together with all property used in the same and the exclusive right to use his name in connection therewith, by paying therefor, greatly in excess of real values, \$26,000 cash. Henry Mandelbaum agreed for twenty years not to engage directly or indirectly in the business of manufacturing, selling, dealing in, or distributing cheroots, cigars, or cigarettes within the United States.

This business was long since discontinued and the plant closed.

In September, 1898, defendant, The American Tobacco Company, acquired from The Brown Tobacco Company, a Missouri corporation long successfully engaged in interstate and foreign commerce in leaf tobacco and manufacturing products thereof (especially plug) at St. Louis, Mo., and in selling and distributing the same throughout the United States and abroad in competition with defendants, all its business of manufacturing and selling, dealing in and distributing tobacco, and all property used in the same, and the exclusive right to use the corporate name in connection therewith, by giving therefor, greatly in excess of real values, \$1,205,712.20 cash.

In the year 1897 The Brown Tobacco Company shipped and distributed about 2,400,000 pounds of plug tobacco.

Paul Brown and W. W. Sherman, principal stockholders, agreed to enter the purchaser's employ and for twenty years

not to engage directly or indirectly in the manufacture of tobacco or in the sale of manufactured tobacco.

This factory and plant have long been closed and abandoned.

In October, 1898, The American Tobacco Company acquired from The Drummond Tobacco Company, a Missouri corporation long successfully engaged in interstate and foreign commerce in leaf tobacco and manufacturing products thereof (especially plug) at St. Louis, Mo., and in selling and distributing the same throughout the United States and abroad in competition with defendants, all its business of manufacturing, selling, dealing in, and distributing tobacco as a going concern, all assets, property, and good will, and the exclusive right to use the corporate name, by giving therefor, greatly in excess of real values, \$3,457,500 cash.

In the year 1897 The Drummond Tobacco Company sold and shipped largely to States other than Missouri 12,976,672 pounds of plug tobacco.

Harrison I. Drummond, John N. Drummond the elder, John N. Drummond the younger, James T. Drummond, Charles R. Drummond, Robert B. Dula, Caleb C. Dula, Robert D. Lewis, and James A. W. Lewis, principal stockholders of vendor corporation, agreed not to engage for ten years directly or indirectly in the manufacture of tobacco in any form, or in the distribution or sale of manufactured tobacco in any form, within the United States.

This plant was permanently closed shortly after its transfer.

## VII.

### CONTINENTAL TOBACCO COMPANY.

In 1891 defendants, through The American Tobacco Company, commenced to acquire plants producing plug tobacco, and thereafter in its name at many points to manufacture, sell, and distribute such articles as a part of interstate and foreign commerce in increasingly large quantities, actively competing with other powerful and successful concerns located in different States and likewise engaged in interstate and foreign commerce. Opposition hindered profits, and in May, 1893, defendant, James B. Duke, its president, was directed to confer with other manufacturers concerning a com-

bination of plug tobacco interests. Union at that time proved impossible, and defendants instituted against their opponents a fierce, unwarranted, unfair, and destructive competition, cutting the price of manufactured goods far below cost. This trade warfare continued until the latter part of 1898 and beyond, to the great cost of all parties concerned, especially defendants.

Amongst the largest and strongest separate and independent domestic concerns engaged in the business of manufacturing, selling, and distributing plug tobacco, as above shown, in competition with defendants in 1898 and prior thereto, were the Liggett & Myers Tobacco Company, with factory at St. Louis, Mo.; P. Lorillard Company, with factory at Jersey City; P. J. Sorg Company, with factory at Middletown, Ohio; John Finzer & Brothers, with factory at Louisville, Ky.; Daniel Scotten & Company, with factory at Detroit, Mich.; J. Wright Company and P. H. Mayo & Brothers, with factories at Richmond, Va.; and the Brown Tobacco Company and the Drummond Tobacco Company, at St. Louis, Mo. (the last two acquired by The American Tobacco Company September and October, 1898). These were all engaged in interstate and foreign commerce as purchasers of leaf tobacco and as manufacturers, sellers, and distributors of tobacco products, and actively competing with each other and defendants. In order more effectively to resist defendants, by striking at their monopoly in the cigarette business, some of these opponents had commenced to manufacture and others were preparing to enter upon the manufacture, sale, and distribution of cigarettes.

Thereupon defendants and others determined unlawfully to combine and confederate the hostile interests, destroy competition amongst them, and monopolize a part of interstate and foreign trade and commerce, and for such purposes they agreed to organize a corporation which, by issuing its stock in exchange and otherwise, should acquire the competitors or establish between them working arrangements. Accordingly, in December, 1898, they organized under the laws of New Jersey the Continental Tobacco Company with large powers and an authorized capital stock of \$75,000,000 (increased April 21, 1899, to \$100,000,000), one-half common, one-half preferred. Its charter recited:

The objects for which this corporation is formed

are to cure leaf tobacco, and to buy, manufacture, and sell tobacco in any and all its forms, and to erect, or otherwise acquire factories and buildings, establish, maintain, and operate factories, warehouses, agencies, and depots for the storing, preparation, cure, and manufacture of its tobacco, and for its sale and distribution, and to transport, or cause the same to be transported, as an article of commerce, and to do any and all things incidental to the business of trading and manufacturing aforesaid. This corporation shall also have power to conduct its business or any portion of it in all other States and Territories, colonies, and dependencies of the United States of America, and in Great Britain and Canada and all other foreign countries, to have one or more offices out of the State of New Jersey, and to hold, purchase, lease, mortgage, and convey real and personal property out of the State of New Jersey, as well as in said State.

By amendment April 20, 1901, the corporation was given the further power:

To indorse or otherwise guarantee the principal or interest, or both, of and on any bonds, debentures or promissory notes that may be made, issued, or uttered by any corporation in which said company has a substantial interest as stockholder, provided that authority for such endorsement or guarantee be first obtained from the board of directors by resolution having the favorable vote of at least two-thirds of the whole board.

Among the incorporators were defendants James B. Duke and John B. Cobb, president and vice-president of The American Tobacco Company, and others representing interests to be acquired; and these with others similarly situated composed the first board of directors. James B. Duke was president until the merger with The American Tobacco Company in 1904, hereinafter described.

Immediately after incorporation, according to preliminary agreements, the Continental Tobacco Company received conveyances of all the business, plants, assets, good will, and the rights to use the names of the five undermen-

tioned concerns, and in exchange issued stock and paid cash, as indicated below:

P. J. Sorg Company—	
Preferred stock .....	\$4,350,000.00
Common stock .....	4,525,000.00
Cash .....	224,375.00
John Finzer & Brothers—	
Preferred stock .....	\$2,250,000.00
Common .....	3,050,000.00
Cash .....	55,000.00
Daniel Scotten & Company—	
Preferred stock .....	1,911,100.00
Common stock .....	3,012,500.00
P. H. Mayo & Brothers—	
Preferred stock .....	1,250,000.00
Common stock .....	1,925,000.00
Cash .....	66,125.00
J. Wright Company—	
Preferred stock .....	495,000.00
Common stock .....	495,000.00
Cash .....	4,116.67

Likewise, about the same time, according to preliminary agreement, The American Tobacco Company transferred to the Continental Tobacco Company, at greatly inflated valuations, the assets, brands, real estate, good will, etc., appertaining to its plug tobacco business, including the National Tobacco Works, The James G. Butler Tobacco Company, Drummond Tobacco Company, and Brown Tobacco Company, in exchange for \$30,274,200 of conveyee's stock one-half preferred one-half common, \$300,000 cash, and an additional sum equal to losses sustained by conveyor in its plug business since January 1, 1898—\$840,035.

Likewise, under the preliminary agreement, about the same time, the Continental Tobacco Company acquired from holders all the \$3,000,000 common stock of P. Lorillard Company in exchange for \$6,000,000 of its stock, and \$1,581,300 of the \$2,000,000 preferred in exchange for notes aggregating a sum considerably larger. The remaining preferred stock is held by many individuals.

The P. Lorillard Company has continued to carry on its business as a distinct corporation, and manufactured prod-

ucts are labelled with its name and so sold and distributed, but its directors have been chosen by the Continental Tobacco Company and The American Tobacco Company, now holder of the acquired stock; and as the result of contracts, agreements, combinations and conspiracies between the stockholders, officers, agents, and directors of the P. Lorillard Company and defendants the affairs of all have long been conducted without competition and in combination. The necessary leaf tobacco for the P. Lorillard Company has been and is purchased through The American Tobacco Company; and the output of the former is sold and distributed as a part of interstate and foreign commerce, and prices fixed by the latter.

The P. Lorillard Company holds and owns, among other assets, \$1,124,700 preferred and \$3,459,400 common stock of the American Snuff Company, and \$13,000 stock of the Amsterdam Supply Company.

About the time of the transfers above described, the principal stockholders, officers, and directors of the P. J. Sorg Company and of John Finzer & Brothers agreed with the Continental Tobacco Company for a term of fifteen years not to engage in the manufacture of or trade or commerce in tobacco or its products; the partners of Daniel Scotten & Company entered into a like agreement for a year; a similar stipulation was made by parties interested in P. H. Mayo & Brothers and by the stockholders of the P. Lorillard Company, and The American Tobacco Company covenanted never to engage in the plug tobacco business in competition with the conveyee.

Having acquired said plants, assets, businesses, etc., together with other property, the Continental Tobacco Company entered upon the business of manufacturing tobacco products at various points in different States, and of buying, selling, dealing in, and distributing leaf tobacco and its products as a part of interstate and foreign commerce, and continued to carry on the same as a separate organization until the merger of 1904. By reason of contracts, agreements, combinations and conspiracies between said company, its stockholders, agents, officers, and directors, and the other defendants, all their affairs were conducted without competition amongst them and in unlawful restraint



of trade and commerce in leaf tobacco and its products among the several States and with foreign nations, and with the purpose and effect of monopolizing such trade and commerce. Defendants always controlled the Continental Tobacco Company by stock ownership.

The output, in pounds, of the concerns named for 1897 follows:

Drummond Tobacco Company: Plug, 12,976,672.

Brown Tobacco Company: Plug 2,400,211; smoking, 2,015.

John Finzer & Brothers: Plug, 4,158,131; smoking, 3,065,473.

Daniel Scotten & Company: Plug, 6,617,382; smoking, 4,053,229; fine cut, 3,198,141; snuff, 16,306.

P. J. Sorg Company: Plug, 7,704,545; smoking, 216,541; twist, 167,677.

P. H. Mayo & Brothers: Plug 1,730,149; smoking, 1,358,473.

J. Wright Company: Plug, 2,084,728; smoking, 84,031.

P. Lorillard Company: Plug, 8,621,257; smoking, 5,936,104; fine cut, 2,162,636; snuff, 1,767,312.

Liggett & Myers Tobacco Company (1898): Plug, 23,477,594; smoking, 509,905.

## VIII.

About the times indicated defendants, with the purposes above specified, through The American Tobacco Company and the Continental Tobacco Company, and otherwise, acquired all the business of manufacturing, buying, selling, and dealing in leaf tobacco and products thereof of the concerns hereinafter enumerated, all of which were then and long before engaged in interstate and foreign commerce therein in competition with defendants. From the owners, stockholders, directors, managers, and officers of all of the same they demanded and received agreements not to engage in interstate and foreign commerce in tobacco or its manufactured products in competition with them, and also grants of the exclusive right to use their names in connection with such business.

In January, 1899, Catlin Tobacco Company, St. Louis, Mo.; consideration, \$550,706.50 cash; conveyance to The

American Tobacco Company. This company manufactured and sold principally smoking and fine-cut tobacco. The factory is now operated as a branch of The American Tobacco Company.

In February, 1899, Wright Brothers Tobacco Company, St. Charles, Mo.; consideration, \$132,001.10 cash; conveyance to Continental Tobacco Company. This company manufactured and sold in 1898 1,500,000 pounds of plug. The plant was permanently closed shortly after its acquisition.

In March, 1899, W. R. Irby Cigar and Tobacco Company Limited, New Orleans, La.; consideration, \$625,000 cash; conveyance to The American Tobacco Company. This company manufactured and sold in 1898, 867,000 pounds of smoking tobacco, 4,190,000 cigars, and 96,900,000 cigarettes, and 33,488 pounds of snuff. The plant is now operated as a branch of The American Tobacco Company.

In March, 1899, Banner Tobacco Company, Detroit, Mich.; consideration, \$50,000 cash; conveyance to The American Tobacco Company. This company manufactured and sold smoking and fine cut. The plant was permanently closed shortly after its acquisition.

In March, 1899, The Bowers Snuff and Tobacco Company, Limited, Changewater, N. J.; consideration, \$200,000 preferred stock of Continental Tobacco Company and \$200,000 common; conveyance to Continental Tobacco Company. This partnership manufactured and sold in 1898, 530,000 pounds of snuff. The plant was permanently closed shortly after its acquisition.

In March, 1899, M. S. Pacholder Company, of Baltimore, Md.; consideration, \$108,950.64; conveyance to The American Tobacco Company. This company manufactured and sold in the year 1898 about 40,000,000 little cigars. The plant was permanently closed shortly after its acquisition.

In April, 1899, Liggett & Myers Tobacco Company, of St. Louis, Mo.; conveyance to Continental Tobacco Company; consideration, \$12,500,000 preferred stock and \$17,500,000 common. This company manufactured and sold in 1898 24,000,000 pounds of plug, was the most powerful competitor of defendants, and they had long sought to acquire it. Its capital stock was \$1,100,000, and the price paid therefor was extraordinary. After its acquisition the plant was operated by the Continental Tobacco Company and is now

operated as a branch of The American Tobacco Company.

In June, 1899, Gradle & Strotz, of Chicago, Ill.; conveyance to The American Tobacco Company; consideration, \$186,161.51 cash. This company manufactured and sold in 1898 about 410,000 pounds of smoking tobacco. The plant since its acquisition has been operated as a branch of The American Tobacco Company.

In June, 1899, F. W. Felgner & Son Company, of Baltimore, Md.; conveyance to The American Tobacco Company; consideration, \$433,744.86 cash. This plant since its acquisition has been operated as a branch of The American Tobacco Company, manufacturing smoking and fine cut.

In July, 1899, Union Tobacco Company, of New York City; conveyance to The American Tobacco Company; consideration, \$12,500,000 common stock. This company owned, among other things, all the capital stock of the Blackwell's Durham Tobacco Company (hereafter described), which, in 1897, sold over 3,100,000 pounds of smoking tobacco. The company was at once dissolved.

In July, 1899, Aug. Beck & Company, of Chicago, Ill.; conveyance to The American Tobacco Company; consideration, \$322,296.34 in cash. The plant of this company, which manufactured and sold smoking tobacco, was permanently closed shortly after its acquisition.

In September, 1899, Buchanan & Lyall, of Brooklyn, N. Y.; conveyance to Continental Tobacco Company; consideration, \$2,400,000 cash. In 1898 Buchanan & Lyall manufactured and sold over 4,000,000 pounds of tobacco. This plant was permanently closed shortly after its acquisition.

In September, 1900, Rice & Vaughan, of Louisville, Ky.; conveyance to Continental Tobacco Company; consideration, \$80,285.46. The plant, which manufactured plug, was permanently closed shortly after its acquisition.

In January, 1901, Rosenblum & Lehman, of New York City; conveyance to The American Tobacco Company; consideration, \$32,586.52. The factory, which manufactured little cigars, was permanently closed shortly after its acquisition.

In February, 1901, Wellman, Dwire Tobacco Company, of St. Louis, Mo.; conveyance to Continental Tobacco Company; consideration \$583,026.81. The plant, which manu-

factured plug, was permanently closed shortly after its acquisition.

In April, 1901, C. V. Winfree Tobacco Company, of Lynchburg, Va.; conveyance to The American Tobacco Company; consideration, \$14,300.90. The plant, which manufactured smoking tobacco and cigarettes, was permanently closed shortly after its acquisition.

In June, 1901, S. W. Venable Tobacco Company, of Petersburg, Va.; conveyance to Continental Tobacco Company; consideration, \$117,019.48. The plant, which manufactured plug, was permanently closed shortly after its acquisition.

In October, 1901, Addison Tinsley Tobacco Company, of Louisiana, Mo.; conveyance to Continental Tobacco Company; consideration, \$110,466.51. The plant, which manufactured and sold about 1,500,000 pounds of plug in 1900, was permanently closed shortly after its acquisition.

In November, 1901, D. H. McAlpin & Company, of New York City; conveyance to The American Tobacco Company; consideration, \$1,442,379.08. The plant, which manufactured and sold about 1,500,000 pounds of smoking and fine cut in 1900, was permanently closed shortly after its acquisition.

In December, 1901, M. C. Wetmore Tobacco Company, of St. Louis, Mo.; conveyance to Continental Tobacco Company; consideration, \$378,430.07. The plant, which manufactured and sold plug, was closed permanently shortly after its acquisition.

In December, 1901, The Wilson & McCallay Tobacco Company, of Middletown, Ohio; conveyance to Continental Tobacco Company; consideration, \$361,900. The plant, which manufactured and sold plug, was closed permanently shortly after its acquisition.

In May, 1903, R. F. Morris & Son Manufacturing Company, of Durham, N. C.; conveyance to The American Tobacco Company; consideration, \$35,000. The factory, which manufactured smoking tobacco, was closed permanently shortly after its acquisition.

In May, 1903, T. C. Williams Company, of Richmond, Va.; conveyance to The American Tobacco Company; consideration, \$375,000. The plant, which had manufactured

and sold smoking and plug, was permanently closed shortly after its acquisition.

In September, 1903, Butler & Bosher Company, of Richmond, Va.; conveyance to Continental Tobacco Company; consideration, \$208,055.13. The plant, which had manufactured and sold plug, was closed permanently shortly after its acquisition.

In October, 1903, Harry Weissinger Tobacco Company, of Louisville, Ky.; conveyance to Continental Tobacco Company; consideration, \$1,179,150. The plant, which in 1901 manufactured and sold 4,300,000 pounds of plug and 127,220 pounds smoking, was closed permanently shortly after its acquisition.

In November, 1903, Manufacturers' Tobacco Company, of Louisville, Ky.; conveyance to Continental Tobacco Company; consideration, \$69,843.09. The plant, which manufactured and sold plug, was closed permanently shortly after its acquisition.

In January, 1904, Meriwether Snuff and Tobacco Company, of Clarksville, Tenn.; conveyance to Continental Tobacco Company; consideration, \$5,063.16.

In October, 1904, Bland Tobacco Company, of Petersburg, Va.; conveyance to The American Tobacco Company; consideration, \$86,425. The plant, which manufactured and sold smoking and plug, was closed permanently shortly after its acquisition.

In January, 1905, B. Leidersdorf & Company, of Milwaukee, Wis.; conveyance to The American Tobacco Company; consideration, \$600,000. The plant, which in 1902 manufactured and sold 3,000,000 pounds of tobacco, was closed permanently shortly after its acquisition.

In June, 1905, Weyman & Brother, of Chicago, Ill.; conveyance to The American Tobacco Company of its smoking tobacco business; consideration, \$424,500. After the purchase The American Tobacco Company discontinued the manufacture of tobacco at the plant of this company.

In January, 1907, Leopold Miller & Sons, of New York City; conveyance to The American Tobacco Company; consideration, \$249,193.60. The plant, which in 1906 manufactured and sold 725,000 pounds of smoking tobacco, 25,000,000 little cigars, and 7,500,000 cigars, was closed permanently shortly after its acquisition.

## IX.

In February, 1899, and thereafter defendants, in pursuance of their general purpose, through The American Tobacco Company, for \$250,000 cash, acquired the entire capital stock (\$40,000) of the Monopol Tobacco Works, a New York corporation, for many years theretofore engaged in the manufacture of cigarettes and smoking tobacco in New York City and in interstate and foreign commerce, buying in different States, selling and shipping to other States and abroad, tobacco and its products in competition with them. The separate organization of the acquired company has been preserved and for a long time it continued to manufacture high grade tobacco and cigarettes; but its board of directors has at all times been selected by defendants and its business conducted in agreement and combination with them and without competition. The business is now confined, by agreement, to that of a selling agency, for defendants, of high grade tobacco products, imported and domestic, and it is being used as an instrument to carry into effect their general purposes to destroy competition in interstate and foreign commerce and acquire a monopoly.

In March, 1899, defendants, through The American Tobacco Company, obtained control of the business of Lührman & Wilbern, a partnership, manufacturers of "Scrap Tobacco," paying therefor \$918,000. They had been successfully engaged in Cincinnati, Ohio, in manufacturing scrap tobacco and also in interstate and foreign trade and commerce, buying leaf tobacco in different States, shipping the same to others and selling, shipping, and distributing throughout the different States its products in active competition with defendants. Their output for the year 1899 was 4,500,000 pounds.

To eliminate this competition defendants agreed with the partners that the Lührman & Wilbern Tobacco Company should be incorporated under the laws of New Jersey with \$900,000 capital, to take over the business and assets of the firm, issuing therefor its entire capital stock, and that thereafter The American Tobacco Company should acquire \$800,000 at par. This agreement was immediately carried into effect, the transfers being made and stock issued (and is now held) in harmony therewith, and the partners agreed for twenty years not

to engage in the tobacco business. At all times since its organization Luhrman & Wilbern Tobacco Company has carried on the business formerly conducted by the partnership and interstate and foreign commerce under its own corporate name, its separate organization being preserved; but the directors have been chosen by defendants and all its affairs have been conducted under an agreement not to compete either in purchasing leaf tobacco or selling and distributing its products, and in combination with them and without competition, for the purpose and with the effect of restraining interstate and foreign trade and commerce and acquiring a monopoly thereof. This company for a long time concealed and denied its association with defendants, and has been used by them as an instrument to cripple other manufacturers of scrap tobacco with a view of driving them out of business and destroying competition therein. According'y it has sold certain brands at less than cost of production; and to aid it large sums of money have been loaned by The American Tobacco Company.

The output of the Luhrman & Wilbern Tobacco Company factory (moved to Middletown, Ohio) for the year 1906 was 10,032,786 pounds of "scrap."

In July, 1899, defendants, through the Continental Tobacco Company, acquired control of the business of C. C. Mengel, jr., Brother & Compauy, Louisville, Ky., a Kentucky corporation long successfully engaged in the manufacture of boxes, especially those for packing tobacco, and in selling, shipping, and distributing them in interstate commerce. According to agreement, a new corporation, the Mengel Box Company, was organized under the laws of New Jersey, to which all business and assets of the Kentucky corporation were conveyed; and the Continental Company also conveyed the box business formerly conducted by Liggett & Myers Manufacturing Company, of St. Louis. In exchange the conveyors accepted stock. The capital stock is now \$2,000,000—\$1,500,000 owned by The American Tobacco Company, which nominates the board of directors and really controls all the affairs. This company has acquired the capital stock (\$150,000) of the Columbia Box Company and of the Tyler Box Company (\$25,000), both at St. Louis; and is engaged in the manufacture, sale, shipment, and distribution as part of interstate commerce of boxes on an extensive scale and has



contracts with defendants to furnish such as they need at plants in different States.

In July, 1899, defendants through The American Tobacco Company, acquired control of the business of Rucabado y Portela, a partnership long engaged at San Juan, Porto Rico, in manufacturing tobacco and cigarettes and in dealing in leaf tobacco and its products as part of interstate and foreign commerce in active competition with them. In 1898 this firm had, among other things, manufactured, sold, and distributed 80,000,000 cigarettes. By agreement between defendants and the partners The Porto Rican-American Tobacco Company was incorporated under the laws of New Jersey, and the partnership business was conveyed thereto in exchange for stock, each of the partners agreeing for twenty-five years not to engage in the tobacco business.

The present outstanding capital stock of the corporation which conducts the former business of the partnership is \$1,799,600, of which defendant, The American Tobacco Company, holds \$585,300, and the American Cigar Company a like amount, the balance being held by individuals. It does an extensive business in the island of Porto Rico and exports large quantities of tobacco products to the United States, which are controlled by the American Cigar Company. Its affairs are conducted in its own name, but its directors are chosen by defendants, and by agreement no competition exists among them. It is one of the instruments used to restrain interstate and foreign commerce and secure monopoly.

In August, 1899, defendants, through the Continental Tobacco Company, acquired control of the business formerly carried on by the Louisville Spirit-Cured Tobacco Company, a Kentucky corporation engaged in interstate and foreign commerce, curing and treating tobacco and utilizing tobacco stems for manufacturing fertilizers, shipping and distributing the same throughout the United States.

By agreement a new corporation, called Kentucky Tobacco Product Company, was organized under the laws of New Jersey, with a capital of \$1,000,000, \$450,000 of which was issued to the stockholders of the Kentucky company and \$550,000 to the Continental Tobacco Company (now held by defendants) in consideration of the latter's agreement to supply tobacco stems. The company is engaged in carry-

ing on the business acquired in combination and agreement with defendants and is an instrument through which they restrain interstate and foreign commerce, destroy competition, and seek to secure monopoly.

In September, 1899, defendants, through The American Tobacco Company, acquired the business of the Golden Belt Manufacturing Company, a New Jersey corporation manufacturing in North Carolina cotton bags and sacks for tobacco products, buying the material thereof and selling the completed product as a part of interstate and foreign commerce. This corporation was formed in pursuance of agreement between defendants and original owners of the business, who conveyed it thereto in exchange for stock. Its capital stock is \$700,000, and \$650,000 is held by The American Tobacco Company which selects the directors. Between this company and defendants, by agreement, no competition exists, and it is one of the instruments through which they seek to restrain interstate and foreign commerce and to monopolize the same. It has a contract to supply them with containers for manufactured tobacco, and is attempting to monopolize and has monopolized trade and commerce in such articles.

In December, 1899, the defendants, through The American Tobacco Company, acquired control of the business of John Conley & Son, long engaged at New York City in manufacturing tin foil, an essential article for packing tobacco products, in buying the necessary raw material therefor and selling the same as a part of interstate and foreign commerce. By agreement between defendants and the partners, The Conley Foil Company, a New Jersey corporation, with a capital stock of \$250,000, was organized and the business and assets of the firm conveyed thereto in exchange for stock. Its capital was thereafter increased to \$375,000, of which defendant, The American Tobacco Company, owns \$225,000.

In order to destroy competition The Conley Foil Company purchased all the capital stock of its competitor, the Johnston Tin Foil and Metal Company of St. Louis, likewise manufacturing and selling tin foil, now being operated under its control and in agreement with it without competition, and by this and other means defendants, through this company, have acquired a monopoly of interstate trade and

commerce in tin foil. These two companies have contracts with defendants to supply all tin foil used by them in the different States at remunerative prices, and the excess of their manufacture above the amount necessary therefor, also by agreement with defendants, is sold at prices below cost of production, for the purpose of breaking down their single remaining competitor and strengthening the monopoly of trade and commerce therein and in tobacco products.

In 1899 defendants, through the Continental Tobacco Company, acquired control of the business for a long time theretofore carried on by the R. J. Reynolds Tobacco Company, a North Carolina corporation with factory at Winston-Salem, a large purchaser of leaf tobacco and manufacturer of products therefrom, and engaged in interstate and foreign trade and commerce therein in competition with them. In 1898 it manufactured, sold, and distributed throughout the United States and abroad 6,000,000 pounds of plug tobacco.

By agreement between defendants and stockholders and officers of the North Carolina corporation a new company was incorporated under the laws of New Jersey with same name and capital of \$5,000,000 (subsequently increased to \$7,525,000), and to it the business and assets of the old concern were transferred in exchange for stock, a majority of which was immediately acquired by the Continental Tobacco Company.

The American Tobacco Company has for a long time held \$5,000,000 of the stock and has elected the members of the board of directors of the New Jersey corporation, which has been and is now doing an extensive business in interstate and foreign commerce, buying leaf tobacco in different States and selling and distributing products of the same in many States and abroad. Its separate organization has been preserved and affairs are conducted in its own name, but in unlawful combination and conspiracy and under an agreement not to compete with defendants as purchasers of leaf tobacco or in the sale of manufactured products, all for the purpose and with the effect of destroying the competition which should exist between them, restraining and monopolizing a part of interstate and foreign commerce.

During the year 1906 this company manufactured, sold, and shipped as a part of interstate and foreign commerce 20,000,000 pounds of manufactured tobacco, mostly plug,

and purchased through their agents in different States 27,500,000 pounds of leaf.

The R. J. Reynolds Tobacco Company, by agreement with and carrying out the policy of defendants to destroy all competition, restrain trade, and to create a monopoly, purchased the business and assets of the following concerns, engaged in interstate and foreign commerce as purchasers of tobacco and in manufacturing and selling and distributing its products in competition with them, all of whose owners, directors, and managers agreed to refrain from engaging in the tobacco business:

April 30, 1900, T. L. Vaughn & Company, partnership, of Winston, N. C.; consideration, \$90,506. The vendors manufactured large amounts of plug tobacco. This plant was immediately closed.

December 17, 1900, Brown Brothers Company, a North Carolina corporation, Winston, N. C.; consideration, \$67,615. This corporation was a large manufacturer of plug tobacco. The plant was immediately closed.

December, 1900, P. H. Hanes & Company and B. F. Hanes & Company, Winston, N. C., partnerships; consideration, \$671,950. These partnerships were large manufacturers of plug tobacco. The plants were immediately closed.

December, 1905, Rucker & Witten Tobacco Company, Martinsville, Va.; consideration, \$512,898. This corporation was a large manufacturer of plug tobacco. The plant was at once closed.

December, 1906, D. H. Spencer & Company, Martinsville, Va.; consideration, \$314,255. This corporation was a large manufacturer of plug tobacco. Its factory was immediately closed.

The R. J. Reynolds Tobacco Company has acquired and now holds a majority of the \$400,000 capital stock in the Liipfert-Scales Company, of Winston, N. C., a corporation largely engaged in the manufacture of plug tobacco and interstate and foreign commerce in leaf tobacco and its products. Its separate organization is preserved and the business carried on under its corporate name, but all in combination and agreement with defendants to refrain from competing with them as purchasers of leaf and in selling manufactured products with the purpose and effect of de-

stroying competition, restraining interstate commerce, and attempting to monopolize the same.

The output of plug tobacco by Liipfert-Scales Company in 1906 exceeded 2,000,000 pounds. This company by agreement with defendants for a long time concealed its connection with them and advertised itself as wholly independent, not connected with any trust or combination, etc.

The R. J. Reynolds Tobacco Company also holds \$98,300 stock of the MacAndrews & Forbes Company and \$9,600 of the Amsterdam Supply Company.

In March, 1899, defendants, through The American Tobacco Company, acquired control of the business of the Blackwell's Durham Tobacco Company, a North Carolina corporation with a plant at Durham, N. C., long engaged in interstate and foreign trade and commerce in leaf tobacco and in manufacturing, selling, and distributing tobacco products throughout the United States and abroad in competition with them. In that month The American Tobacco Company purchased the stock of the Union Tobacco Company, which owned all stock of the Blackwell's Durham Tobacco Company. Thereafter defendants organized a New Jersey corporation, called the Blackwell's Durham Tobacco Company, with capital of \$1,000,000 and this secured the business of the North Carolina company, then in the hands of a receiver.

The New Jersey corporation, all stock of which The American Tobacco Company has acquired at a cost of \$1,000,000 has been and is doing an extensive business in interstate and foreign commerce, buying leaf tobacco in different States and selling and distributing its products in many States and abroad. Its separate organization has been preserved and its affairs are conducted in its own name, but in unlawful combination and conspiracy with defendants and under an agreement not to compete with them as purchasers of leaf tobacco or in the sale of manufactured tobacco products all for the purpose and with the effect of destroying the competition which should exist between them, restraining and monopolizing a part of interstate and foreign commerce.

During 1906 this company manufactured, sold, and shipped to points throughout the United States, as a part of interstate and foreign commerce, 9,920,000 pounds of smok-

ing tobacco and purchased through its agents in different States, 16,511,000 pounds of leaf.

The Blackwell's Durham Tobacco Company, carrying out the policy of defendants to destroy competition, restrain trade, and create a monopoly, purchased from the holders in the year 1902 the capital stock of the Reynolds Tobacco Company, a Tennessee corporation successfully engaged at Bristol, Tenn., in interstate commerce in leaf and manufactured tobacco, buying leaf in different States and selling and shipping the products manufactured therefrom to different States and abroad. The plant was closed and the company liquidated.

In 1903, by agreement with defendants and with the same purpose to destroy all competition and acquire a monopoly, the Blackwell's Durham Tobacco Company purchased from the holders and now holds a majority of the capital stock (\$262,500) of the F. R. Penn Tobacco Company, a North Carolina corporation with plant at Reidsville, N. C., long successfully engaged in interstate and foreign commerce in leaf tobacco and in manufacturing, selling, and distributing tobacco products, particularly smoking, throughout the United States and abroad in competition with defendants.

The F. R. Penn Tobacco Company has continued its interstate commerce business in leaf and manufactured tobacco. Its separate organization has been preserved and its affairs are conducted in its own name, but in unlawful combination and conspiracy with defendants and under agreement not to compete with them as purchasers of leaf or in the sale of manufactured products all for the purpose and with the effect of destroying the competition which should exist between them and monopolizing a part of interstate and foreign commerce. The Blackwell's Durham Tobacco Company and defendants elect the directors.

In 1906, the F. R. Penn Tobacco Company manufactured, sold, and distributed throughout the United States 2,000,000 pounds of tobacco. For a long time this Company concealed and denied its connection with defendants and it has and does now advertise itself as wholly independent and without association with any trust or combination.

In 1903, the Blackwell's Durham Tobacco Company acquired from the holders, and now holds, all the stock of the Wells-Whitehead Tobacco Company, a North Carolina cor-

poration, with plant at Wilson, N. C., long successfully engaged in interstate and foreign commerce in competition with defendants, in leaf and manufactured tobacco, buying leaf tobacco in different States, and selling, shipping, and distributing products manufactured therefrom, especially cigarettes, throughout the United States and in foreign countries. Its separate organization is preserved and the business carried on under its corporate name, but all in combination and agreement with defendants to refrain from competing with it as purchasers of leaf and in selling manufactured products with the purpose and effect of destroying competition and restraining interstate and foreign commerce and attempting to monopolize the same.

The output of cigarettes by the Wells-Whitehead Tobacco Company in 1906 was 90,600,000. This Company has habitually concealed and denied its association with defendants and has persistently advertised, and is now advertising, itself as an independent manufacturer not connected with them. All this is in pursuance of defendants' policy, by disguising ownership, to use controlled companies to break down opposition and secure for themselves the benefit of public sentiment against combinations, and illustrates the general allegations on that subject hereinbefore set out. Under agreement with defendants it has been, and is now, selling certain brands manufactured by it at less than cost of production with the purpose of driving out of business manufacturers and dealers honestly independent who are endeavoring to compete.

## X.

### AMERICAN SNUFF COMPANY.

The Continental Tobacco Company and defendants, including The American Tobacco Company and P. Lorillard Company, prior to March, 1900, were largely engaged in the business of buying leaf tobacco in different States, shipping it to others and manufacturing therefrom snuff and selling, shipping, transporting, and distributing the same to divers persons in many States, all as parts of interstate and foreign commerce—their joint output of snuff in 1899 being approximately 5,000,000 pounds. Between them and the Atlantic Snuff Company, another strong combination producing about 5,000,000 pounds of snuff annually, George



W. Helme Company, Weyman & Brother, and other snuff makers, all similarly engaged in interstate and foreign commerce, there was fierce trade competition.

The Atlantic Snuff Company was incorporated under the laws of New Jersey in 1898 as a means of destroying competition, unlawfully combining and confederating a number of independent manufacturers, dealers in, and distributors of snuff, each of which obligated itself not to compete with the others and all of whom in combination sought to exclude others from the business. It took over among others the plant of Bruton & Condon at Nashville, Tenn., and acquired all the capital stock of W. E. Garrett & Sons, of Philadelphia, one of the principal domestic snuff manufacturing concerns, which itself controlled through stock ownership or otherwise a number of subordinate companies in the same business.

Early in 1900 defendants and others, in order to suppress and destroy competition therein and to acquire monopoly of the business of manufacturing, selling, and distributing snuff as a part of interstate and foreign commerce, entered into contracts, and upon a conspiracy which has continued to this time to refrain from all competition with each other and to combine contending interests therein, for the purpose of excluding all others and securing complete control for themselves.

Accordingly The American Tobacco Company, Continental Tobacco Company, P. Lorillard Company, and Atlantic Snuff Company, in February, 1900, agreed that as an instrumentality to effect said purpose they would cause to be incorporated under the laws of New Jersey the American Snuff Company, with capital of \$25,000,000, one-half preferred, one-half common, to which the Atlantic Snuff Company should convey all its plants, business, and assets of every kind; that each of the other companies should likewise convey thereto all its snuff business, together with the plants, property, and assets used in connection therewith and that each should accept in exchange for the things conveyed a designated amount of stock in the conveyee company, and agree not thereafter to engage in such business. In March, 1900, conveyances were made to the American Snuff Company according to the preliminary agreement by all parties thereto, and stock was issued as follows:

Atlantic Snuff Company.....	\$10,000,000
Preferred .....	\$7,500,000
Common .....	2,500,000
P. Lorillard Company.....	\$4,584,100
Preferred .....	\$1,124,700
Common .....	3,459,400
The American Tobacco Company.....	4,405,300
Preferred .....	1,177,800
Common .....	3,227,500
Continental Tobacco Company .....	1,010,600
Preferred .....	197,500
Common .....	813,100

The stock issued to Continental Tobacco Company and defendants is still held by the latter, and they have at all times had a controlling interest in the Snuff Company.

All of the conveyor companies, together with their officers and directors, covenanted that they would not thereafter engage in the tobacco business or the manufacture, sale, or distribution of snuff.

The incorporators of the American Snuff Company were defendants, James B. Duke, John B. Cobb, Caleb C. Dula, and others, connected with the several concerns to be acquired, and the first board of directors according to the understanding was made up of individuals similarly interested. Its charter provides:

That the objects for which this company is formed are to do any or all of the things herein set forth to the same extent as natural persons might or could do, and in any part of the world, as principals, agents, contractors, trustees, or otherwise, and either alone or in company with others, and in furtherance, and not in limitation, of the general powers conferred by the laws of the State of New Jersey, it is hereby expressly provided that the company shall have also the following powers: To buy, to cure, and sell leaf tobacco; to buy, manufacture, and sell snuff in any and all its forms; including the acquisition, by purchase, by manufacture, or otherwise, of all materials, supplies, machinery, and other articles necessary or convenient for use in connection with and in carrying on the business herein mentioned, or any part thereof; and for such

purposes (a) to manufacture, purchase, or otherwise acquire, hold, own, mortgage, pledge, sell, assign, and transfer, invest, trade, deal in, and deal with goods wares and merchandise, and property of every class and description necessary or incident to the business of manufacturing and selling snuff; (b) to acquire the good will, rights, and property of any kind, and to undertake the whole or any part of the assets and liabilities of any person, firm, association, or corporation, and to pay for the same in cash, stock of this company, bonds or otherwise; (c) to apply for, obtain, register, purchase, lease, or otherwise acquire, and to hold, own, use, operate, introduce, and to sell, assign, or otherwise dispose of, to grant licenses in respect of or otherwise turn to account any and all trade-marks, trade names, and distinctive marks, copyrights, and rights analogous thereto, and all inventions, improvements, and processes used in connection with, or secured under letters patent of the United States or elsewhere or otherwise, and with a view to the working and development of the same to carry on any necessary business, whether manufacturing or otherwise; (d) to purchase or otherwise acquire, to hold, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of bonds, mortgages, debentures, obligations, or shares of the capital stock of any corporation, and to exercise in respect of all such property any and all the rights, powers, and privileges of individual owners thereof; (e) to procure the company to be registered or recognized, to have one or more offices, to carry on its operations and business, and to hold, purchase, mortgage, and convey real and personal property, to conduct its business or any part thereof, and to erect or otherwise acquire factories and buildings, maintain and operate factories, warehouses, agencies, and depots in any State or Territory of the United States and in any foreign country or place; (f) to do all and everything necessary, suitable, or proper for the accomplishment of any of the purposes or attainment of any of the objects hereinbefore enumerated.

Having acquired the plants (some of which were immediately closed and abandoned), assets, business, etc., above

described, together with other property, the American Snuff Company entered upon the business of manufacturing snuff at various points in the different States (and is now so doing at Nashville, Tenn., Helmetta and Changewater, N. J., Baltimore, Md., and Clarksville, Tenn.), and of buying, dealing in, and selling leaf tobacco and its products as a part of interstate and foreign commerce, and has continued and is now carrying on the same. Some of the points at which this company buys leaf tobacco, and from which it ships the same to other States, are in Kentucky, Tennessee, and Virginia. It has at all times been a party and the principal instrument and agency of the successful conspiracy amongst defendants and others above described to destroy competition in interstate trade and commerce in snuff and to monopolize the same, and with such ends and purposes constantly in view it has done among other things those which are hereinafter detailed.

By reason of contracts, agreements, combinations and conspiracies between said American Snuff Company, its stockholders, agents, officers, and directors, and the other defendants, all their affairs have been conducted without competition amongst them and in restraint of trade and commerce in leaf tobacco and its products among the several States and with foreign nations, and with the purpose and effect of monopolizing such trade and commerce. Each by contract has been obligated to refrain and has refrained from all competition with any other one, and all have exercised their power in combination to keep others from engaging in the business in which any of them was concerned for the express purpose and with the effect of securing for themselves a monopoly therein.

Among the assets transferred by Atlantic Snuff Company to American Snuff Company were all the shares (\$600,000) of W. E. Garrett & Sons, Inc., then and now one of the oldest and very largest producers of snuff, for a long time and still engaged at Yorkland, Del., in interstate and foreign commerce in tobacco and its products, and which controlled through stock ownership the Southern Snuff Company, Memphis, Tenn.; Dental Snuff Company, Lynchburg, Va., and Stewart-Ralph Snuff Company, Clarksville, Tenn.

The separate existence of W. E. Garrett & Sons, Inc., has been preserved and its business conducted under the cor-

porate name, but its directors are elected by the American Snuff Company, and by agreement it does not compete either in purchases or sales, and in combination and conspiracy the business of both is conducted with the express purpose to keep others out and to acquire monopoly in combination, and there is no competition between them. The output of snuff by W. E. Garrett & Sons, Inc., for the year 1906 was 6,000,000 pounds.

In March, 1900, the American Snuff Company acquired all the shares of George W. Helme Company, one of the oldest and largest producers of snuff and actively engaged at Helmetta, N. J., in interstate and foreign commerce in competition with defendants, by issuing in exchange therefor \$2,000,000 preferred stock and \$1,000,000 common; and it thereafter took a conveyance of all assets of the acquired company and now operates the plant under its own name. The stockholders, owners, directors, and officers of George W. Helme Company agreed with the purchaser for ten years not to engage in the business of manufacturing, selling, dealing in, or distributing snuff.

About the times specified defendants, through American Snuff Company, acquired all the business of manufacturing snuff and buying, selling, and dealing in leaf tobacco and the products thereof, together with the plants (most of which were at once closed) and all assets used in connection therewith of the concerns hereinafter enumerated, all of which were at such times, and long before, engaged in interstate and foreign commerce in competition with defendants; and from the owners, directors, managers, and officers of all they demanded and received agreements not to engage in interstate and foreign commerce in tobacco or its products in competition with defendants, and also grants of the exclusive right to use the names of such individuals, partnerships, and corporations.

April, 1900, Stewart-Ralph Snuff Company of Clarksville, Tenn.

January, 1901, the entire capital stock (\$50,000) of DeVoe Snuff Company, of Spottswood, N. J.; consideration, \$101,012. The business and plant of this corporation has continued to be conducted under its own name, but in combination with the defendants and without competition.

June, 1901, Dalmer & Co., Pittsburg.

December, 1901, D. H. McAlpin & Co., Brooklyn.

February, 1902, Stewart Snuff Company of Clarksville, Tenn.; consideration, \$63,517.50.

May, 1902, McNamara-Laird Company of Birmingham, Ala.; consideration, \$13,488.68.

September, 1902, Independent Snuff Mills Company of Virginia; consideration, \$16,741.31.

September, 1902, Dental Snuff Company of Virginia.

May, 1903, R. F. Morris & Son Manufacturing Company; consideration, \$4,813.14.

July, 1903, Skinner & Company (corporation); consideration, \$23,268.84. The plant of this company is still operated in New Jersey under its corporate name but in combination with defendants and without competition with them.

October, 1903, W. L. Venable & Company (partnership), Petersburg, Va.; consideration, \$5,899.75.

January, 1904, J. B. Holloway Company of Kentucky; consideration, \$24,214.94.

March, 1904, Meriwether Snuff and Tobacco Company of Clarksville, Tenn.; consideration, \$41,254.08.

March, 1904, H. Bolander (corporation, capital \$135,000), Chicago, Ill.; consideration, \$138,044.81. The plant and business of this company are still operated under the corporate name, but in combination with the defendants and without competition.

July, 1905, Weyman & Brother, Pittsburg, Pa.; consideration, \$1,577,177.26. This was the last of the large snuff concerns in active competition with the defendants. A corporation with the same name was organized by defendants with capital of \$500,000 all owned by the American Snuff Company, to take over the business of the partnership, and the plant subsequently removed to Chicago, where the business is now being conducted under the corporate name but without competition with defendants.

Since January 1, 1906, at different times, J. H. Fye Company, of Clarksburg, West Virginia, consideration, \$8,000; and Sun Tobacco Company, consideration \$2,609.85; R. Starr & Company, consideration \$92,639.91; and Arnd Brothers, consideration \$20,000, of Baltimore, Md.

The Standard Snuff Company incorporated in 1898, constructed a large snuff factory at Nashville, Tenn., and became actively engaged in interstate and foreign commerce

in competition with defendants, and sought to build up its business by advertising itself as free and independent of connections with trusts or combines. The defendants waged against it an unwarranted and unrelenting trade warfare accompanied by misrepresentations, deceitful practices, and unfair trade methods, and by so doing prevented it from prospering. In 1902 the Standard Snuff Company instituted suit in the circuit court for Davidson County, Tenn., against the American Snuff Company, alleging unfair practices and willful and malicious acts to the detriment of its business, and asked damages. While this suit was pending and in September, 1903, the American Snuff Company secretly purchased of A. B. Hill, president, and others a majority of the capital stock of Standard Snuff Company, and subsequently they secured the remainder (total, \$281,600), giving in exchange its own stock with some cash.

On or about the date specified the following agreement was made:

*Know all men by these presents:*

Whereas under memorandum of contract of September 12th, 1903, we, the undersigned, E. C. Morrow, W. B. Anderson, and A. B. Hill, agreed to sell and sold to Martin J. Condon in the aggregate 1,800 shares of the stock of Standard Snuff Company, which purchase was made by said Martin J. Condon, as was well known to us, for American Snuff Company; and

Whereas it was originally understood and agreed at the time that in order to secure to American Snuff Company the enjoyment of the good will of Standard Snuff Company and of the undersigned, and as a part of the consideration to be paid us by the said American Snuff Company from the said Condon, we should severally engage and bind ourselves not to re-engage in the snuff business, as hereinafter provided:

Now therefore know all men by these presents that for and in consideration of the premises and of the purchase price paid us and each of us by American Snuff Company aforesaid we, the undersigned, each for himself, covenants and agrees to and with American Snuff Company and its successors and assigns that he will not at any time or times within fifteen years from the



date hereof directly or indirectly engage or be interested in the business of manufacturing or dealing in snuff in any of the States or Territories of the United States (except the State of Utah and the Territory of Alaska) or in the District of Columbia, or hold stock in any corporation so engaged, except in or for the American Snuff Company or by its written consent.

In witness whereof we have hereunto signed our names and affixed our seals this 1st day of October, 1903.

W. B. ANDERSON.

E. C. MORROW.

A. B. HILL.

Notwithstanding the conditions A. B. Hill has continued to be the president of Standard Snuff Company, and by agreement with defendants it has continued to freely advertise as an independent concern free from trust control, as manufacturer of the only independent snuff, etc. This was in pursuance of defendants' policy by disguising ownership to use controlled companies to break down opposition and secure for themselves the benefit of public sentiment against combinations, and illustrates the foregoing general allegations on that subject. In further pursuance of this same policy the Standard Snuff Company has been permitted to purchase leaf tobacco and sell its output apparently as though independent, while in fact it has been and is controlled and by agreement operated in combination with defendants and without competition with them. It manufactured, sold, and distributed in the year 1906 about 500,000 pounds of snuff.

Considering that the defendant American Snuff Company has owned all the capital stock of certain corporations (W. E. Garrett & Sons, Standard Snuff Company, DeVoe Snuff Company, Skinner & Company, and others) as specified above in this paragraph, and could alter its technical relation to them any day without publicity, petitioner does not with absolute certainty know that such companies are at this date controlled precisely in the way pointed out and as they were for a long time heretofore and certainly until recently. Petitioner does, however, allege that the circumstances are as described, or that the defendant Snuff Com-

pany, in pursuance of the general purposes of the defendants heretofore so frequently stated, has caused the controlled companies very recently to go through the form of conveying to it all their assets and plants and is now conducting the same in its name and as branches.

Defendants have now no formidable competitors in interstate and foreign trade and commerce in the snuff business and have secured a monopoly thereof.

The business and affairs of the American Snuff Company are conducted in accord, combination, and conspiracy with defendants and without competition. The board of directors is largely composed of officers and directors of The American Tobacco Company and other defendants, and all are acting together with a common purpose and as parts of an unlawful combination. It maintains a department for the purchase of leaf, with agents in the different States which buy not only for it but for other defendants, and is one of the instruments for destroying competition in the leaf market. The Snuff Company buys each year twenty-five million pounds of leaf tobacco for other defendants, particularly W. S. Mathews & Sons, British-American Tobacco Company, R. J. Reynolds Tobacco Company and The American Tobacco Company. These purchases are made under agreements with defendants both as to territory and prices and in order to avoid competition.

For the calendar year of 1906 the total output of snuff manufactured in the United States was 23,660,061 pounds; imports were insignificant. For the same year the amount of snuff manufactured by American Snuff Company and its controlled concerns was 22,500,000 pounds, and by reason of additional recent acquisitions the percentage of the whole now being manufactured and sold by them has increased.

Enormous profits have resulted to the parties interested from the combinations and conspiracies entered into and monopoly acquired in the snuff business. The outstanding capital stock of American Snuff Company (greatly inflated) is \$23,001,700—\$1 for each pound of snuff now manufactured, much more when the company was formed. Notwithstanding this enormous capitalization dividends at the rate of 6 per cent per annum have always been paid upon the preferred stock, and for many years last past at the rate of 10 per cent on the common. The financial statement of the

company for 1906 shows after paying dividends amounting to \$1,820,170 there was a net surplus from the year's earnings of \$961,696.72, with total surplus \$4,213,831.74 and total assets \$29,459,276.31.

Among other assets the American Snuff Company holds and owns the following stocks and bonds:

The American Tobacco Company, preferred stock.	\$1,080,000
The American Tobacco Company, bonds.....	100,000
American Cigar Company.....	500,000
Amsterdam Supply Company.....	16,500
W. S. Mathews & Sons.....	181,800

## XI.

In March, 1900, defendants, in pursuance of their general purpose through The American Tobacco Company, obtained control of the business for a long time theretofore carried on by one S. Anargyros, paying therefor \$680,000. S. Anargyros had been long successfully engaged in New York City in interstate and foreign commerce in leaf tobacco and cigarettes in competition with defendants, buying leaf tobacco in different States and foreign countries and selling, shipping, and distributing cigarettes among the different States and abroad. By agreement a corporation was formed under the laws of New York called S. Anargyros, with a capital stock of \$650,000 (of which \$450,000 was issued), and to it was transferred all his business in exchange for stock which he immediately conveyed to The American Tobacco Company at par. S. Anargyros since incorporation has been and is now doing an extensive business in interstate and foreign commerce, buying leaf tobacco in different States and abroad and selling and distributing cigarettes made therefrom in many States and abroad. Its separate organization has been preserved, and its affairs are conducted in its own name, but its directors have been at all times elected by defendants, and it is a party to the unlawful combination and conspiracy and under agreement not to compete with them as purchasers of leaf tobacco or in the sale of manufactured products, all for the purpose and with the effect of destroying the competition which would otherwise exist between them, restraining and monopolizing a part of interstate and foreign commerce.

During 1906 this corporation manufactured, sold, and

shipped 672,000,000 cigarettes and purchased, through agents in different States and countries, 2,320,000 pounds of leaf.

S. Anarygyros, the vendor, agreed with defendants not to trade in tobacco.

In June, 1900, defendants, through The American Tobacco Company, acquired control of the business for many years theretofore carried on by The John Bollman Company, a California corporation with factory at San Francisco, Cal., a large purchaser of leaf tobacco and manufacturer of products therefrom, particularly cigarettes, and engaged in interstate and foreign trade and commerce therein in competition with defendants, selling, shipping, and distributing its products in different States and abroad. In the year 1899 it manufactured, sold, and distributed, among the States and abroad, 22,000,000 cigarettes.

By agreement between defendants and the stockholders and officers of the California corporation, a new one was incorporated in New Jersey with same name and \$200,000 capital, and to it the business and assets of the old concern were transferred in exchange for all the stock, and a majority was immediately acquired by The American Tobacco Company for \$102,000 cash. The American Tobacco Company elects the directors of the New Jersey corporation, which does an extensive business in interstate and foreign commerce, buying leaf tobacco in different States and selling and distributing products of the same in many States and abroad. Its separate organization has been preserved and its affairs are conducted in its own name but in unlawful combination and conspiracy with defendants, and under an agreement not to compete with them as purchasers of leaf tobacco or in the sale of manufactured products of tobacco, all for the purpose and with the effect of destroying the competition which should exist between them, restraining and monopolizing a part of interstate and foreign commerce.

In 1900 this company manufactured, sold, and distributed 79,000,000 cigarettes. The principal stockholders of The John Bollman Company agreed with defendants not to engage in the business of manufacturing, selling, or dealing in cigarettes.

In November, 1901, in pursuance of their general pur-

pose, defendants acquired control of the business of the United Cigar Stores Company, a New Jersey corporation organized in May, 1901, then and now engaged in selling and distributing tobacco products of all kinds throughout the United States, especially at retail. The American Tobacco Company holds \$600,000 of the \$900,000 common stock, all the preferred stock \$750,000, and \$2,850,000 of the company's bonds.

The United Cigar Stores Company has acquired in various ways the business of many retailers and procured and forced their retirement. It now operates cigar stores in New Jersey, New York, Pennsylvania, Ohio, Maryland, Washington, D. C., Connecticut, California, Washington, Delaware, Oregon, Texas, Massachusetts, Rhode Island, Illinois, Minnesota, Michigan, Indiana, Missouri, Wisconsin, Kentucky, and other States, and is diligently seeking to monopolize the retail business in tobacco products. It buys tobacco products and supplies of all kinds in the different States, ships them to its depots in New York City, Chicago, and San Francisco, and subsequently distributes them among its stores in different States.

Under an agreement with and direction of The American Tobacco Company the United Cigar Stores Company promotes and furthers the sale of tobacco products manufactured by defendants and hinders and obstructs the sale of products of independents, either refusing to handle them or to treat them fairly.

This company for a long time concealed and denied association with defendants and has been and is used by them as an instrument to acquire control of the retail tobacco business and to cripple other distributors of tobacco with the view of driving them out, destroying competition, and preventing others from entering. It has bought out very many dealers in and distributors of tobacco products and has taken agreements from the vendors not to engage in the business of selling the same. It has likewise at tremendous cost set up retail stores at prominent places in various cities, and by means of the powerful support of defendants is seeking to acquire control of the retail business in tobacco products and thus render all competition with them more nearly impossible.

The United Cigar Stores Company, through stock owner-

ship, controls the following companies engaged in selling and distributing tobacco products:

United Cigar Stores Company, of Chicago, Ill., capital outstanding, \$389,800.

United Cigar Stores Company, of Providence, R. I., capital outstanding, \$98,000.

The Royal Company, of New York City, capital outstanding, \$100,000.

C. A. Whelan & Co., Inc., of Syracuse, N. Y., capital outstanding, \$50,000.

United Cigar Stores Company, agency, of New York capital outstanding, \$1,000.

United Merchants Realty and Improvement Company, of Rhode Island, capital outstanding, \$500,000.

Moebs Cigar Stores Company, of Detroit, Mich., capital outstanding, \$10,000.

Wm. Baeder & Company, New York, capital outstanding, \$25,000.

In February, 1902, and thereafter, defendants in pursuance of their general purpose, through the Continental Tobacco Company acquired from the holders for \$2,205,090 the entire capital stock (\$400,000) of the F. F. Adams Tobacco Co., a Wisconsin corporation long successfully engaged at Milwaukee, Wis., in interstate and foreign commerce in leaf and manufactured tobacco in competition with defendants, buying leaf in different States and selling and distributing products manufactured therefrom among the different States. In the year 1901 it manufactured, sold, and distributed 3,500,000 pounds of tobacco. The American Tobacco Company elects the directors. The separate organization of the F. F. Adams Tobacco Company has been preserved and its affairs are conducted in its own name but in an unlawful combination and conspiracy with defendants and under an agreement not to compete with them as purchasers of leaf tobacco or in the sale of manufactured products, all for the purpose and with the effect of destroying the competition which should exist between them and restraining and monopolizing a part of interstate commerce.

The officers, directors, and stockholders of the F. F. Adams Tobacco Company agreed with the defendants not to engage in the business of manufacturing, selling, or distributing tobacco. In the year 1906 it sold and distributed



4,200,000 pounds of tobacco and purchased in different States 4,500,000 pounds of leaf. This company, by agreement with defendants, for a long time concealed and denied its connection with them and has advertised and is now advertising itself as an independent concern, free of all connection with the trust or combine, etc.

In February, 1902, defendants, through the Continental Tobacco Company, for \$1,362,900, acquired control of the business of Spaulding & Merrick, an Illinois corporation, long successfully engaged at Chicago, Ill., in interstate and foreign commerce in leaf and manufactured tobacco, buying leaf tobacco in different States and selling and distributing products manufactured therefrom throughout the United States and abroad. Its output in 1901 was about 8,000,000 pounds.

In order to eliminate this competition, defendants agreed with the principal stockholders that a New Jersey corporation should be formed under the same name with capital of \$100,000, and take over the business and assets of the Illinois company. This agreement was immediately carried into effect, transfers being made and stock issued, all of which The American Tobacco Company now holds.

At all times Spaulding & Merrick has carried on the interstate and foreign commerce in tobacco products formerly conducted by the Illinois company and its separate organization has been preserved, but the directors have been chosen by defendant and all its affairs have been conducted under an agreement not to compete either in purchasing leaf tobacco or selling and distributing its products and in combination with them and without competition for the purpose and with the effect of unreasonably restraining interstate and foreign trade and commerce and creating a monopoly therein.

The principal stockholders of the Illinois company agreed not to engage in the business of manufacturing, selling, or distributing tobacco.

This company manufactured, sold, and shipped 9,000,000 pounds of tobacco in 1906, and in the same year purchased in different States 9,000,000 pounds of leaf.

Defendants, in order to restrain trade and commerce in tobacco products among the several States and with



foreign nations and to suppress competition therein and monopolize said trade and commerce, and as a means to that end, about 1902, set about to monopolize the importation of licorice root and the manufacture, sale, and distribution throughout the United States of licorice paste and other licorice products, valuable articles of merchandise and indispensable ingredients in plug and smoking tobaccos, snuff, and cigars.

All licorice root is imported and from it paste and other products are manufactured. The principal importers and domestic manufacturers, sellers, and distributors of paste and other licorice products among the States at the beginning of 1902 were MacAndrews & Forbes, of Newark, N. J., The Mellor & Rittenhouse Company, of Camden, N. J., J. S. Young Company, of Baltimore, Md., Stamford Manufacturing Company, of Stamford, Conn., and John D. Lewis, of Providence, R. I. Smaller manufacturers, sellers, and distributors were Young & Smylie, F. B. & V. P. Scudder, and Weaver & Sterry, Limited, New York City.

All the companies and firms above mentioned were at that time in active competition with each other engaged in interstate and foreign trade and commerce in licorice root and licorice products, importing root from foreign countries, especially Russia, Turkey, and Persia, and manufacturing the same into licorice products at their several factories and then selling and shipping the same to tobacco manufacturers throughout the United States and abroad.

The Mellor & Rittenhouse Company was controlled by the Continental Tobacco Company through stock ownership.

In May, 1902, defendants, in pursuance of their general purposes, through the Continental Tobacco Company, secured control of MacAndrews & Forbes. Thereafter the Continental Tobacco Company, The Mellor & Rittenhouse Company, and MacAndrews & Forbes agreed that a new corporation, called the MacAndrews & Forbes Company, should be organized under the laws of New Jersey and acquire the businesses of MacAndrews & Forbes and The Mellor & Rittenhouse Company, of importing licorice root and manufacturing, selling, and distributing licorice products. This agreement was carried out and the corporation organized with capital of \$7,000,000—\$4,000,000 preferred and \$3,000,000 common, the latter alone having voting power. The Continental

Tobacco Company secured more than two-thirds of the common stock by agreeing to purchase from the new corporation all paste used by it during a year at 7½ cents per pound. The American Tobacco Company now holds \$2,112,900 of the common stock and \$750,000 preferred. The Continental Tobacco Company or The American Tobacco Company have always elected the directors of the MacAndrews & Forbes Company, and have directed its policy, and all defendants have acted in agreement with it.

The MacAndrews & Forbes Company immediately entered into unlawful combination and conspiracy with defendants to restrain interstate and foreign trade and commerce in licorice root and paste and to eliminate and suppress competition therein and to obtain a monopoly thereof.

In June, 1902, MacAndrews & Forbes Company purchased of the Stamford Manufacturing Company all its business of importing licorice root and manufacturing, selling, and distributing paste throughout the United States. The directors, officers, and stockholders of the Stamford Manufacturing Company agreed with MacAndrews & Forbes Company not to engage in the business of manufacturing, selling, or distributing licorice paste in the United States.

In the same year defendants and the MacAndrews & Forbes Company incorporated the National Licorice Company (ever since in agreement with them), which acquired the business of Young & Smylie and F. B. & V. P. Scudder, manufacturers of licorice paste, and the vendors agreed to go out of the business. The National Licorice Company then agreed with the MacAndrews & Forbes Company and defendants not to manufacture licorice paste to be used in tobacco products.

The only formidable competitors remaining in the summer of 1902 were J. S. Young Company, of Baltimore, and John D. Lewis, of Providence; and these the MacAndrews & Forbes Company in agreement with the Continental Tobacco Company and defendants undertook to drive out of business, and to that end sold and distributed licorice paste far below cost and made special inducements to customers of opponents.

Thereafter MacAndrews & Forbes Company, J. S. Young Company, and John D. Lewis entered into a combination in restraint of interstate trade and commerce in licorice root

and paste carried on in the manner aforesaid whereby the same was restrained in the ways and by the means now described: Competition between the three as to the prices at which licorice paste was sold and delivered by each was prevented and destroyed by their agreeing that there should be none and by their agreeing upon establishing and maintaining, from time to time, arbitrary and noncompetitive prices for the licorice paste so sold in interstate business, trade, and commerce and by their selling and delivering licorice paste at such arbitrary and noncompetitive prices. They also induced their only competitor, Weaver & Sterry, Limited, of New York City, likewise to establish and maintain arbitrary and noncompetitive prices. The prices so agreed upon, established, fixed, and maintained by them were greatly in excess of those which would at such times have prevailed if they had not engaged in this unlawful combination and conspiracy.

A division and apportionment of the interstate commerce in licorice paste was made at the same time between MacAndrews & Forbes, J. S. Young Company, and John D. Lewis, it being provided that the output of John D. Lewis should be limited to 1,000,000 pounds and of the Young Company to 5,000,000 pounds. By agreement between them manufacturers were allotted to each as customers, those known as independents being assigned to John D. Lewis and J. S. Young Company, while MacAndrews & Forbes Company agreed to supply defendants. The three concerns also fixed by agreement the terms and conditions upon which they would sell licorice paste in respect to discounts, payments, and delivery, and in respect to the form and character of contracts; and that they would not compete in any respect.

In December, 1903, in accordance with agreement between J. S. Young Company and MacAndrews & Forbes Company, a new corporation was organized, with the name J. S. Young Company and \$800,000 capital, to which the business of the old Young Company was transferred. A large majority of the common stock, which alone had voting power, was issued to the MacAndrews & Forbes Company for no other consideration than its guaranteeing the annual sale of 5,000,000 pounds of paste by the Young Company. This new company for a long time in flaming advertisements announced itself as wholly independent of all trusts and combines, and ex-

plained with much detail why manufacturers not connected with defendants should patronize it, and in other unfair ways sought to mislead and defraud the public.

In 1905 the United States began an investigation of the combination in restraint of trade and monopolies existing in foreign trade and commerce in licorice root and products manufactured therefrom, and in 1906 an indictment was found against the MacAndrews & Forbes Company and the J. S. Young Company, charging them with violating the act of Congress passed July 2, 1890, and they were tried and convicted.

After the above-mentioned investigation began the MacAndrews & Forbes Company acquired all stock of the J. S. Young Company and took an absolute conveyance of the latter's business and plant, and is now operating the same as a branch.

In the ways above described, the defendants through the MacAndrews & Forbes Company have secured complete control and have monopolized the importation of licorice root and the manufacture, sale, and distribution of its products. They now have no formidable competitor in such trade and commerce, and of the 35,000,000 pounds of licorice products annually consumed within the United States they manufacture, sell and distribute exceeding 95 per cent, and their importation of licorice root constitutes even a larger percentage of the whole. This company has agreements to furnish all defendants with licorice products at a remunerative profit. This enables it when expedient to sell any excess above their needs below cost and to destroy and prevent effective competition.

In October, 1902, defendants, in pursuance of their general purpose through The American Tobacco Company, acquired control of the business of the Brunswick Briar Pipe Company, a New York corporation long successfully engaged in the manufacture of pipes, cigar and cigarette holders, and in selling, shipping, and distributing them in different States and abroad in interstate and foreign commerce. According to agreement, The Manhattan Briar Pipe Company, a New Jersey corporation, was organized, to which all the business of the New York company was conveyed, and The American Tobacco Company immediately acquired all issued capital stock of the New Jersey corporation (\$350,000), at

a total cost of \$468,534, and now nominates the directors and controls the corporate affairs.

The Manhattan Briar Pipe Company is engaged at Marion, N. J., in the manufacture, sale, shipment, and distribution of pipes and supplies for consumers of tobacco as a part of interstate and foreign commerce on an extensive scale. It has acquired the capital stock (\$1,000) of the Baltimore Briar Pipe Company engaged in a similar business, and controls the latter.

In August, 1903, in pursuance of their general purpose, defendants for \$926,250, through the Continental Tobacco Company, acquired two-thirds and thereafter the remaining capital stock of the R. A. Patterson Tobacco Company, a Virginia corporation, capitalized at \$150,000, long successfully engaged in interstate and foreign commerce in leaf and manufactured tobacco at Richmond, Va., buying leaf in different States and selling and distributing its products throughout the United States and abroad, in competition with defendants. From the officers and directors of the company defendants demanded and received agreements not to engage in trade and commerce in tobacco or its products. The separate organization of the R. A. Patterson Tobacco Company has been preserved, but its directors, since 1903, have been selected by defendants and its business conducted under an agreement with them not to compete in purchasing leaf tobacco or in selling and distributing its products, and in combination with them and without competition, for the purpose and with the effect of restraining interstate and foreign trade and commerce and creating a monopoly therein.

This company has habitually concealed and denied its association with defendants, and has persistently advertised and is now advertising itself as an independent corporation unconnected with them. It has been, and is being, used as an instrument to cripple others in the tobacco business with the purpose of driving them out and keeping out others and destroying competition. For such purposes and under agreement with defendants, it has been and is selling certain brands manufactured by it at less than the cost of production in competition with independent manufacturers and distributors; and to aid it in crushing such competitors large sums of money are loaned by The American Tobacco Company.

In 1906, the R. A. Patterson Tobacco Company manufactured, sold and distributed 5,895,000 pounds of tobacco and in the same year purchased in Virginia, North Carolina, and South Carolina for transportation to its factory, over 6,980,000 pounds of leaf.

In August, 1903, defendants, in pursuance of their general purpose, acquired, through The American Tobacco Company, control of the business of R. P. Richardson, jr., & Company, long successfully engaged in interstate and foreign commerce in leaf and manufactured tobacco at Reidsville, N. C., buying leaf in different States and selling and distributing the products manufactured therefrom throughout the United States and abroad. According to agreement the capital of R. P. Richardson, jr., & Company, a New Jersey corporation, was increased to \$300,000 (\$200,000 preferred and \$100,000 common), and The American Tobacco Company acquired a controlling interest therein and continues to hold the same.

The owners of the original business agreed not to engage for fifteen years in the business of manufacturing, selling, or distributing tobacco or its products.

At all times since acquisition of control by defendants in 1903, R. P. Richardson, jr., & Company has carried on, and now carries on under its own name, interstate and foreign trade and commerce in tobacco and its products; its separate organization has been preserved, but the directors have been chosen by defendants and all its affairs are conducted under an agreement with them not to compete in purchasing leaf tobacco or selling and distributing its products and in combination and without competition for the purpose and with the effect of restraining interstate and foreign trade and commerce and creating a monopoly.

This company for a long time has concealed and denied association with defendants and is an instrument to cripple opponents with a view of driving them out of business and of destroying competition. For that purpose it has been advertised and is advertising itself as an independent company unconnected with a trust or combination.

The output of R. P. Richardson, jr., & Company for 1906 was about 1,000,000 pounds.

In August, 1903, defendants, in pursuance of their general purpose, through The American Tobacco Company, acquired



control of the business theretofore carried on for a long time at Chicago, Ill., by Thomas Cusack, of sign painting and advertisement painting. By agreement a corporation called Thomas Cusack Company was organized under the laws of New Jersey with a capital stock of \$250,000 (\$100,000 preferred, \$150,000 common), which was issued to Thomas Cusack in exchange for his business. He then assigned \$100,000 of the common stock (which had all voting power) to The American Tobacco Company without further consideration than the cooperation of the latter in organizing the new company. The latter is now carrying on the original business, but is acting in combination and agreement with defendants and is an instrument through which they restrain interstate and foreign commerce in tobacco products, destroy competition, and seek to secure a monopoly thereof.

Thomas Cusack agreed for fifteen years not to engage in the business of sign painting, bulletin painting, bill posting, or other form of outdoor advertising.

In August, 1903, defendants, in pursuance of their general purpose, through the Continental Tobacco Company, acquired for \$51,505 two-thirds of the capital stock (\$100,000) of the Pinkerton Tobacco Company, an Ohio corporation long successfully engaged at Zanesville, Ohio, in interstate and foreign commerce in leaf and manufactured tobacco, buying leaf in different States and selling, shipping, and distributing its products, especially scrap, manufactured therefrom throughout the United States and abroad in competition with defendants. From the parties interested in the acquired company defendants demanded and received agreements not to engage in trade and commerce in tobacco or its products. The Pinkerton Tobacco Company has preserved its separate organization, but the directors have been elected by the Continental Tobacco Company, or The American Tobacco Company, which now holds the acquired stock, and all its business is conducted under an agreement with defendants not to compete in purchasing leaf tobacco or in selling and distributing products and in combination and without competition for the purpose and with the effect of restraining interstate and foreign trade and commerce and creating a monopoly.

This company has concealed and denied, and is now concealing and denying, its association with defendants, and has been and is being used as an instrument to cripple opponents



in order to drive them out of business, to keep others out, and destroy competition. For that purpose, and under agreement with defendants, it has advertised itself as unconnected with them and has been and is selling certain brands at less than cost of production. To aid it in carrying out the purpose of the combination large sums of money have been loaned by The American Tobacco Company.

In 1906 the Pinkerton Tobacco Company manufactured, sold, and distributed 2,420,000 pounds of scrap.

In 1903, in pursuance of their general purpose, defendants, through The American Tobacco Company, organized the Amsterdam Supply Company, a New Jersey corporation, with capital stock of \$225,000. This company preserves a separate organization, but its directors have at all times been elected by defendants, and its policy is controlled and directed by them. It is engaged in interstate and foreign commerce purchasing in different States and abroad supplies of all kinds except leaf tobacco for defendants, many of whom are stockholders, and who, in order to avoid buying in the open market in competition, created and appointed the corporation their general purchasing agent. By agreement among defendants the agent has the power to determine and does determine the prices which they shall pay for supplies.

In October, 1905, defendants, in pursuance of their general purpose, through The American Tobacco Company acquired control of the business of Carroll Brothers, a partnership long successfully engaged at Lynchburg, Va., in interstate and foreign commerce in tobacco, buying leaf tobacco in different States and shipping the same to its factory, and selling, shipping, and distributing products manufactured therefrom throughout the United States in active competition with defendants. In order to eliminate this competition, defendants entered into an agreement with the partners that the John W. Carroll Tobacco Company should be incorporated in New Jersey with a capital of \$425,000, which should be issued in exchange for their business to the partners, who should then assign \$200,000 of the same to The American Tobacco Company without consideration. This agreement was immediately carried into effect, and the partners agreed for ten years not to engage in the manufacture of tobacco or in the distribution of its products.

The John W. Carroll Tobacco Company carried on the business formerly conducted by the partnership under its corporate name and its organization was preserved. Its directors have been chosen by defendants and its affairs conducted under agreement not to compete either in purchasing leaf tobacco or in selling and distributing its products in combination with defendants and without competition for the purpose and with the effect of restraining interstate and foreign trade and commerce and creating a monopoly therein.

The plant was closed in November, 1905, and the brands are now manufactured and sold by defendants under the name of John W. Carroll Tobacco Company, and prices are determined by agreement among them.

In 1905, defendants, in pursuance of their general purpose, for \$138,000 cash, acquired the entire stock (\$116,800) of the Nall & Williams Tobacco Company, a Kentucky corporation, long successfully engaged at Louisville, Ky., in interstate and foreign commerce in leaf and manufactured tobacco, buying tobacco leaf in different States and selling, shipping, and distributing the products manufactured therefrom throughout the United States and abroad in competition with defendants. The owners and persons interested agreed with defendants not to engage in trade and commerce in tobacco or its products. The separate organization of the acquired company has been preserved, but the directors have at all times since been selected by defendants, and its business has been conducted under an agreement with them not to compete in the purchase of leaf tobacco or in the sale or distribution of its products and in combination with them and without competition for the purpose and with the effect of restraining interstate and foreign trade and commerce, and creating a monopoly therein. This company has concealed and denied and is now concealing and denying its association with defendants, and has been used by latter as an instrument to cripple opponents, drive them out of business and destroy competition. Accordingly it has been accustomed to sell certain brands at less than cost of production and to advertise itself as an independent company. In 1906 it manufactured, sold, shipped, and distributed 4,100,000 pounds of plug.

In April, 1906, defendants, in pursuance of their general

purpose, through The American Tobacco Company, for \$247,780 acquired the entire stock (\$120,000) of the Nashville Tobacco Works, a Tennessee corporation long successfully engaged at Nashville, Tenn., in interstate and foreign commerce in leaf and manufactured tobacco, purchasing leaf tobacco in different States and shipping the same to its factory at Nashville, Tenn., and selling and distributing products manufactured therefrom throughout the United States and abroad in competition with defendants. In 1895 it purchased in the manner mentioned 875,000 pounds of leaf tobacco and sold and shipped 775,000 pounds of manufactured products.

The separate organization of the acquired company has been preserved, but the directors have since April, 1906, been selected by defendants and the business conducted under an agreement with them not to compete either in purchasing leaf or in selling or distributing its products, in combination with them and without competition, for the purpose and with the effect of restraining interstate and foreign trade and commerce and creating a monopoly therein.

The output of the Nashville Tobacco Works for 1906 was 725,000 pounds. The stockholders, directors, and officers of the Nashville Tobacco Works agreed with defendants for fifteen years not to engage in manufacturing or selling tobacco in any form.

The Nashville Tobacco Works, carrying out the policy of the defendants to destroy all competition, restrain trade, and create a monopoly, purchased the business and assets of the Britain Tobacco Works, a Tennessee corporation long successfully engaged at Columbia, Tenn., in interstate and foreign commerce as a purchaser of tobacco and in manufacturing, selling, and distributing its products in competition with defendants. All of the officers, directors, and stockholders of the Britain Tobacco Works agreed with defendants not to engage in manufacturing or selling tobacco. The plant was permanently closed shortly after its acquisition. In 1906 the output of the works was 175,000 pounds.

In October, 1906, in pursuance of their general purpose, defendants, through The American Tobacco Company, acquired control of the Day & Night Tobacco Company, Duwel Brothers Tobacco Company, August Schroer Tobacco Company, and Queen City Tobacco Company, all engaged at

Cincinnati, Ohio, in interstate and foreign commerce in leaf and manufactured tobacco, buying leaf in different States and shipping, selling, and distributing the products, especially scrap, throughout the United States and abroad. By agreement between defendants and the parties interested a new Day & Night Tobacco Company, with a capital stock of \$400,000, was incorporated under the laws of Ohio and to it was transferred the business of the four companies above mentioned. Thereafter The American Tobacco Company, for \$400,000 cash, acquired and now holds all the capital stock of the new company.

Since its organization the new Day & Night Tobacco Company has carried on the business of all the old companies. Its separate organization has been preserved, but its directors are selected by defendants, and all its affairs conducted under an agreement with them not to compete, either in purchasing leaf tobacco or in selling and distributing its products in combination, with them, and without competition, for the purpose and with the effect of restraining interstate and foreign trade and commerce and creating a monopoly therein.

This company, by agreement with defendants, for a long time concealed and denied association with them and advertised itself as independent, whereas it has been used by defendants as an instrument to cripple opponents with the view of driving them out of business and of destroying competition. In 1906 its output was 7,000,000 pounds of scrap.

For some years prior to October, 1906, Walter J. Friedlander had carried on at Cincinnati, Ohio, the business of manufacturing scrap tobacco and selling the same throughout the different States under the name of the Day & Night Tobacco Company, had built up a large and prosperous trade, and was independent and without connection with the defendants. In 1904 the latter set about to drive him out of business and for that purpose organized the Queen City Tobacco Company, which entered the scrap business at Cincinnati in unfair competition with him. By combination and agreement between the Queen City Tobacco Company and The American Tobacco Company defendants designedly forced up the price of cigar cuttings and leaf used in the manufacture of scrap, so that Friedlander was obliged to pay therefor three times the former prices and much more than real values, and the Queen City Tobacco Com-

pany sold its product below cost. During the entire period from its organization to the time of its merger into the Day & Night Tobacco Company as above described, the Queen City Tobacco Company falsely advertised itself as an independent concern, in pursuance of the policy of defendants, by disguising ownership to use controlled companies to break down opposition and secure for themselves the benefit of the sentiment against combinations. This illustrates the general allegations on that subject hereinbefore set out.

Among other assets not hereinabove mentioned, The American Tobacco Company holds and owns the securities described below—

American Machine and Foundry Company.

Capital stock, \$100,000; holdings, \$51,000; American Cigar Company holds the balance, \$49,000. This company is engaged in the business of running a machine shop and in the manufacture of machinery for the benefit of defendants.

International Cigar Machinery Company.

This corporation was organized in 1901 in accordance with a contract between The American Tobacco Company and stockholders of corporations theretofore existing, owners of patents for the manufacture of cigar machines. The agreement provided that these patents should be transferred to the corporation to be organized. Capital stock, \$10,000,000, of which The American Tobacco Company owns \$3,366,700, for which it paid cash \$1,077,966 and in addition executed contracts relative to some of its own inventions. The American Cigar Company owns \$2,920,200.

New Jersey Machine Company.

This corporation was organized in 1906 by The American Tobacco Company and the American Cigar Company with \$100,000 capital, of which The American Tobacco Company owns \$51,000 and the American Cigar Company \$49,000. It runs a machine shop and manufactures machinery for the benefit of defendants, and is an adjunct to the American Machine and Foundry Company.

Garson Vending Machine Company.

Capital stock, \$50,000, of which The American Tobacco Company holds \$25,000. The corporation was organized in 1906 in accordance with a contract between The American Tobacco Company and the previous owners of the business, and is engaged in the exploitation of patents for vending cigars.

Crescent Cigar and Tobacco Company.

This is a tobacco jobbing corporation, organized by The American Tobacco Company to do business in New Orleans. It has a capital stock of \$20,000, all of which is owned by The American Tobacco Company.

Acker, Merrall & Condit Company.

The American Tobacco Company owns \$900,000 out of a total issue of \$5,000,000 common stock. The company was organized to do a general grocery business and is a large distributor of cigars.

Standard Tobacco Stemmer Company.

This is a corporation formed for exploiting patents for stemming leaf tobacco. In 1899 and thereafter The American Tobacco Company acquired \$1,684,500 of its capital stock at a cost of \$64,995.76.

## XII.

## AMERICAN CIGAR COMPANY.

Prior to 1901 the Continental Tobacco Company and defendants, especially The American Tobacco Company, were engaged in interstate and foreign trade and commerce, buying and shipping leaf tobacco, in the manufacture of cigars, stogies, cheroots, and similar rolls, and in selling, shipping and distributing the same throughout the United States in competition with many concerns engaged in like business.

Early in the year 1901 defendants and others determined to undertake upon a large scale manufacturing and dealing in cigars, stogies, and cheroots. In order to bring about the retirement of competitors, to prevent others from engaging therein, to suppress competition, hinder and restrain inter-

state commerce and acquire a monopoly of the cigar, stogie, and cheroot business as a part of such interstate and foreign trade and commerce, they entered into contracts, combinations, and conspiracies, continued to this time. And as successive elements of a single connected scheme to carry the purposes named into effect, they have done and procured to be done among others the things hereinafter described.

For a long time the firm of Powell, Smith & Company of New York had manufactured large numbers of cigars, 50,000,000 or more per year, purchased the raw material therefor in various other States, and successfully sold and distributed the completed product throughout the different States. Defendants and this firm entered into an agreement that the American Cigar Company should be incorporated under the laws of New Jersey to engage in the same general business theretofore pursued by the partners to which the firm should convey its entire business, assets, good will, etc., the stock to be subscribed  $46\frac{1}{2}$  per cent by The American Tobacco Company,  $46\frac{1}{2}$  per cent by the Continental Tobacco Company, and 7 per cent by such partners.

The American Cigar Company was accordingly incorporated in January, 1901, by parties representing the contracting interests, with an authorized capital of \$10,000,000, afterwards increased to \$20,000,000. Defendant James B. Duke became its first president and was succeeded by J. B. Cobb, who still fills the office. Its charter provides:

The objects for which this corporation is formed are to cure leaf tobacco, and to buy, manufacture, and sell cigars, cheroots, little cigars, cigarettes, and all other forms of tobacco, and to buy, manufacture, sell, lease, and let to hire machines and machinery, tools, implements, and appliances useful or available in the manufacture of cigars, cheroots, little cigars, cigarettes, or any other form of tobacco; to erect or otherwise acquire factories and buildings, establish, maintain, and operate factories, warehouses, agencies, and depots for the storing, preparation, and manufacture of cigars, tobacco, supplies, machinery, implements, and appliances, and for their sale and distribution, and to transport or cause the same to be transported as articles of commerce, and to do any and all things



incidental to the business of trading and manufacturing aforesaid. This corporation shall also have power to conduct its business, or any portion of it, in all other States and Territories, colonies and dependencies of the United States of America, and in Great Britain and Canada, and all other foreign countries, and to have one or more offices out of the State of New Jersey, and to hold, purchase, lease, mortgage, and convey real and personal property out of the State of New Jersey as well as in said State.

The capital stock of the American Cigar Company was immediately subscribed according to the preliminary agreement, and a majority of the same has at all times been held by defendants. The American Tobacco Company now holds of the common stock \$7,725,100, of the preferred \$8,970,000, and also \$10,000,000 in notes.

In January, 1901, for the recited consideration of \$2,130,664, all the assets, good will, and right to use the name of Powell, Smith & Co. were conveyed to the American Cigar Company, and the partners severally agreed that they would not thereafter, directly or indirectly, engage in the manufacture, distribution, or sale of cigars or tobacco.

Having acquired the assets mentioned, the American Cigar Company entered upon the business for which it was incorporated, and has continued therein.

About the time specified defendants, through the American Cigar Company, acquired all the business of manufacturing cigars, stogies, cheroots, and other products of tobacco, selling and dealing in leaf tobacco and the products thereof, together with the plants, most of which were at once closed, and all assets used in connection therewith, of the concerns hereinafter enumerated, all at such times, and long before, engaged in interstate and foreign commerce in competition with defendants; and from the owners, directors, managers, and officers of all the same demanded and received agreements not to engage in interstate or foreign commerce in tobacco or its products. They also obtained grants of the exclusive rights to the use of the names.

In January, 1901, S. Levy & Company, a New York partnership with a plant at Passaic, N. J.; consideration, \$11,789.

In March, 1901, Barlow, Rogers & Company, Binghamton, N. Y.; consideration, \$205,681 cash and \$100,000 in stock.

In March, 1901, Hummel Vogt Company, a Kentucky corporation, Louisville; consideration, \$42,428.

In April, 1901, defendant, The American Tobacco Company, in consideration of \$3,909,952 stock, conveyed all its business of manufacturing cheroots, cigars, and stogies weighing more than 3 pounds to the thousand, dealing in and distributing the same throughout the world, and defendant agreed not thereafter to engage in such business. The conveyor had factories for manufacturing the articles named at Cincinnati, Ohio; Richmond, Va.; Jersey City; Windsor, Conn.; Fulton, N. Y.; Madison, Wis., and Lancaster, Pa.

In May, 1901, the Binghamton Cigar Company of Binghamton, N. Y.; consideration, \$1,000.

In May, 1901, Harburger, Homan & Company, a partnership with factories in New York, Philadelphia, Camden, Trenton, and Baltimore; consideration, \$800,000 4 per cent ten-year notes and \$511,000 cash.

In October, 1901, Brown Brothers Company, a Michigan corporation, Detroit, Mich.; consideration, \$469,272, partly in stock and partly in cash.

In April, 1902, Roth, Bruner & Feist, a partnership, Cincinnati, Ohio; consideration, \$225,471, partly in cash, partly in stock.

In May, 1903, Philippi Cigar Manufacturing Company, Philippi, W. Va.; consideration, \$4,203 cash.

In August, 1903, United Cigar Stores Company conveyed its business of manufacturing cigars at 421 East One hundred and first street, New York; consideration, \$54,141.

In March, 1905, the American Cigar Machine Company, of Portland, Me., conveyed certain letters patent, and among other things the principal stockholder, Davis, agreed not thereafter to become interested in inventions or machines for making cigars except for the account of the purchaser.

In March, 1906, M. W. Mendel & Brother, New York City; consideration, \$643,482.

The Havana-American Company, prior to that time largely engaged in the manufacture of cigars at Binghamton, N. Y., Chicago, Tampa, Ybor City, and Key West, Fla., and New Orleans, and in interstate and foreign commerce, as

buyers of tobacco and sellers and distributors of its products, in June, 1901, sold to the American Cigar Company all its business, assets, good will, and right to use its name for \$4,000,000 in gold notes. Since that time the plants have been operated and the business carried on in the name of the conveyor company, the separate organization of which has been preserved. It is used as an instrument to effectuate the general purposes of defendants.

In May, 1902, the Havana Tobacco Company was organized under the laws of New Jersey. It has a capital stock of \$34,500,000, of which the American Cigar Company holds a controlling interest, and a bonded indebtedness of \$7,500,000, \$3,500,000 of which is held by the American Cigar Company. This company was organized to control, through ownership of their stock, the following-named five corporations, which in Cuba are engaged in the business of manufacturing cigars, selling, shipping, and disposing of the same throughout the world, and together produce a majority of all the cigars shipped from that island, most of which are imported into the United States:

Havana Commercial Company; capital, \$15,500,000.

H. de Cabanas y Carbajal; capital, \$1,500,000.

J. S. Murias & Company; capital, \$750,000.

H. Clay & Bock Company; capital, \$1,600,000 (bonds, \$826,000).

Havana Cigar and Tobacco Company; capital, \$2,527,000 (bonds, \$1,262,600).

Among other assets the American Cigar Company owns the stock specified in the following corporations:

American Machine & Foundry Company, a New Jersey corporation with a capital of \$100,000; amount held, \$49,000.

American Stogie Company, described hereinafter (a New Jersey corporation); capital, \$11,855,000; amount held, \$7,307,275.

Amsterdam Supply Company, capital, \$235,000; amount held, \$30,300.

M. Blaskower Company, a Nevada corporation, jobbers at San Francisco, capital, \$500,000, amount held, \$375,000.

R. D. Burnett Cigar Company, an Alabama corporation, jobbers, Birmingham, capital, \$15,000, amount held, \$7,700.

Cliff Weil Cigar Company, a Virginia corporation, jobbers at Richmond, Va., capital, \$50,000, amount held \$25,500.

Corp. J. & B. Moos, a New Jersey corporation, jobbers, Chicago, capital \$150,000, amount held \$100,000.

The J. & B. Moos Co., a New Jersey corporation, jobbers at Cincinnati, Ohio, capital \$200,000; amount held \$200,000.

Dusel, Goodloe & Company, a New Jersey corporation, jobbers at Philadelphia, capital \$72,000, amount held \$51,000.

Federal Cigar Company, a Pennsylvania corporation, capital \$200,000; amount held \$200,000.

J. J. Goodrum Tobacco Company, a Georgia corporation, jobbers at Atlanta, capital \$60,000, amount held \$47,700. This company does a jobbing business and operates a number of retail stores in the city of Atlanta.

Federal Cigar Real Estate Company, of Pennsylvania, capital \$30,000; amount held \$30,000.

Louisiana Tobacco Company, Ltd., a Louisiana corporation, jobbers at New Orleans, capital \$50,000, amount held \$37,550.

The Smokers' Paradise Company, a New Jersey corporation, jobbers and retailers, Atlantic City, capital \$75,000, amount held \$59,900.

Cuban Land & Leaf Company, a New Jersey corporation, capital \$100,000, all held by American Cigar Company. The business of this corporation is to own plantations and raise tobacco in Cuba.

International Cigar Machinery Company, a New Jersey corporation, capital \$10,000,000, amount held \$2,920,200.

New Jersey Machine Company, a New Jersey corporation, capital \$100,000, amount held \$49,000.

Porto Rican-American Tobacco Company, a New Jersey corporation, capital \$1,999,000, amount held \$657,600.

Porto Rican Leaf Tobacco Company, a New Jersey corporation, capital \$500,000, amount held \$250,000. This company was organized for the purpose of raising tobacco in Porto Rico.

Jordon Gibson & Baum, a Tennessee corporation, jobbers at Memphis, capital \$50,000, amount held \$42,500.

The Kentucky Tobacco Product Company, capital \$1,000,000, amount held \$35,500.

Petitioner is not able to state the facts in detail, but alleges that by financing the same through loans and extensive credits the American Cigar Company in effect controls a great number of jobbing and retail establishments throughout the

different States of the Union. Such control has been acquired with the especial purpose to exclude all competitors from a fair opportunity to market their goods. Among the concerns so controlled and being used as part of the general scheme is the National Cigars Stands Company, a New Jersey corporation, which now has places of business in the drug stores of many cities, and is diligently seeking to establish others throughout the different States.

The American Cigar Company has an organized department for purchasing leaf tobacco, with agents in all important localities where cigar types of tobacco are grown or marketed, who purchase the same and ship it to factories in other States. It also has many factories situated in different States and abroad, and sells, ships, and distributes their output in all the States of the Union. Its business and affairs are all conducted in pursuance of an agreement that it shall not compete with defendants, and it is one of the instrumentalities used by them to destroy competition, hinder and restrain interstate and foreign commerce, acquire a monopoly of trade and commerce, interstate and foreign, in tobacco and its products, and make effective the above-described unlawful designs.

The output of the American Cigar Company for 1906 follows—

Manufactured in its own name:

Cigars .....	559,560,144
Cheroots .....	188,642,511
<hr/>	
Total .....	748,202,655
Little cigars .....	116,607,226
Manufactured by American Stogie Company.	97,711,372
Manufactured by Havana-American Company.	87,620,310
Manufactured by five Cuban companies controlled by the Havana Tobacco Company:	
Cigars .....	131,000,000
Cigarettes .....	1,582,400,819

The report of the treasurer for 1906 shows—

Capital stock outstanding .....	\$20,000,000.00
Outstanding gold notes .....	10,000,000.00
Net earnings for the year ....	\$2,332,378.86
Total surplus .....	5,477,677.08

## XIII.

## CONSOLIDATED TOBACCO COMPANY.

In June, 1901, in pursuance of the general scheme and purposes heretofore described to secure the retirement of competitors, destroy competition, hinder and restrain interstate and foreign commerce in tobacco and its products, exclude others therefrom and acquire therein a monopoly, the directors, officers, and stockholders of The American and Continental Tobacco Companies caused to be organized under the laws of New Jersey the Consolidated Tobacco Company with a capital stock of \$30,000,000, afterwards increased to \$40,000,000. The charter recited:

The objects for which the corporation is formed, any and all of which may be undertaken, are the following:

To dry and cure leaf tobacco, and to buy, manufacture, sell and otherwise deal in tobacco and the products of tobacco in any and all forms.

To construct or otherwise acquire and hold, own, maintain, and operate warehouses, factories, offices, and other buildings, structures, and appliances for the drying, curing, storing, manufacture, sale, and distribution of tobacco and its products.

To purchase or otherwise acquire, and hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the shares of the capital stock of or any bonds, securities, or other evidences of indebtedness created by any other corporation or corporations of this or any other State or government, and to issue its own obligations in payment or in exchange therefor, or for any purpose of its incorporation, and to secure such obligations by pledge or mortgage under deed of trust or otherwise of the shares of capital stock or bonds, securities, or other evidences of indebtedness so acquired, or of any property of the corporation.

To guarantee dividends on any shares of the capital stock of any corporation in which this corporation has an interest as stockholder, and to indorse or otherwise guarantee the principal and interest, or either, of any bonds, securities, or other evidences of indebtedness created by any corporation in which this corpora-

tion has such an interest, provided that authority for any such indorsement or guarantee be first given by resolution adopted by vote of at least two-thirds of the whole board of directors of this corporation.

To carry on any business operations deemed by the corporation to be necessary or advisable in connection with any of the objects of its incorporation or in furtherance of any thereof, or tending to increase the value of its property. \* \* \*

This corporation may conduct business in all other States, Territories, possessions, and dependencies of the United States of America, and in all foreign countries, and may have one or more offices out of the State of New Jersey, and may hold, purchase, mortgage, and convey real and personal property out of said State as well as therein.

The stock was subscribed by a few individuals closely associated with the management of the old companies. James B. Duke was at all times president, and Thomas F. Ryan, John B. Cobb, and C. C. Dula vice-presidents of the new company; and the board of directors was composed of directors of the old companies.

This company acquired substantially all the common stock of The American and Continental Tobacco Companies, giving in exchange its 4 per cent bonds at \$2 for each dollar of stock in the former and dollar for dollar for that of the latter, and thereby in effect gained control of both. Its business was confined to holding and financing, in the course of which it loaned large sums to those companies whose stocks it held and their subordinates. Profits from this venture to the few stockholders were enormous. In 1904, as hereinafter explained, the company was merged into The American Tobacco Company (new). The facts concerning the results of its financial operations are stated in paragraph XVII, page 77, hereinafter.

#### XIV.

##### THE AMERICAN STOGIE COMPANY.

Prior to 1903 defendants, especially the American Cigar Company, The American Tobacco Company, and the Continental Tobacco Company, engaged in the manufacture, sale,



and distribution of what are known as "stogies" and "tobies," types of cheap cigars, and in interstate and foreign commerce in the same and the leaf tobacco necessary for their fabrication, in active competition with the United States Cigar Company, a Delaware corporation, and others likewise carrying on such business, trade and commerce.

In pursuance of the general purposes and designs heretofore described defendants, in May, 1903, caused to be incorporated under the laws of New Jersey The American Stogie Company, with an authorized capital of \$11,976,000, empowered among other things:

To buy, sell, and deal in, store or warehouse tobacco, and other kindred products; to manufacture, buy, sell, and deal in cigars, cheroots, and other tobacco products; to manufacture, sell, and deal in machinery and devices for the manufacture thereof; to manufacture matches, match boxes, etc.; to manufacture, buy, sell, deal in, and deal with timber, lumber, etc.; to purchase and acquire, sell and exchange tobacco and agricultural lands, and to plant, cultivate, grow, import, and export tobacco; to establish and maintain branch offices and structures for storage, warehousing, sale, and distribution of goods, merchandise and other personal property; to purchase or otherwise acquire and to take control of the property rights, business, assets, and liabilities of any person, firm, association or corporation, and to pay for the same in cash or with the shares of capital stock or the bonds of this corporation; to guarantee the shares of capital stock, mortgages, bonds, debentures, and other securities; to borrow and raise money without limit as to amount; to enter into, make, perform, and carry out contracts of every kind and for any lawful purpose; to conduct business in any of the States, Territories, colonies or dependencies of the United States or in foreign countries.

Defendants, the American Cigar Company, The American Tobacco Company, and the Continental Tobacco Company, conveyed to The American Stogie Company immediately after its incorporation in exchange for \$8,206,275 of its stock their stogie and tobie business, together with the

plants, property, and rights connected therewith; and agreed that they would not at any time within fifty years directly or indirectly advertise or label any article manufactured or sold by them as stogies or tobies in competition with the conveyee company or the United States Cigar Company. Having acquired such plants, business, property, and assets The American Stogie Company began to operate them and conduct the business and has at all times since engaged in manufacturing stogies and tobies and in interstate and foreign commerce, selling and distributing the same and the leaf tobacco necessary for their fabrication among the different States.

In exchange for \$3,647,725 of its stock, during 1903 The American Stogie Company acquired from the several holders all the shares of the United States Cigar Company, and thereafter took from the latter a conveyance of all its plants and assets, and since that time has controlled the same. The United States Cigar Company had acquired and owned the entire capital stock, \$1,250,000, of the W. W. Stewart Company, a corporation manufacturing and dealing in stogies, which latter controlled the property and assets of the Collins Cigar Company, a corporation with capital of \$100,000, the Union American Cigar Company, a corporation with capital of \$60,000, and also Zeugschmidt Brothers, W. W. Blake, and M. Brills & Company—all in the business of manufactring, selling, and distributing stogies and tobies as a part of interstate trade and commerce.

Defendant, The American Stogie Company, owns all the capital stock of the American Stogie Company of Pennsylvania, organized for the purpose of holding real estate in that State, and also \$1,500 stock of the Amsterdam Supply Company. By agreement defendant refrains from competing in any way with defendants and they with it; and the affairs of all are conducted as a part of the general scheme intended to bring about the results heretofore pointed out. The American Cigar Company holds and owns \$8,000,000 of its capital stock and has always selected the board of directors.

The report of the treasurer for the year 1906 shows outstanding capital stock \$11,855,000, net profits for the year, \$70,041. The output for 1906 was approximately 100,000,000 stogies and tobies.

## XV.

## BRITISH AGREEMENTS AND COMPANIES.

For a long time many separate competing concerns with plants located at different points in Great Britain bought leaf tobacco in the United States or through other such purchasers, converted the same into products fit for consumption, and sold, shipped, and distributed them in the United Kingdom, to the United States, and throughout the world. Many of these concerns were old, well established, possessed large assets and world-wide reputations.

Defendants, especially The American Tobacco Company, American Cigar Company, their agents and directors, together with the Continental and Consolidated Tobacco companies, prior to 1902, determined vigorously to push the sale in the United Kingdom of tobacco products manufactured by them in the United States, and as an instrument to facilitate that purpose in September, 1901, purchased for \$1,500,000 control of a Liverpool corporation known as Ogdens, Limited, engaged in the business of manufacturing, selling, and dealing in tobacco products. Through this company and otherwise defendants made special efforts to sell and dispose of their manufactured goods, and a fierce trade conflict arose between them and the English manufacturers and dealers. Alarmed at the invasion of their territory, many of the leading and strongest of the latter, controlling the major portion of the trade, determined to combine in order to resist. Accordingly in October, 1901, they incorporated defendant, The Imperial Tobacco Company of Great Britain and Ireland, with a capital stock of 15,000,000 pounds sterling (afterwards increased to 18,000,000 pounds sterling), and in exchange for its stock severally conveyed thereto their business and plants, which, together with subsequent acquisitions, have ever since been operated and conducted by it.

Between The Imperial Tobacco Company and the American companies in conjunction with Ogdens, Limited, during the remainder of 1901 and a part of 1902 there was fierce commercial conflict, each side seeking to exclude the other and to appropriate the English market for itself. To this end the former offered to give large bonuses to dealers who would handle their goods exclusively, and the latter agreed

to distribute to its British customers during each of the four succeeding years all profits, and in addition thereto 200,000 pounds sterling. During 1902 The Imperial Tobacco Company resolved to undertake the manufacture of tobacco products within the United States and began the necessary preliminaries therefor. Subsequently defendants determined to end the obnoxious competition and by agreements and combinations to parcel out the various parts of the world, assigning to some the exclusive right to do business in a designated field without competition from the others. Accordingly the defendants entered into contracts, combinations, and conspiracies in restraint of interstate and foreign trade and commerce in leaf tobacco and the articles manufactured therefrom and to monopolize and attempt to monopolize parts of the same, all of which have continued down to the present time, and to which all the defendants and others are parties; and in pursuance thereof they have done or procured to be done among other things those hereinafter described.

September 27, 1902, The Imperial Tobacco Company, Ogdens Limited, The American Tobacco Company, Continental Tobacco Company, American Cigar Company, Consolidated Tobacco Company, and parties in behalf of the British-American Company (Limited) thereafter to be incorporated, entered into two written agreements, copies of which are hereto attached, as parts of this bill, marked "Exhibit 1" and "Exhibit 2," whereby they stipulated, among other things, that The Imperial Tobacco Company should limit its business to the United Kingdom, and especially should refrain from carrying on the same within the United States, except to sell to the other defendants and to buy and treat leaf tobacco for its own uses, and should take over the plant and business (except export) of Ogdens Limited, and the assets of the American companies in Great Britain in exchange for stock. That the American companies should limit their business and operations to the United States, its dependencies, and Cuba, and especially that they should refrain from carrying on the same within the United Kingdom—except selling to the Imperial Company—and other parts of the world. That the British-American Company Limited should be incorporated under the English law with a capital of 6,000,000 pounds sterling, to be apportioned, one-third

to The Imperial Tobacco Company and two-thirds to the American companies; and that the other contracting companies with stipulations against competition should convey to it, together with all assets used in connection therewith, their "export business," meaning thereby the manufacture of tobacco to be used outside of the United Kingdom and the United States, and dealing in the same within such territory. That any one of the parties might manufacture and within its territory deal in the brands and should be the sole customer of all the others, and that the directors of The Imperial Tobacco Company and of the American companies should enter into personal covenants binding themselves to refrain from engaging in the tobacco business outside of the field reserved to their respective companies. And that no one should sell to any person when there was reason to think such person intended to export the article purchased into the peculiar territory of another party to the contracts.

The agreements were immediately carried into effect, and all contracting companies and their successors have ever since strictly observed them.

Copies of the stipulations by the directors are attached as a part of this bill, marked "Exhibit 3" and "Exhibit 4."

In exchange for property and assets of Ogdens Limited, The Imperial Tobacco Company issued a large amount of stock now held and owned by defendant, The American Tobacco Company, and because thereof the latter has been allowed to select two members of the board of managers of the former. At present they are defendants James B. Duke and William R. Harris.

Defendant, The Imperial Tobacco Company, was formed for the purpose of destroying competition and associating in combination the great English manufacturers of tobacco, and has at all times since controlled and monopolized the manufacture of and trade and commerce in such products and the leaf tobacco necessary therefor with and within the United Kingdom. It formerly did a large business in tobacco products outside of Great Britain, and for the manufacture thereof purchased leaf in the United States. By reason of the agreements of September 27, 1902, it has abandoned that business. Leaf tobacco in large quantities is now purchased by defendant, The Imperial Tobacco Company, through agents in the United States under the general super-

vision and control of defendant Reed, who, having acquired, export the same as a part of interstate and foreign commerce. During the year 1906 its purchases here aggregated 54,000,000 pounds, and as a result of the agreements aforesaid were made without competition with any of the other defendants.

The British-American Tobacco Company Limited, was incorporated under the laws of Great Britain and Ireland September 27, 1902, with a capital stock of 6,000,000 pounds sterling, which issued and is now held one-third by The Imperial Tobacco Company and two-thirds by The American Tobacco Company. The memorandum of association, or charter, a copy of which is attached as a part hercof, marked "Exhibit 5," recites as among its objects:

To adopt, enter into, and carry into effect, with or without modification, an agreement proposed to be made between The Imperial Tobacco Company of Great Britain and Ireland, Limited, of the first part; Ogden's Limited, of the second part; The American Tobacco Company, of the third part; Continental Tobacco Company, of the fourth part; American Cigar Company, of the fifth part; Consolidated Tobacco Company, of the sixth part; and Williamson Whitehead Fuller and James Inskip, on behalf of a company intended to be formed under the Companies Acts—1862 to 1900—with the name of British-American Tobacco Company, Limited, of the seventh part.

Having, as agreed, received conveyances from the other contracting companies of their "export business" and the property and assets used in connection therewith and also the control and ownership of many foreign corporations, the British-American Tobacco Company entered upon and has ever since been engaged in the manufacture of tobacco products and in interstate and foreign commerce therein, and in leaf tobacco within the United States and abroad, and by agreement has refrained from and refused to compete with any of the defendants. It was created as an instrumentality and for the especial purpose of defeating and violating the laws of the United States. Its principal office has been in London, England, but the chairman of the board of managers, defendant William R. Harris, an officer of The Ameri-

can Tobacco Company, has maintained its office at No. 111 Fifth avenue, New York City, and the company has always carried on business within the Southern District of New York.

The British-American Tobacco Company purchases large amounts of leaf tobacco in the United States each year—during 1906 48,000,000 pounds—part of which it exports to its various plants abroad, and about half it manufactures here and in that form exports. All such leaf tobacco by agreement is purchased in the various States of the Union through defendant, The American Tobacco Company, and without competition with any one of the defendants.

This company, in addition to many plants abroad, has warehouses located in different States, and manufacturing plants at Petersburg, Va., and Durham, N. C. During the year 1906 it manufactured and exported 1,801,167,000 cigarettes, 986,000 all-tobacco cigarettes and cheroots, 842,839 pounds of smoking, and 1,415,852 pounds of plug.

The British-American Tobacco Company, through ownership of all or a majority of the capital stock, controls the following-named companies engaged in the business of manufacturing or selling tobacco and its products at the places specified:

The American Tobacco Company of Canada, Ltd., Montreal; capital, \$1,000,000.

The American Tobacco Company. Aktieselskab, Copenhagen, Denmark; capital, Kr. 100,000.

George A. Jasmatzi, Akt. Ges., Dresden, Germany; capital, M. 5,000,000.

T. C. Williams Company, Petersburg, Va.; capital, \$400,000.

David Dunlop, Petersburg, Va.; capital, \$450,000.

British Cigarette Company, Limited, Shanghai, China; capital, \$5,000,000 Mex.

British-American Tobacco Company (India), Ltd., Calcutta, India; capital, £40,000.

Mustard & Company, Shanghai, China; capital, \$575,000.

The United Tobacco Companies, Limited, Cape Town, South Africa; capital, £800,000.

Maspero Freres, Limited, Cairo, Egypt; capital, £30,000.

Jamaica Tobacco Company, Kingston, Jamaica; capital, \$200,000.



Peninsular Tobacco Company, Limited, Karachi, India; capital, £10,000.

British-American Tobacco Company (Ceylon), Ltd., Colombo, Ceylon, capital, £7,500.

Emile Boussard, Limited, Belgium, capital, £20,000.

Nya Aktiebolaget Cigarettfabriken Orient, Stockholm, Sweden, capital, Kr. 2,000,000.

W. S. Mathews & Sons (owns one-half), Louisville, Ky., capital, \$400,000.

In May, 1903, in pursuance of their general purpose, defendants, through the British-American Tobacco Company and the American Snuff Company acquired control of the business of W. S. Mathews & Sons, a copartnership, long successfully engaged at Louisville, Ky., in interstate and foreign commerce in leaf and manufactured tobacco and especially in exporting to foreign nations for sale tobacco leaf purchased in different States. According to agreement a corporation was organized under the laws of New Jersey with the name of W. S. Mathews & Sons and capital stock of \$400,000, thereafter increased to \$500,000, and to it was transferred the business of the partnership. The British-American Tobacco Company and the American Snuff Company together at once acquired and now hold a majority of the stock of the new corporation.

The corporation preserves a separate organization and carries on business under its own name, but the directors have been selected by the British-American Tobacco Company and the American Snuff Company, and its business has been conducted in harmony with said companies and under an agreement and combination with them and defendants not to compete either in purchasing leaf tobacco in different States or in selling, shipping, and distributing its purchases and products throughout the United States and abroad and in combination with them and without competition for the purpose and with the effect of restraining interstate and foreign trade and commerce and creating a monopoly therein.

The members of the old partnership agreed not to engage in the business of exporting tobacco or its manufacture, sale, or distribution.

In 1903 W. S. Mathews & Sons purchased 16,900,000 pounds of leaf tobacco and exported 13,655,000. In the year 1906 its purchases amounted to more than 7,000,000 pounds

and its exports to more than 6,500,000 pounds. By agreement, a large proportion of the leaf for it is bought by the American Snuff Company and The American Tobacco Company, and without competition with any of the defendants, and in pursuance of their general purpose, defendants, through it have acquired control of the competing business of M. F. Dortch & Sons, a partnership at Louisville, Ky., buying and exporting large quantities of tobacco. The members of the partnership agreed not to engage in the business of exporting tobacco or in the tobacco business.

Among other assets W. S. Mathews & Sons holds stock in the following companies:

West Indian Tobacco Company (Limited), Trinidad, West Indies, capital stock \$40,000, holdings 60 per cent—the British-American Tobacco Company owns 15 per cent. This corporation manufactures black leaf tobacco, sold principally in the West Indies.

Black Horse Tobacco Company, Monterey, Mexico, capital stock \$200,000, holdings about 94 per cent. This company manufactures black leaf tobacco.

The manufacture, sale, distribution, and use within the United States of cigarettes made from tobacco grown in Turkey has greatly increased within a few years, and the leaf necessary therefor has become an important article of foreign trade and commerce. The present importation is at the rate of more than 6,000,000 pounds per annum, two-thirds of which is brought in by defendant The American Tobacco Company.

With the purpose of restraining lawful trade and commerce in such leaf tobacco and in an attempt to monopolize the same, defendants The American Tobacco Company, The Imperial Tobacco Company, and the British-American Tobacco Company entered into a contract, combination, and conspiracy, and in pursuance thereof executed a contract, which is appended hereto as a part of this bill marked "Exhibit 7" [should be 6], the terms of which they have observed and intend hereafter to observe. And as the result thereof all competition among such three defendants in said trade and commerce has been destroyed.

## XVI.

## THE MERGED COMPANY.

In October, 1904, The American Tobacco Company (old), Continental Tobacco Company, and Consolidated Tobacco Company, pursuant to the laws of New Jersey, were merged and consolidated into one under the name of The American Tobacco Company, with the following officers, who have continuously held such places: President, James B. Duke; vice-presidents, John B. Cobb, C. C. Dula, William R. Harris, and Percival S. Hill. The agreement of merger is hereto appended as a part of this bill, marked "Exhibit 6" [should be 7].

According to the merger and consolidation, all assets, rights, and property of every kind belonging to the old companies came into the possession and ownership of the merged one, and since that time defendant The American Tobacco Company has carried on the business of all in that name. It now operates as branches plants manufacturing cigarettes, little cigars and cheroots, plug and smoking tobaccos, at Richmond, Danville, and Newport News, Va., Baltimore, Md., New Orleans, La., New York City, St. Louis, Chicago, Durham, N. C., Louisville, Ky., Clarksville, Tenn., Middletown, Ohio, Petersburg, Va., and Owensboro, Ky. The products of such plants, together with the output of those operated by other defendant corporations, especially P. Lorillard Company, are collected in warehouses in States other than those where manufactured, and then by the selling department of The American Tobacco Company, located in New York City, acting through agents and drummers traveling and stationed, wholesalers, retailers, and other agencies in the various States, are sold and shipped over the ordinary freight routes and distributed and delivered to every part of the Union as a part of interstate and foreign commerce. Through the means herein described it controls and utilizes hundreds of selling and distributing agencies throughout the different States.

Defendant also has an organized buying department, with special agents located in the different States where leaf tobacco is grown and marketed, and through these for itself and many other of the defendants in which it owns stock, operating in various States, especially P. Lorillard Company, Blackwell's Durham Tobacco Company, The John Bollman

Company, Spaulding & Merrick, F. F. Adams Company, and S. Anargyros, buys large quantities of leaf tobacco, which is then shipped from the States where so grown and purchased to warehouses and factories located in other States and abroad. In its own name or through others, it has acquired, and now exercises dominion and control over, a large number of jobbers, wholesalers, dealers, and other distributors of tobacco products in the different States by loaning them large sums of money, giving them unusual credit and confidential and secret rebates. In this and other ways such dealers and distributors are induced or forced to give preference to the goods of defendants and to hinder their competitors.

The American Tobacco Company, acting directly in its own name or through other defendant corporations, owns a controlling interest in the capital stock of all the other corporate defendants (except the Imperial Tobacco Company) and dictates the election of their directors. All of them are engaged in interstate and foreign commerce in leaf tobacco and its products, or articles necessary in their manufacture and sale, and by agreement each one refrains from competing with any of the others, and all have cooperated and do now cooperate for the purpose of securing the retirement from the tobacco business, except in association with them as employees or otherwise, of all successful, capable persons engaged therein, to exclude all others therefrom, to destroy competition therein, and to monopolize the same for their own use and benefit and to the detriment of the public.

## XVII.

### PROFITS.

As the results of the unlawful contracts, combinations, conspiracies, attempts to monopolize, and the things done in pursuance thereof heretofore detailed, defendants and others connected and associated have made and secured enormous and unreasonable profits, the extent of which cannot with accuracy be stated because, among other things, of the multitude of associated corporations, the manipulation of securities, and the excessive valuations of property for which stock was given in exchange.

The following tabulated abstract from the annual reports of The American, Continental, and Consolidated Tobacco

Companies considered in connection with the confederated concerns, indicates the extraordinary returns from and the financial strength obtained by the combination.

1890.

The American Tobacco Company (organized  
January, 1890) :

Preferred stock outstanding .....	\$10,000,000.00
Common stock outstanding.....	15,000,000.00
Dividends on preferred stock, 8 per cent.	
Dividends on common stock, 10 per cent.	
Surplus .....	211,180.12

1891.

The American Tobacco Company:

Preferred stock outstanding.....	\$11,935,000.00
Common stock outstanding.....	17,900,000.00
Dividends on preferred stock, 8 per cent.	
Dividends on common stock, 12 per cent.	
Net surplus from year's earnings after deducting dividends and expenses...	2,284,213.54
Total accumulated surplus.....	2,495,393.66
Total assets .....	32,330,393.66

1892.

The American Tobacco Company:

Preferred stock outstanding.....	\$11,935,000.00
Common stock outstanding .....	17,900,000.00
Dividends on preferred stock, 8 per cent.	
Dividends on common stock, 12 per cent.	
Net surplus from year's earnings after deducting dividends and expenses...	1,612,501.65
Total accumulated surplus.....	4,107,895.31
Total assets .....	36,171,390.97

1893.

The American Tobacco Company:

Preferred stock outstanding.....	\$11,935,000.00
Common stock outstanding.....	17,900,000.00
Dividends on preferred stock, 8 per cent.	
Dividends on common stock, 12 per cent.	
Net surplus from year's earnings after deducting dividends and expenses...	1,612,501.65
Total accumulated surplus .....	5,333,062.65
Total assets .....	37,168,253.13

1894.

## The American Tobacco Company:

Preferred stock outstanding.....	\$11,935,000.00
Common stock outstanding.....	17,900,000.00
Dividends on preferred stock, 8 per cent.	
Dividends on common stock, 12 per cent.	
Net surplus from year's earnings after deducting dividends and expenses...	1,865,227.66
Total accumulated surplus.....	7,198,290.31
Total assets .....	38,700,595.42

1895.

## The American Tobacco Company:

Preferred stock outstanding.....	\$11,935,000.00
Common stock outstanding.....	17,900,000.00
Dividends on preferred stock, 8 per cent.	
Dividends on common stock, 9 per cent.	
Net surplus from year's earnings after deducting dividends and expenses...	1,402,081.55
Total accumulated surplus.....	8,600,371.86
Total assets .....	40,782,607.59

1896.

## The American Tobacco Company:

Preferred stock outstanding.....	\$11,935,000.00
Common stock outstanding.....	17,900,000.00
Dividends on preferred stock, 8 per cent.	
Dividends on common stock, 29 per cent, of which 9 per cent was paid in cash and 20 per cent (\$3,580,000) in scrip, afterwards redeemed at its face value, with interest at 6 per cent from May 1, 1896.	
Net surplus from year's earnings after deducting cash dividends and ex- penses .....	864,176.99
Total accumulated surplus after de- ducting 20 per cent scrip dividend..	5,884,548.85
Total assets .....	41,153,714.03

## 1897.

## The American Tobacco Company:

Preferred stock outstanding.....	\$11,935,000.00
Common stock outstanding.....	17,900,000.00
Dividends on preferred stock, 8 per cent.	
Dividends on common stock, 8 per cent.	
Net surplus from year's earnings after deducting dividends and expenses...	1,563,300.66
Total accumulated surplus.....	7,447,849.51
Total assets .....	42,289,236.32

## 1898.

## The American Tobacco Company:

Preferred stock outstanding.....	\$14,000,000.00
Common stock outstanding.....	21,000,000.00
Dividends on preferred stock, 8 per cent.	
Dividends on common stock, 8 per cent.	
Net surplus from year's earnings after deducting dividends and expenses .....	\$2,123,683.92
Profits from sale of plug business .....	11,701,414.04
Profits from other sources .....	1,284,741.40
Total .....	15,109,839.36
Total accumulated surplus.....	22,557,688.87
Total assets.....	62,297,754.93

## 1899.

## The American Tobacco Company:

Preferred stock outstanding.....	\$14,000,000.00
Common stock outstanding.....	54,500,000.00
Dividends on preferred stock, 8 per cent.	
Dividends on common stock, 106 per cent, of which 6 per cent was paid in cash and 100 per cent (\$21,000,000) in common stock.	
Net surplus from year's earnings after deducting cash dividends and expenses .....	1,017,740.72
Total accumulated surplus after deducting 100 per cent stock dividend.....	2,575,429.59
Total assets .....	77,075,542.83



## Continental Tobacco Company:

Preferred stock outstanding.....	48,844,600.00
Common stock outstanding.....	48,846,100.00
Dividends on preferred stock, 3½ per cent.	
Net surplus from year's earnings after deducting dividends and expenses....	323,195.39
Total assets .....	99,928,016.54

## 1900.

## The American Tobacco Company:

Preferred stock outstanding.....	\$14,000,000.00
Common stock outstanding.....	54,500,000.00
Dividends on preferred stock, 8 per cent.	
Dividends on common stock, 6 per cent.	
Net surplus from year's earnings after deducting dividends and expenses....	1,732,663.82
Total accumulated surplus .....	4,308,093.41
Total assets .....	79,933,253.07

## Continental Tobacco Company:

Preferred stock outstanding.....	\$48,844,600.00
Common stock outstanding.....	48,846,100.00
7 per cent bonds outstanding .....	1,581,100.00
Dividends on preferred stock, 7 per cent.	
Net surplus from year's earnings after deducting dividends and expenses....	1,061,735.62
Total accumulated surplus.....	1,384,931.01
Total assets .....	104,378,951.72

## 1901.

## The American Tobacco Company:

Preferred stock outstanding.....	\$14,000,000.00
Common stock outstanding.....	54,500,000.00
Dividends on preferred stock, 8 per cent.	
Dividends on common stock, 6 per cent.	
Net surplus from year's earnings after deducting dividends and expenses....	2,076,224.15
Total accumulated surplus.....	6,384,317.56
Total assets .....	91,183,612.40

## Continental Tobacco Company:

Preferred stock outstanding.....	48,844,600.00
Common stock outstanding.....	48,846,100.00
Seven per cent bonds.....	1,581,100.00
Dividends on preferred stock, 7 per cent.	
Dividends on common stock, 2 per cent.	
Net surplus from year's earnings after deducting dividends and expenses....	3,204,696.02
Total accumulated surplus.....	4,589,627.03
Total assets.....	111,621,616.19

Consolidated Tobacco Company (a holding corporation), organized by parties controlling the American and Continental tobacco companies, was incorporated in June, 1901. It purchased substantially all of the common stock of the American Tobacco Company and the Continental Tobacco Company, giving in payment for the former at the rate of \$200 of its 4 per cent bonds for \$100 of the stock, and for the latter \$100 of its 4 per cent bonds for \$100 of the stock.

1902.

## The American Tobacco Company:

Preferred stock outstanding.....	\$14,000,000.00
Common stock outstanding.....	54,500,000.00
Dividends on preferred stock, 8 per cent.	
Dividends on common stock, 10 per cent.	
Net surplus from year's earnings after deducting dividends and expenses....	820,291.25
Total accumulated surplus.....	\$7,204,608.81
Total assets .....	88,434,337.19

## Continental Tobacco Company:

Preferred stock outstanding.....	48,844,600.00
Common stock outstanding.....	48,846,100.00
7 per cent bonds.....	1,581,100.00
Dividends on preferred stock, 7 per cent.	
Dividends on common stock, 13 per cent.	
Net surplus from year's earnings after deducting dividends and expenses...	2,007,819.22
Total accumulated surplus.....	6,597,446.25
Total assets .....	119,820,442.38

## Consolidated Tobacco Company:

Capital stock .....	30,000,000.00
4 per cent bonds.....	156,593,400.00
Dividend, <sup>a</sup> paid in cash, 20 per cent.	
Net surplus from year's earnings after deducting dividend and expenses...	915,205.64
Total accumulated surplus.....	950,215.58
Total assets .....	196,581,917.09

1903.

## The American Tobacco Company:

Preferred stock outstanding.....	\$14,000,000.00
Common stock outstanding.....	54,500,000.00
Dividends on preferred stock, 8 per cent.	
Dividends on common stock, 12 per cent.	
Net surplus from year's earnings after deducting dividends and expenses...	1,004,784.64
Total accumulated surplus.....	8,209,393.45
Total assets .....	86,040,261.44

## Continental Tobacco Company:

Preferred stock outstanding.....	48,844,600.00
Common stock outstanding.....	48,846,100.00
7 per cent bonds outstanding.....	1,581,100.00
Dividends on preferred stock, 7 per cent.	
Dividends on common stock, 16 per cent.	
Net surplus from year's earnings after deducting dividends and expenses...	1,522,286.06
Total accumulated surplus.....	8,119,732.31
Total assets .....	120,606,179.51

## Consolidated Tobacco Company:

Capital stock .....	\$ 40,000,000.00
4 per cent bonds.....	157,378,200.00
Net surplus from year's earnings after deducting expenses .....	
Total accumulated surplus.....	10,967,539.97
Total assets .....	214,941,501.66

<sup>a</sup>The funds for this dividend and interest on the 4 per cent bonds were principally derived from dividends on the common stock of The American and Continental Tobacco Companies.

1904.

October 1, 1904, The American Tobacco Company, the Continental Tobacco Company, and the Consolidated Tobacco Company were merged and consolidated into a single corporation under the name of The American Tobacco Company (merged corporation). The agreement, as perfected, was in substance as follows:

For the first nine months of 1904 there was paid 6 per cent to the holders of the preferred stock of The American Tobacco Company (old),  $5\frac{1}{4}$  per cent to the holders of the preferred stock of the Continental Tobacco Company, and 6 per cent and 12 per cent, respectively, to holders of common stock in the American (old) and Continental Tobacco Companies not acquired by the Consolidated Company, amounting to \$242,450. All stock held by any one of the three merging companies in another was canceled. Holders of the preferred stock of The American Tobacco Company (old) exchanged the same for \$133  $\frac{1}{3}$  of 6 per cent bonds of the new American Tobacco Company, and holders of the preferred stock of the Continental Tobacco Company exchanged the same for \$116  $\frac{2}{3}$  of like bonds. The stock in the Consolidated Tobacco Company and \$242,450 unacquired common stock in the old American and Continental companies were exchanged for common stock in the new American Tobacco Company. Holders of the outstanding 4 per cent bonds of the Consolidated Tobacco Company were permitted to exchange one-half of the same for 6 per cent preferred stock in the new American Tobacco Company, and the remaining one-half for 4 per cent gold bonds of the same company. All obligations of the three merging companies were assumed by the merged company.

For the last quarter of 1904 a dividend of  $1\frac{1}{2}$  per cent was paid on the preferred stock of the new American Tobacco Company.

The net surplus from the earnings of all the companies mentioned above for the year 1904, after deducting dividends and expenses, amounted to \$12,235,130.69.

Total accumulated surplus after deducting \$10,012,916.67 difference between the face value of the 6 per cent bonds issued under the merger agreement and the par value of the preferred stock paid for by the same, as shown by the state-

ment of The American Tobacco Company (new) December 31, 1904, \$29,518,879.75.

Total assets, \$293,620,115.20.

## 1905.

## The American Tobacco Company:

Preferred stock outstanding.....	\$78,689,100.00
Common stock outstanding.....	40,242,400.00
6 per cent bonds outstanding.....	55,650,150.00
4 per cent bonds and remaining 4 per cent bonds Consolidated Tobacco Company not yet exchanged.....	63,489,100.00
Dividends on preferred stock, 6 per cent.	
Dividends on common stock, 20 per cent.	
Net surplus from this year's earnings after deducting dividends and expenses .....	6,156,071.26
Total accumulated surplus, after deducting \$9,988,990.42, paid for \$15,200,000 4 per cent bonds of the company, purchased and canceled.....	25,685,960.59
Total assets .....	274,361,059.93

## 1906.

## The American Tobacco Company:

Preferred stock outstanding.....	\$78,689,100.00
Common stock outstanding.....	40,242,400.00
6 per cent bonds outstanding.....	55,208,350.00
4 per cent bonds.....	61,052,100.00
Dividends on preferred stock, 6 per cent.	
Dividends on common stock, 22½ per cent.	
Net surplus from year's earnings after deducting dividends and expenses...	6,754,231.55
Total accumulated surplus after deducting \$1,886,303.93 paid for \$2,437,000.00 4 per cent bonds of the company purchased and canceled.....	30,553,888.21
Total assets .....	278,628,564.13

1907.

The American Tobacco Company:

Dividends at the rate of 6 per cent on the preferred stock have been provided for.

Dividends amounting to 10 per cent on the common stock were provided for prior to June 1, and exceeding \$6,000,000 4 per cent bonds have been purchased in the market and retired.

The earnings of the company during 1907 will equal or exceed those of 1906.

### XVIII.

All the defendants observed, are observing, and intend hereafter to observe and conduct their business according to the terms of the contracts dated September 27, 1902, Exhibits 1 and 2 hereto, whereby they agreed, among other things, to a division of territory.

Defendant, The Imperial Tobacco Company, in which The American Tobacco Company is a large stockholder, has combined the largest and most powerful English concerns, formerly competing with each other in foreign trade and commerce in American leaf tobacco and in manufacturing, selling, and distributing the products thereof throughout the world, including large quantities in the United States; and by means of such combination and the agreements above referred to it controls and monopolizes such trade, manufacture, and commerce within the territory allotted to it—the United Kingdom. It has always observed and intends to observe the agreements of September 27, 1902, between it and the other defendants, and by reason thereof does not compete with them nor they with it. It purchases some American leaf tobacco through warehousemen and dealers in England, but its principal supply is secured through its own agency in the United States directed by defendant Reed stationed at Richmond, Va., who appoints sub-agents in the various districts and States where the desired types grow or are exposed for sale. Through this agency and as a part of interstate and foreign trade and commerce more than 50,000,000 pounds of leaf tobacco have been and are annually purchased and shipped to The Imperial Tobacco Company in England. Such purchases have been and are made in the

different States and districts without competition with the other defendants, and while rivalry may sometimes exist among their agents the extinction of genuine competition is the inevitable result of present conditions. Within the United States the destruction of competition by The Imperial Tobacco Company as a purchaser of leaf tobacco is especially detrimental to producers, and consumers are particularly damnified by its refusal to compete for the sale of its manufactured products.

Defendant, The British-American Tobacco Company, the stock of which is held one-third by The Imperial Tobacco Company and two-thirds by The American Tobacco Company, was created solely as an instrument for perfecting the purposes of the illegal agreements of September 27, 1902, and has always been operated in harmony therewith. It has acquired control and ownership of many foreign concerns engaged in the manufacture, sale, and distribution of tobacco products, and has attempted to monopolize and monopolizes foreign trade and commerce in American leaf and the products thereof.

This company requires for its purposes annually about 50,000,000 pounds of American tobacco, all of which by agreement The American Tobacco Company purchases for it in the various districts and States where the desired types grow and are sold, without competition with any of the other defendants. At its plants in the United States about one-half of such tobacco is converted into cigarettes and other articles for consumers, which are sent abroad and constitute more than 90 per cent of exported tobacco products. The remainder is exported in crude condition.

Defendants, through The American Tobacco Company and one or more of its controlled companies and by unlawful contracts, combinations, and conspiracies, have either acquired outright ownership or secured and now have control (with few exceptions) of the large and important establishments in the United States which in competition were formerly engaged in the manufacture of smoking tobacco, plug, snuff, cigarettes, little cigars, tin foil, and licorice paste, and in interstate and foreign commerce in leaf tobacco and such manufactured products; by agreements they have obligated hundreds of successful tobacco men to refrain from trade and commerce therein, and have destroyed competition



and have acquired a monopoly of a part of interstate and foreign trade and commerce, and have become so powerful that successful competition with them by any new concern would be well-nigh an impossibility.

Through the American Cigar Company defendants have a dominating influence over, prevent competition in, and unlawfully restrain trade and commerce between the United States, Cuba, and Porto Rico, and among the several States in cigars and leaf tobacco, and are now attempting to monopolize such trade and commerce.

Through the American Snuff Company the defendants have a monopoly of interstate and foreign commerce in snuff, have destroyed competition, and are unlawfully restraining interstate and foreign trade and commerce in leaf tobacco and snuff.

Through the MacAndrews & Forbes Company the defendants monopolize interstate and foreign trade and commerce in licorice root and licorice paste and other licorice products, articles necessary for the fabrication of tobacco products; have destroyed competition, and are unlawfully restraining such trade and commerce.

Through the Conley Foil Company defendants monopolize interstate and foreign trade and commerce in tin foil, an essential article in the preparation of tobacco products; have destroyed competition, and are now unlawfully restraining such trade and commerce in that commodity.

The necessary leaf tobacco for all defendants is purchased under a common oversight and control by their special agents abroad and in all important domestic districts, either directly from the growers at the farm or at central markets in different States, and is then shipped to warehouses and factories in other States and abroad as a part of interstate and foreign trade and commerce. Through such agents, of the tobacco grown in the United States defendants, without competition among themselves, annually acquire 20 per cent of the cigar type and more than two-thirds of all other types—of some more than 80 per cent. By reason of their power in combination defendants dominate the market for leaf tobacco, have a controlling influence upon prices, have attempted to monopolize and monopolize interstate and foreign trade and commerce in such products.

During the twelve months ending September 1, 1906, defendants, in the ways above described and without competition among them, which but for agreements and combinations herein pointed out would have existed, purchased approximately 475,000,000 pounds of domestic leaf tobacco, and during the twelve months ending September, 1907, their purchases will probably aggregate a still larger proportion of the whole.

Supplies of all kinds except leaf necessary for the defendants are purchased through the Amsterdam Supply Company as the result of agreements among them, and in this way competition in interstate and foreign trade and commerce in such articles has been destroyed and the same unlawfully hindered and restrained.

The manufactured output of all the defendants is advertised, offered for sale, sold, transported, and distributed to agents, dealers, and purchasers throughout the various States of the Union and abroad as a part of interstate and foreign commerce under a common control, direction, and oversight, and without competition amongst them. The larger part of the same (except The Imperial Tobacco Company and British-American Tobacco Company) is advertised, offered for sale, sold, and distributed directly through the sales department of defendant, The American Tobacco Company, which fixes the prices and determines all matters in connection therewith.

In order the better to carry out their purposes often herein described, certain of the defendant companies, especially the American Snuff Company, American Cigar Company, R. J. Reynolds Tobacco Company, R. A. Patterson Tobacco Company, Standard Snuff Company, Pinkerton Tobacco Company, F. R. Penn Tobacco Company, Night and Day Tobacco Company, Wells Whitehead Tobacco Company, Nall & Williams Tobacco Company, and others, maintain separate purchasing and sales departments with agents who purchase and solicit trade for them in many different States, and through them and otherwise they buy supplies of leaf and sell and distribute their products as a part of interstate and foreign trade and commerce; but all such defendants either directly or indirectly report to The American Tobacco Company, which under agreements and the general plan of

operation has ultimate control and decides how and where the several defendants may operate, fixes all prices, and prevents any real competition among them.

Competition between defendants as to prices at which the several tobacco products of each are sold and delivered is further prevented and destroyed by their agreeing there shall be none and by their agreeing upon, establishing, and maintaining, from time to time, arbitrary and noncompetitive prices for such products sold in interstate trade and commerce, and by their selling and delivering the same therefor, which are greatly in excess of those which would prevail but for this unlawful combination and conspiracy.

It results that all business of defendants is conducted without real competition amongst them and as a part of a general plan, agreement, combination, and conspiracy by which they have destroyed competition, driven out opponents, deterred others from entering, and now unreasonably hinder, restrain, and monopolize interstate and foreign trade and commerce in leaf tobacco and articles fabricated therefrom or necessary therein. They have already driven out most opponents and have obtained such power in combination that the few established competitors must conduct their business in the well-grounded fear of swift destruction whenever defendants may decide to eliminate them; and the mere withholding or withdrawal of their numerous brands from any tobacco dealer—jobber or retailer—would probably render his success impossible. The opportunities for any new competitors are constantly being closed by defendants; the agencies for distribution are rapidly coming under their undisputed control, and unless prevented and restrained their complete unchallenged dominion of every branch of trade and commerce in tobacco and its products may be confidently expected at an early day.

The following summary shows in round figures the total tobacco products manufactured in the United States during 1906. For the same year the combined output of defendants, including that of the British-American Tobacco Company manufactured in bond and exported, all sold and distributed as parts of interstate and foreign trade and commerce, was in excess of the amounts specified, and actually and relative to the whole it has since then increased and is now increasing;

1908.	Total United States.	Defendants' output.
Manufactured tobacco, plug and smoking	363,000,000 lbs.	282,000,000 lbs.
Snuff.....	23,660,000 "	22,500,000 "
Cigarettes.....	6,328,000,000	4,900,000,000
Small cigars.....	995,000,000	905,000,000
Cigars, stogies, etc.....	7,375,000,000	747,135,000

## XIX.

## PRAYER.

Wherefore petitioner prays:

1. That the contracts, combinations, and conspiracies in restraint of trade and commerce among the States and with foreign nations, together with the attempts to monopolize and the monopolies of the same hereinbefore described be declared illegal and in violation of the act of Congress passed July 2, 1890, and subsequent acts, and that they be prevented and restrained by proper orders of the court.

2. That the agreements, contracts, combinations, and conspiracies entered into by the defendants on or about September 27, 1902, and thereafter, and evidenced among other things by the two written agreements of that date, Exhibits 1 and 2 hereto, be declared illegal, and that injunctions issue restraining and prohibiting defendants from doing anything in pursuance of or in furtherance of the same within the jurisdiction of the United States.

3. That The Imperial Tobacco Company, its officers, agents, and servants be enjoined from engaging in interstate or foreign trade and commerce within the jurisdiction of the United States until it shall cease to observe or act in pursuance of said agreements, contracts, combinations, and conspiracies entered into by it and other defendants on or about September 27, 1902, and thereafter, and evidenced among other things by the contracts of that date, Exhibits 1 and 2 hereto.

4. That the British-American Tobacco Company be adjudged an unlawful instrumentality created solely for carrying into effect the objects and purposes of said contract, combination, and conspiracy entered into on or about September 27, 1902, and thereafter, and that it be enjoined from engaging in interstate or foreign trade and commerce within the jurisdiction of the United States.

5. That the court adjudge The American Tobacco Company, the American Snuff Company, The American Cigar Company, the American Stogie Company, the MacAndrews & Forbes Company, and the Conley Foil Company is each a combination in restraint of interstate and foreign trade and commerce; and that each has attempted and is attempting to monopolize, is in combination and conspiracy with other persons and corporations to monopolize, and has monopolized part of the trade and commerce among the several States and with foreign nations; and order and decree that each one of them be restrained from engaging in interstate or foreign commerce, or, if the court should be of opinion that the public interests will be better subserved thereby, that receivers be appointed to take possession of all the property, assets, business, and affairs of said defendants and wind up the same, and otherwise take such course in regard thereto as will bring about conditions in trade and commerce among the States and with foreign nations in harmony with law.

6. That the holding of stock by one of the defendant corporations in another under the circumstances shown be declared illegal and that each of them be enjoined from continuing to hold or own such shares in another and from exercising any right in connection therewith.

7. That defendants, each and all, be enjoined from continuing to carry out the purposes of the above-described contracts, combinations, conspiracies, and attempts to monopolize by the means herein described, or by any other, and be required to desist and withdraw from all connection with the same.

8. That each of the defendants be enjoined from purchasing leaf tobacco or from selling and distributing its manufactured output as a part of interstate and foreign trade and commerce in conjunction or combination with any other defendant, and from taking part or being interested in any agreement or combination intended to destroy competition among them in reference to such purchases or sales.

9. That petitioner have such other, further, and general relief as may be proper.

10. To the end, therefore, that the United States of America may obtain the relief to which it is justly entitled in the

premises, may it please your honors to grant unto it writs of subpœna directed to the said defendants, The American Tobacco Company; British-American Tobacco Company, Limited; Imperial Tobacco Company of Great Britain and Ireland, Limited; American Snuff Company; American Cigar Company; American Stogie Company; Havana Tobacco Company; Havana American Company; P. Lorillard Company; R. J. Reynolds Tobacco Company; Spaulding & Merrick; R. A. Patterson Tobacco Company; Blackwell's Durham Tobacco Company; S. Anargyros; Monopol Tobacco Works; Luhrman & Wilbern Tobacco Company; The John Bollman Company; F. F. Adams Tobacco Company; John W. Carroll Tobacco Company; Nall & Williams Tobacco Company; Nashville Tobacco Works; Day and Night Tobacco Company; Pinkerton Tobacco Company; R. P. Richardson, Jr., & Co. (Incorporated); F. R. Penn Tobacco Company; Wells Whitehead Tobacco Company; Liipfert-Scales Company; W. S. Mathews & Sons; T. C. Williams Company; David Dunlop (Incorporated); W. E. Garrett & Sons (Incorporated); De Voe Snuff Company; Standard Snuff Company; H. Bolander; Weyman & Bro.; The Porto Rican-American Tobacco Company; United Cigar Stores Company; Kentucky Tobacco Product Company; Amsterdam Supply Company; MacAndrews & Forbes Company; J. S. Young Company; The Conley Foil Company; The Johnston Tin Foil and Metal Company; Golden Belt Manufacturing Company; Mengel Box Company; Manhattan Briar Pipe Company; International Cigar Machinery Company; Garson Vending Machine Company; Crescent Cigar and Tobacco Company; Florodora Tag Company; Thomas Cusack Company; M. Blaskower Company; R. D. Burnett Cigar Company; Cliff Weil Cigar Company; Corporation J. & B. Moos; The J. & B. Moos Co.; Dusel, Goodloe & Co; J. J. Goodrum Tobacco Company; Jordan, Gibson & Baum (Incorporated); Louisiana Tobacco Company (Limited); The Smokers' Paradise Company; Cuban Land and Leaf Company; Porto Rican Leaf Tobacco Company; Federal Cigar Company; Federal Cigar Real Estate Company; James B. Duke; Caleb C. Dula; Percival S. Hill; George Arents; Paul Brown; Robert B. Dula; George A. Helm; Robert D. Lewis; Thomas J. Maloney; Oliver H. Payne; Thomas F. Ryan; Robert K. Smith; George W. Watts; George G. Allen; John B. Cobb; William R. Harris; William

H. McAlister; Anthony N. Brady; Benjamin N. Duke; H. M. Hanna; Herbert D. Kingsbury; Pierre Lorillard; Rufus L. Patterson; Frank H. Ray; Grant B. Schley; Charles N. Strotz; Peter A. B. Widener; Welford C. Reed, and Williamson W. Fuller, and each and every one of them, commanding them and each of them to appear herein and answer, but not under oath (answer under oath being hereby expressly waived), the allegations contained in the foregoing petition and abide by and perform such orders and decree as the court may make in the premises.

HENRY L. STIMSON,  
*Attorney for the United States  
for the Southern District of New York.*

CHARLES J. BONAPARTE,  
*Attorney-General.*

MILTON D. PURDY,  
*Assistant to the Attorney-General.*

J. C. McREYNOLDS,  
EDWIN P. GROSVENOR,  
*Special Assistants to the Attorney-General.*

*July, 1907.*

## EXHIBIT 1.

An agreement made the twenty-seventh day of September, one thousand nine hundred and two, between Ogden's Limited, being a company duly incorporated under English law (hereinafter referred to as the "Ogden Company"), of the first part; The American Tobacco Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, one of the States of the United States of America (hereinafter referred to as the "American Company"), of the second part; Continental Tobacco Company, a corporation organized and existing under and by virtue of the laws of the said State of New Jersey (hereinafter referred to as the "Continental Company"), of the third part; American Cigar Company, a corporation organized and existing under and by virtue of the laws of the said State of New Jersey (hereinafter referred to as the "Cigar Company"), of the fourth part; Consolidated Tobacco Company, a corporation organized and existing under and by virtue of the laws of the said State of New Jersey (hereinafter referred to as the "Consolidated Company"), of the fifth part; British Tobacco Company, Limited, being a company incorporated under English law (hereinafter referred to as the "British Company"), of the sixth part; and the Imperial Tobacco Company (of Great Britain and Ireland), Limited, a corporation incorporated under English law (hereinafter referred to as the "Imperial Company"), of the seventh part.

Whereas the Ogden Company was incorporated to acquire and purchase from Thomas Ogden, Limited, the right of carrying on as successor to that company the business carried on as importers of and dealers in tobacco and cigars, manufacturers of and dealers in cigars, cigarettes, and snuff, and other businesses, and (amongst other objects) to sell the business or undertaking of the Ogden Company, or any part thereof, for such consideration as the company might think fit, and in particular for shares, debentures, or securities of any other company having objects altogether or in part similar to those of the Ogden Company, and by the articles of association of the Ogden Company it is provided (amongst other things) that the directors may sell the business or undertaking of the Ogden Company, or any part thereof, and may accept payment for the said business or undertaking, or



for any property or rights sold either in cash or in shares or bonds of any company, with or without deferred or preferred rights, or partly in one mode and partly in another, and generally on such terms as the directors may determine, and, further, that the directors may do all or any of the things or matters mentioned in the memorandum of association; and

Whereas the American Company is entitled to nearly the whole of the shares of the Ogden Company, and the British Company has been formed and incorporated in the interest of the Ogden Company, and all the shares issued by the British Company are held by parties interested in the Ogden Company; and

Whereas the Imperial Company has been incorporated for the purpose (amongst other things) of carrying on the business of tobacco manufacturers, planters, growers, exporters, importers, and merchants and general dealing in tobacco, cigars, cigarettes, snuff, tobacco machinery, and other articles and things, and to purchase or otherwise acquire and undertake all or any part of the business, property and liabilities of any company carrying on any business which the Imperial Company is authorized to carry on, and by the articles of association of the Imperial Company the directors, in addition to all powers and authorities expressly conferred upon them, are authorized to exercise all of such powers and to do all of such acts and things as may be exercised or done by the company, and are not directed or required to be exercised or done in general meeting, and to enter into all such negotiations and contracts and execute and do all such acts, deeds, and things in the name and on behalf of the company as they may consider expedient for or in relation to purposes of the company; and

Whereas proposals have been made for amalgamating the business of the Ogden Company with that of the Imperial Company by transfer of the business and undertaking of the Ogden Company and of the British Company to the Imperial Company upon the terms and conditions and subject to and with the stipulations hereinafter contained or referred to.

Now, therefore, it is hereby agreed as follows, namely:

(1) The Ogden Company shall sell and the Imperial Company shall purchase as from the 30th day of September, 1902 (hereinafter referred to as the "Transfer day"), the under-

taking of the Ogden Company, which expression shall be deemed to include all the lands, buildings, hereditaments, goods, chattels, stock, or shares in companies, good will, formulæ, and recipes for the preparation, treatment, and manufacture of tobacco patent rights, trade-marks, brands, licenses, and other exclusive rights and privileges, things in action, contracts, agreements, securities, and other assets whatsoever and wheresoever belonging to the Ogden Company except the cash in hand and at the bank and the book and other debts belonging or owing to the Ogden Company on the transfer day, and except also the export business and the good will and trade-marks of such export business of the Ogden Company and the lands, buildings, and hereditaments, goods, chattels, and other effects occupied or used or acquired for the purposes of such export business, and except also all funds set apart for the purpose of redeeming coupons of the Ogden Company and the goods acquired for the like purpose.

(2) The price to be paid to the Ogden Company and or its nominees shall be a sum equal to the aggregate of the following items—that is to say:

(A) The value of the lands, buildings, and hereditaments agreed to be sold by the Ogden Company, as the same now stand in the books of the company;

(B) The value of the fixed and loose plant, live stock, machinery, tools, and utensils as the same now stand in the books of the company;

(C) The value of the stock in trade and materials at cost;

(D) The value of the good will of the business of the Ogden Company, which is to include all patent rights, trade-marks, brands, licenses, and other exclusive rights and privileges, and all the shares in the British Company taken at the sum of one million five hundred thousand pounds (£1,500,000), payable as hereinafter provided.

3. The consideration for the sale aforesaid shall be satisfied as follows—that is to say:

(A) As to the amount payable for good will and other rights connected therewith as hereinbefore defined under (D) in Clause 2 by the allotment to the Ogden Company or its nominees of fully paid-up ordinary shares in the Imperial Company (and consisting as to one-half of preferred ordinary shares and as to the other half of deferred ordinary shares) to be treated as of par value;

(B) As to one equal one-third part of the balance by the allotment to the Ogden Company or its nominees of fully paid-up preference shares in the Imperial Company to be treated as of par value;

(C) As to another equal third part of the said balance by the allotment to the Ogden Company or its nominees of debenture stock of the Imperial Company to be treated as of par value;

(D) As to the residue by the payment thereof in cash to the Ogden Company:

Provided, that if one-third part of the said balance shall exceed £300,000 the Imperial Company shall not be required to satisfy more than that amount by the allotment of preference shares, and the excess of such one-third part beyond £300,000 shall be added to the debenture stock and cash prescribed by (C) and (D) in equal parts.

4. The Ogden Company shall clear its undertaking of all mortgages, charges, and other incumbrances, and shall pay and discharge all its own debts and liabilities, and shall be entitled to receive the proceeds of all book debts due to it at the transfer day, but for a period of three calendar months after the transfer day the Imperial Company shall be authorized on behalf of the Ogden Company to collect and receive such book debts, and the proceeds shall be from time to time paid over to the Ogden Company or its nominees at the end of every month.

5. The Imperial Company shall as from the transfer day undertake the observance and performance of all covenants and conditions on the part of the lessee or tenant, in any lease of or agreement relating to lands, building, and hereditaments hereby agreed to be sold, and thenceforth on the part of the lessee or tenant to be observed and performed, and the Imperial Company shall also as from the same date (except as in this clause hereinafter provided) undertake the performance of all contracts *bona fide* entered into by the Ogdens Company in the ordinary course of carrying on its business (other than contracts of employment with the present directors or any of them) and shall indemnify the Ogden Company against all proceedings, claims, and demands in respect thereof, provided always that the Imperial Company does not by the foregoing stipulations of this clause undertake any

liability in connection with the customers' bonus or the coupons or presents scheme of the Ogden Company.

6. All books of account of the Ogden Company and all books of reference to customers and other books and documents of the Ogden Company, except the statutory and minute books and any other books of a private nature, shall be delivered to the Imperial Company upon completion of the purchase, and the Imperial Company shall thenceforth be entitled to the custody thereof and to the use thereof for the purpose of carrying on its business, but nevertheless the Ogden Company or its agents shall have free access at all reasonable times to the said books and documents or any of them for any reasonable purpose, and to the temporary use of the same for the purpose of any legal proceedings.

7. The Imperial Company shall from the time of any property being at its risk be entitled to the benefit of all current insurance and the Ogden Company shall be entitled to repayment of a proportionate part of the premiums already paid for the unexpired portion of the current year of any policy, and all periodical payments shall be apportioned as on the 30th of September, 1902.

8. The purchase shall be completed on or before the 1st day of November, 1902, at the office of Messrs. Grace, Smith & Hood, 41 Castle Street, Liverpool, the solicitors for the Ogden Company, and the consideration for same shall be paid or satisfied pursuant to the provisions of this agreement, and thereupon and from time to time the Ogden Company shall execute and do all such assurances and things for vesting the said premises in the Imperial Company and giving to it the full benefit of this agreement as shall be reasonably required.

9. The Imperial Company shall pay interest at the rate of five (5) per cent per annum on the portion of the purchase money payable to the Ogden Company in cash from the transfer day until actual payment, and on the portions payable in debenture stock and preference shares from the transfer day until the actual issue of such stock and shares, respectively, and the Imperial Company shall pay interest on the portion of the said consideration payable in ordinary shares for the period from the transfer day until the actual issue of such shares at the same rate per annum as shall be paid by way of dividend upon the ordinary shares of the same

class in the Imperial Company already issued for the period comprising such interval.

10. As regards any of the premises subject to mortgages which can not be paid off until after the time of completion, the Ogden Company shall, if so desired by the Imperial Company, convey the said premises subject to the mortgages affecting the same, respectively, and the Imperial Company shall retain out of the cash portion of the consideration aforesaid a sum sufficient to pay off and satisfy the claims under such mortgages.

11. In any and every case where any leasehold hereby agreed to be sold are only assignable with the consent of the landlords from whom the same, respectively, are held the Ogden Company shall use its best endeavors to obtain the requisite consents for the assignment thereof to the Imperial Company; and in any case where such consents can not conveniently be obtained the Ogden Company shall execute a declaration of trust in favor of the Imperial Company or otherwise deal with the same as the Imperial Company shall direct.

12. The possession of the property hereby agreed to be sold shall be delivered by the Ogden Company to the Imperial Company on the transfer day, and in the meantime the Ogden Company shall carry on its business and maintain the same as a going concern.

13. For the purposes of title and conveyance of the lands, buildings, and hereditaments the Ogden Company and the Imperial Company shall, respectively, be deemed and taken to have entered into this contract subject to the terms and stipulations of the Liverpool public sale conditions, so far as the same shall be applicable to a sale by private contract.

14. Each of the parties hereto of the first six parts for itself and not the one for any others agrees and shall covenant with the Imperial Company that the covenanting party will not at any time after the transfer day, except as hereinafter expressly excepted, either solely or jointly with any other person or persons, company or companies, directly or indirectly carry on or be employed, engaged, or concerned, or interested in the business in the United Kingdom of a tobacco manufacturer, or in any dealing in tobacco or its products therein, or sanction the use of its name in connection with any such business therein, save so far as the covenanting company, shall, as a member of the Imperial Company or

as a member of any company manufacturing cigars in the United States or of any other companies formed or to be formed with the concurrence of the Imperial Company, be interested in the business thereof, or through, or in connection with the Imperial Company, as hereinafter provided. The said covenanting parties will procure the following directors or some or one of them, namely, James Buchanan Duke, Benjamin Newton Duke, Thomas Fortune Ryan, John Blackwell Cobb, Williamson Whitehead Fuller, William Rees Harris, Percival Smith Hill, and Caleb Cushing Dula, and will, respectively, use their best endeavors to procure such other directors as shall be required by the Imperial Company to enter into a covenant with the Imperial Company similar to that referred to in the preceding part of this clause.

15. The Imperial Company similarly agrees and shall covenant with the American Company, the Continental Company, the Cigar Company, and the Consolidated Company, that the Imperial Company will not at any time after the transfer day, except as hereinafter expressly excepted, either solely or jointly, with any other person or persons, company or companies, directly or indirectly, carry on or be employed, engaged, concerned, or interested in the business in the United States of a tobacco manufacturer or in any dealing in tobacco or its products therein, or sanction the use of its name in connection with any such business therein save so far as the Imperial Company shall, as a member of any other company formed or to be formed with the concurrence of the American Company, the Continental Company, the Cigar Company, or the Consolidated Company, be interested in the business thereof, and save and except that the Imperial Company shall be at liberty to buy and treat tobacco leaf and other materials in the United States for the purpose of its business, and save and except such business as shall be carried on through or in connection with the American Company, the Continental Company, the Cigar Company, or the Consolidated Company as hereinafter provided, the Imperial Company will procure the following of its directors, viz., Sir William Henry Wills, Henry Overton Wills, Sir Edward Payson Wills, Sir Frederick Wills, George Alfred Wills, Henry Herbert Wills, Walter Melville Wills, Charles Edward Lambert, John Dane Player, Walter Butler, William Goodacre Player, and William Ruddell Clarke, and will use

its best endeavors to procure such other of its directors as shall be required by the American Company, the Continental Company, the Cigar Company, and the Consolidated Company to enter into a covenant similar to that referred to in the preceding part of this clause.

16. Forthwith, or as soon as may be after the transfer day, the Imperial Company shall duly appoint to its board three (3) directors, nominated by the Ogden Company, subject to their acquiring the necessary qualifications, and the directors so appointed shall be reelected at the next ordinary general meeting and shall be classified so that only a due proportion of them shall retire in each year.

17. The export business of the Ogden Company hereinbefore excluded from the operation of this contract is to be the subject of an agreement entered into contemporaneously with this agreement, and providing for the transfer to a separate company of the export business from the United Kingdom (except to the United States) not only of the Ogdens Company, but also of the Imperial Company and of Salmon & Gluckstein, Limited, and the export business from the United States of the American Company, the Continental Company, and the Cigar Company (except to the United Kingdom), which agreement has been already prepared and is executed contemporaneously with this agreement. For the purpose of construing this agreement the export business of the said several companies shall be deemed to be herein defined in the same manner as in the said contemporaneous agreement. The "United Kingdom" and the "United States" are also, respectively, to be deemed to be defined as defined in the same agreement.

18. From and after the date of transfer, subject to agreements already existing between the Imperial Company and its present agents, neither the Imperial Company nor Salmon & Gluckstein, Limited, shall sell or consign any tobacco products to any person, firm, or company within the United States except the American Company, or persons or companies designated by it, and on the other hand the American Company, the Continental Company, and the Cigar Company, and the Consolidated Company, respectively, shall not sell or consign any tobacco products to any person, firm, or company in the United Kingdom except the Imperial Company, or any persons or companies designated by it, the intention being that the American Company or its nominees



shall be the sole customer of the Imperial Company and of Salmon & Gluckstein, Limited, in the United States, and that the Imperial Company or its nominees shall be the sole customer of the American Company, the Continental Company, and the Cigar Company in the United Kingdom. None of the parties shall sell any tobacco products to any person, firm, or company whom they have reason to believe will export the same to the territory in which the seller has agreed not to sell such goods as herein provided.

19. For American goods sold to the Imperial Company or its nominees for sale in the United Kingdom in pursuance of the preceding clause the Imperial Company shall pay the cost of manufacture and packing of such goods (but not including any expenses of advertising and selling) plus ten per cent (10 per cent), and shall also pay freights, customs charges and duties, and for goods of the Imperial Company and of Salmon & Gluckstein, Limited, sold by them to the American Company, the Continental Company, or the Cigar Company, for sale within the United States, the American Company, the Continental Company, or the Cigar Company, as the case may be, shall pay the cost of the manufacture and packing thereof (but not including any expenses of advertising or selling) plus ten per cent (10 per cent), and shall also pay freights, customs charges, and duties. In all cases of sales under this clause the invoices of the respective vendors shall be final and binding as to cost. The Imperial Company shall be empowered by the American Company and the Continental Company to manufacture their brands within the United Kingdom for sale therein, and the American Company, the Continental Company, and the Cigar Company shall be empowered to manufacture the brands of the Imperial Company in the United States for sale therein, and each party shall manufacture the brands of the other party upon recipes and formulæ to be supplied by the other.

20. As early as practicable and subject to existing contracts and obligations of the companies manufacturing and selling the cigars and cigarettes hereinafter referred to, the American Company, the Continental Company, and the Cigar Company will appoint or procure the appointment of the Imperial Company sole agent for the sale within the United Kingdom of Havana and Porto Rico cigars and Havana and



Porto Rico cigarettes directly or indirectly controlled by the American Company, the Continental Company, and the Cigar Company, and such agency shall be upon the terms of the Imperial Company receiving a net commission of seven and one-half per cent ( $7\frac{1}{2}$  per cent) upon the Havana and Porto Rico prices, respectively, and being allowed three months' credit for payment of the invoice prices less such  $7\frac{1}{2}$  per cent and the Havana and Porto Rico prices charged the Imperial Company shall, from time to time and at all times, be as low as the prices charged by the American Company, the Continental Company, and the Cigar Company, or parties controlled by them, for similar cigars and cigarettes sold to their most-favored customers, subject only to the exception that if at any time the prices of cigars or cigarettes sold to any country not affecting British trade shall be temporarily reduced for the purposes of competition, such local and temporary reduction is not to be taken into account for the purpose of fixing the price of cigars and cigarettes sold to the Imperial Company. If and so far as the control of any other cigar trade not hereinbefore provided for is now possessed or shall be acquired by the American Company, the Continental Company, and the Cigar Company, or any of them, a similar agency is to be given to the Imperial Company in respect thereof. The Imperial Company shall not (except to complete any other contract already made) handle or sell any other Havana or Porto Rico cigars and cigarettes than those of the American Company, the Continental Company, and the Cigar Company, for which the Imperial Company holds the aforesaid agency, and a similar provision shall apply to any other cigars or cigarettes for which the aforesaid agency may be hereafter granted, and the Imperial Company shall use its best efforts and endeavors to promote and enlarge the sales of all such cigars and cigarettes within the United Kingdom, and provided the Imperial Company maintains a sale of the Havana cigars or cigarettes included in the agency hereinbefore provided for equal to not less than seventy-two per cent (72 per cent) of the total annual importations into the United Kingdom, duty paid, of cigars and cigarettes made in Cuba, the American Company, and the Cigar Company, and the Continental Company shall not be entitled to call in question the efforts and endeavors of the Imperial Company hereinbefore required: *Provided always,*

That the percentage to be maintained by the Imperial Company shall be ascertained upon the average of three years. The Imperial Company shall sell the cigars and cigarettes from time to time falling within the said agency at prices not exceeding their cost to the Imperial Company with the addition of freights, railway charges, packages, customs duties, and customs charges, and the said commission of  $7\frac{1}{2}$  per cent. The American Company, the Continental Company, and the Cigar Company will not knowingly supply cigars or cigarettes to be transshipped or indirectly imported into the United Kingdom. The aforesaid proportion of 72 per cent has been based upon the belief and assumption that the parties hereto of the second, third, fourth, and fifth parts or some or one of them control or will shortly control not less than 80 per cent of the aforesaid annual importation, and if it shall hereafter appear that the proportion thereof actually controlled by the said parties is less than 80 per cent, then in such case the said proportion of 72 per cent shall be correspondingly reduced.

21. The Imperial Company shall cause Salmon & Gluckstein, Limited, and A. I. Jones & Company, Limited, and any other companies, firms, or persons from time to time controlled by it (subject to the performance of any prior contracts), to purchase their cigars of any brands comprised in the said agency through the Imperial Company as agent under the last preceding clause.

22. The American Company, the Continental Company, the Cigar Company, and the Consolidated Company, together with their directors, entering into the covenant aforesaid, are to give to the Imperial Company in the United Kingdom the full benefit of their good will and support, and on the other hand the Imperial Company, together with its directors, entering into the covenant aforesaid, are to give the American Company, the Continental Company, and the Cigar Company in the United States the full benefit of their good will and support, and with a view to giving further effect to the intention of the parties as in this clause hereinbefore expressed the allottees of the said 1,500,000 ordinary shares of the Imperial Company are not to sell or transfer more than 10 per cent of the said shares within the period of five (5) years from the date of their allotment, if and so long as the present directors of the Imperial Company, or some of them, shall

hold not less than 3,000,000 ordinary shares of the Imperial Company.

23. This agreement is to be construed and take effect as a contract made in England and in accordance with the law of England, but to the intent that any of the parties may sue in its own country. The Imperial Company is always to have an agent for service in the United States, and each of them, the American Company, the Continental Company, the Cigar Company, and the Consolidated Company, is always to have an agent for service in England, and service on any such agent of any notice, summons, order, judgment, or other process or document in respect of this agreement, or any matter arising thereout, shall be deemed to be good service on the party appointing such agent, and as regards each of the said parties whilst and whenever there is no other agent the following shall be considered to be the agents of the respective parties duly appointed under this clause, namely: For the Imperial Company, Samuel Untermeyer, of New York City, American counsel; and for the American Company, the Continental Company, the Cigar Company, and the Consolidated Company, Joseph Hood, 41 Castle Street, Liverpool, solicitor. Notice of any appointment under this clause shall be from time to time given by the appointor to the other parties hereto. The mode of service sanctioned by this clause is not in any way to prejudice or preclude any mode of service which would be allowable if this clause were omitted.

24. So far as it is necessary for the purpose of making the issue of ordinary shares hereinbefore mentioned the Imperial Company shall forthwith take the necessary steps for increasing its capital by the creation of an adequate number of ordinary shares (half preferred and half deferred) which shall rank *pari passu* with and shall be of the same respective classes and confer the same rights and privileges as the 5,000,000 preferred ordinary shares and the 5,000,000 deferred ordinary shares forming part of the original capital of the Imperial Company.

In witness whereof the said parties of the first, second, sixth, and seventh parts have hereunto affixed their common seals, and the said parties of the third, fourth, and fifth parts have executed this agreement under the hand of their respective presidents the day and year first above written.

[SEAL.]

The common seal of the Imperial Company was hereunto affixed by order of the board in the presence of—

GEORGE ALFRED WILLS,

C. E. LAMBERT,

*Directors.*

H. W. GUNN, *Secretary.*

[SEAL.]

The common seal of Ogden's, Limited, was hereto affixed in the presence of—

R. W. WALTERS,

JOHN MACCONNAL,

*Directors.*

[SEAL.]

The common seal of British Tobacco Company, Limited, was hereunto affixed in the presence of—

R. W. WALTERS,

JOSEPH HOOD,

*Directors.*

[SEAL.]

The common seal of The American Tobacco Company was hereunto affixed in the presence of—

J. B. DUKE, *Prest.* [SEAL.]

CONTINENTAL TOBACCO CO.,

By J. B. DUKE, *Prest.*

Continental Tobacco Company has executed this agreement under the hand of James Buchanan Duke, its president, in the presence of—

JOSEPH HOOD,

*Solicitor, Liverpool.*

AMERICAN CIGAR CO.,

By J. B. COBB, *Prest.*

American Cigar Company has executed this agreement under the hand of John Blackwell Cobb, its president, in the presence of—

W. R. HARRIS,

*Director, American Cigar Company.*

CONSOLIDATED TOBACCO CO.,

By J. B. DUKE, *Prest.*

Consolidated Tobacco Company has executed this agreement under the hand of James Buchanan Duke, its president, in the presence of—

W. R. HARRIS,

*Treasurer, Consolidated Tobacco Co.*

## EXHIBIT 2.

An agreement made the twenty-seventh day of September, one thousand nine hundred and two, between The Imperial Tobacco Company (of Great Britain and Ireland), Limited, being an English company duly incorporated under English law (hereinafter referred to as the "Imperial Company"), of the first part; Ogden's, Limited, also being a company incorporated under English law (hereinafter referred to as the "Ogden Company"), of the second part; The American Tobacco Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, one of the States of the United States of America (hereinafter referred to as the "American Company"), of the third part; Continental Tobacco Company, a corporation organized and existing under and by virtue of the laws of the said State of New Jersey (hereinafter referred to as the "Continental Company"), of the fourth part; American Cigar Company, a corporation organized and existing under and by virtue of the laws of the said State of New Jersey (hereinafter referred to as the "Cigar Company"), of the fifth part; Consolidated Tobacco Company, a corporation organized and existing under and by virtue of the laws of the said State of New Jersey (hereinafter referred to as the "Consolidated Company"), of the sixth part; and Williamson Whitehead Fuller and James Inskip, on behalf of a company intended to be formed under the companies' acts, 1862 to 1900, with the name of "British-American Tobacco Company, Limited" (hereinafter referred to as the "British-American Company"), of the seventh part.

Whereas the parties hereto of the first five parts now respectively carry on business as tobacco manufacturers and other ancillary businesses, which comprise as to the parties hereto of the first and second parts, businesses carried on within the United Kingdom of Great Britain and Ireland and export businesses as hereinafter defined, and as to the parties hereto of the third, fourth, and fifth parts, businesses carried on within the United States of America, and export businesses as also hereinafter defined, and proposals have been made for amalgamating the said export businesses by transfer thereof to the British-American Company upon the terms and conditions hereinafter expressed.

Now therefore it is hereby agreed as follows:

1. In this agreement the words "United Kingdom" mean Great Britain and Ireland and the Isle of Man.

The words "United States" mean the United States of America as now constituted—Cuba, Porto Rico, the Hawaiian Islands, and the Philippine Islands.

The words "export business" mean the manufacture of and dealing in tobacco and its products in any country or place outside the United Kingdom and the United States and the manufacture of and dealing in tobacco and its products within the United Kingdom for export to any other country except the United States, and the manufacture of and dealing in tobacco and its products in the United States (except in Cuba, Porto Rico, the Hawaiian Islands, and the Philippine Islands) for the purpose of export to any other country except the United Kingdom, and the manufacture and selling in the United Kingdom and the United States, respectively, of tobacco to be supplied to ships in port for the purposes of ships' stores.

2. The parties hereto of the first five parts shall sell and the British-American Company shall purchase the export businesses as hereinbefore defined of the parties of the first five parts, and the good will appertaining thereto, which shall include formulæ and recipes of preparation, treatment, and manufacture, as well as license to use patent rights, trademarks, brands, licenses, and other exclusive rights and privileges for the purposes of such export business, and shall also include all stock or shares in companies incorporated in countries foreign to the United Kingdom and the United States owned or held by the parties of the first six parts, including all shares of the American Company in Georg A. Jasmatzi Company (of Dresden), and all shares of the Imperial Company in W. D. & H. O. Wills (Australia), Limited, at the price of two million eight hundred and twenty thousand pounds (£2,820,000), of which two equal third parts, or one million eight hundred and eighty thousand pounds (£1,880,000), shall be payable to the Ogden Company, the American Company, the Continental Company, the Cigar Company, and the Consolidated Company, or some of them, in such proportions as they shall mutually agree and as shall be indicated in writing under the hands of their respective presidents or chairmen as the case may be, and one-third, or

nine hundred and forty thousand pounds (£940,000), shall be payable to the Imperial Company, and the said prices shall be satisfied by the allotment to the parties entitled thereto of fully paid-up ordinary shares in the British-American Company to be treated as of par value. The said sale and purchase shall take effect as to the Ogden Company on the 30th September, 1902 (hereinafter referred to as "the Ogden transfer day"), and as to the parties hereto of the first, third, fourth, fifth and sixth parts on the 31st October, 1902 (hereinafter referred to as "the Imperial and American transfer day").

3. In addition to the ordinary shares by the preceding paragraph agreed to be allotted in payment of the said purchase money, the Imperial Company shall take and pay cash for three hundred thousand (300,000) additional one-pound ordinary shares, and the American Company, the Continental Company, the Cigar Company, and the Consolidated Company, or some or one of them, shall take and pay cash for six hundred thousand (600,000) additional one-pound ordinary shares in the British-American Company, Limited, and such shares shall be allotted to such parties at once.

4. The Imperial Company and the Ogden Company will, respectively, sell to the British-American Company their several lands, buildings, and hereditaments used as export factories, and the plant and equipment and stock in trade at the date of transfer forming a part of the said export businesses or undertakings, and the American Company, the Continental Company, and the Cigar Company will sell to the British-American Company factories for export business and the plant and equipment and stock in trade at the date of transfer forming a part of the said export businesses or undertakings. The factories of the said respective parties employed for export purposes shall, in the case of the Imperial Company, include the export factory of the Imperial Company formerly belonging to W. D. & H. O. Wills, Limited, at Ashton Gate, Bristol, and the land and cottages held therewith; the leasehold export factory formerly belonging to Messrs. Lambert & Butler, Limited, in London; and the two export factories formerly belonging to the Richmond Cavendish Company, Limited, at Liverpool; and the cigarette factory of the Imperial Company formerly belonging to W. D. & H. O. Wills, Limited, at Sydney, in the Commonwealth of

Australia. The export factories of the Ogden Company will include the bonded or export factory of the Ogden Company in Cornwallis street, Liverpool, and a factory at Sydney aforesaid. The export factories of the American Company, the Continental Company, and the Cigar Company will include such suitable factories as shall be designated by these companies, or some or one of them, so that the price thereof with their plant and equipment as hereinafter fixed shall not exceed the aggregate price of the factories, land, and cottages with their plant and equipment to be sold by the Imperial Company as before stated. All the said factories and the plant and equipment used in connection with the same are to be taken at the value now standing in the books of the respective vendors thereof, and the stock in trade and materials hereby agreed to be sold are to be taken at cost. The respective values shall be paid by the British-American Company to the respective vendors in cash. As part of the export business and good will to be sold by the Imperial Company to the British-American Company the export business of Salmon & Gluckstein, Limited, shall be included, and the Imperial Company hereby undertakes to procure the transfer of the same to the British-American Company, but this shall not be deemed to include any lands, buildings, or hereditaments. The said export business shall also include all the interest of the Imperial Company in a factory at Shanghai recently purchased by it and or in the American Cigarette Company of Shanghai.

5. The British-American Company shall be entitled to purchase at not exceeding cost thereof to its vendor any export business hereafter acquired by any of the parties hereto of the first six parts, as well as any shares in any companies incorporated in countries foreign to the United Kingdom and the United States acquired by any of said parties, and the export business and the assets employed in such business of any company the control of which shall be hereafter acquired by any of said parties, as well as any shares in companies engaged in export business which may be held by such controlled companies acquired by any of the parties of the first six parts as aforesaid.

6. The British-American Company shall have the right to use in its export business, as hereinbefore defined, any brands and trade-marks now owned or hereafter acquired or



adopted by any of the parties hereto of the first six parts.

7. The sale and purchase of the said export businesses hereinbefore agreed to be made are subject to and with the benefit of all contracts heretofore made by the respective parties hereto of the first six parts, with their agents or other persons interested in the said businesses so far as such contracts are now in force, save and except that if the Imperial Company is under an obligation to buy the shares of G. F. Todman in W. D. & H. O. Wills (Australia), Limited, at any price not approved by the British-American Company, such obligation is not agreed to be undertaken by that company. The Japanese stockholders in Murai Bros. Company, Limited, shall have the right to take from the British-American Company on or before January 1, 1904, by paying par therefor, with interest thereon at the rate of six per cent per annum (less any dividends received) from the date of their purchase by the American Company until payment, all issued stock sold by the American Company to the British-American Company in excess of sixty per cent of the total capital stock of Murai Bros. Company, Limited.

8. The dividends or proportions of dividends upon shares hereby agreed to be sold and the profits of each export business hereby agreed to be sold shall, up to the respective transfer days, belong to the respective vendors of the same.

9. The parties of the first five parts shall, respectively, clear the lands, buildings, and hereditaments hereby agreed to be sold of all mortgages, charges, and other incumbrances, and shall be entitled to the proceeds of all book debts due to the said parties, respectively, on the respective transfer days, but for a period of three calendar months thereafter the British-American Company shall be authorized on behalf of these respective parties to collect and receive such book debts, and the proceeds shall be from time to time paid over to the parties entitled thereto at the end of every month.

10. The British-American Company shall undertake the observance and performance of all covenants and conditions on the part of the lessee or tenant in any lease of or agreement relating to the lands, buildings, and hereditaments hereby agreed to be sold, and thenceforth on the part of the lessee or tenant to be observed and performed, and the British-American Company shall also, as from the same date, undertake the performance of all contracts bona fide entered

into by the parties of the first five parts in the ordinary course of carrying on their export business and particularly applicable thereto, and shall indemnify the parties of the first five parts against all proceedings, claims, and demands in respect thereof.

11. All books of account of the parties of the first and second parts referring solely to the export businesses hereby agreed to be sold, and all books of reference to customers and other books and documents of the said parties relating solely to the said export businesses (except the statutory and minute books, and any other books of a private nature) shall be delivered to the British-American Company upon completion of the purchase, and the British-American Company shall thenceforth be entitled to the custody thereof and to the use thereof for the purpose of carrying on its business, but, nevertheless, the parties of the first and second parts shall have free access at all reasonable times to the said books and documents, or any of them, for any reasonable purpose, and to the temporary use of the same for the purpose of any legal proceedings. The parties of the third, fourth, and fifth parts shall deliver to the British-American Company a list of their respective customers for the export businesses hereby sold and any books used exclusively in connection with such business.

12. The British-American Company shall from the time of any property being at its risk be entitled to the benefit of all current insurances, and the parties of the first five parts shall be entitled to repayment of a proportionate part of the premiums already paid for the unexpired portion of the current year of any policy, and all periodical payments shall be apportioned as from the respective transfer days hereinbefore mentioned.

13. The purchases shall be completed on or before the 1st day of January, 1903, in London, and the consideration for the same shall be paid or satisfied subject to the provisions of this agreement and thereupon and from time to time the parties of the first five parts shall execute and do all such assurances and things for vesting the said premises in the British-American Company and giving to it the full benefit of this agreement as shall be reasonably required.

14. As regards any of the premises subject to mortgages which can not be paid off until after the time of completion,

the parties of the first five parts shall, if so desired by the British-American Company, convey the said premises subject to the mortgages affecting the same, respectively, and the British-American Company shall retain out of the consideration aforesaid a sum sufficient to pay off and satisfy the claims under such mortgage.

15. In any and every case where any leaseholds hereby agreed to be sold are only assignable with the consent of the landlords from whom the same respectively are held, the parties of the first five parts, or such of them as hold such leaseholds, shall use their best endeavors to obtain the requisite consent for the assignment to the British-American Company, and in any case where such consent can not be conveniently obtained the parties of the first five parts or such of them as hold such leaseholds as aforesaid shall execute a declaration of trust in favor of the British-American Company, or otherwise deal with the same as the British-American Company shall direct.

16. The possession of the property hereby agreed to be sold by the Ogden Company shall be delivered to the British-American Company on the Ogden transfer day, and the possession of the properties hereby agreed to be sold by the parties hereto of the first, third, fourth, and fifth parts shall, subject as hereinafter mentioned, be delivered to the British-American Company on the Imperial and American transfer day, but if the said parties of the third, fourth, and fifth parts shall not be able to deliver possession on the last-mentioned transfer day, the said parties shall from such day until delivery of possession carry on and conduct their export business for the benefit of the British-American Company, and shall account to that company for all the profits arising therefrom, but the British-American Company shall pay interest at the rate of five per cent per annum on the purchase money from the transfer day until actual payment.

17. For the purposes of title of the lands, buildings, and hereditaments hereby agreed to be sold by the parties of the first and second parts, they shall, respectively, be deemed and taken to have entered into this contract with the British-American Company subject to the terms and stipulations of the Liverpool public sale conditions so far as the same shall be applicable to a sale by private treaty.

18. Each of the parties hereto of the first six parts here-

by agrees and shall covenant with the British-American Company that the said covenanting party will not at any time after its transfer day, either solely or jointly with any other person, company, or firm, directly or indirectly, carry on or be employed, engaged, or concerned or interested in export business as defined in this agreement, except as it may be interested as a member of the British-American Company or of a company formed or to be formed with the concurrence of the British-American Company, and also except so far as the parties of the third, fourth, fifth, and sixth parts may be interested as members of companies or firms engaged in exporting cigars and cigarettes from Cuba, Porto Rico, the Hawaiian Islands, and or the Philippine Islands, and the British-American Company hereby agrees and shall covenant with each of the parties hereto of the first six parts that the British-American Company will not at any time hereafter, either solely or jointly with any other person, firm, or company, directly or indirectly, carry on or be employed, engaged, concerned, or interested in the business of a tobacco manufacturer or in any dealing in tobacco or its products except in the manner and within the limits contemplated and authorized by this agreement.

19. The British-American Company will, if and so long as thereunto required by the Imperial Company, manufacture in the United Kingdom such brands as the Imperial Company shall require for sale in the United Kingdom and for export to the United States, to be manufactured in bond, and the Imperial Company shall pay for tobacco manufactured pursuant to this clause the cost of manufacturing and packing, with an addition of 10 per cent upon such cost, and the Imperial Company shall also pay the duty.

20. This agreement is to be construed and take effect as a contract made in England and in accordance with the law of England; but to the intent that any of the parties may sue in its own country, the Imperial Company is always to have an agent for service in the United States, and each of them, the American Company, the Continental Company, the Cigar Company, and the Consolidated Company, is always to have an agent for service in England, and service on any such agent of any notice, summons, order, judgment, or other process or document in respect of this agreement, or any matter arising thereout, shall be deemed to be good service

on the party appointing such agent; and as regards each of the said parties whilst and whenever there is no other agent the following shall be considered to be the agents of the respective parties duly appointed under this clause, namely: For the Imperial Company, Samuel Untermeyer, of New York City, American counsel, and for the American Company, the Continental Company, the Cigar Company, and the Consolidated Company, Joseph Hood, 41 Castle street, Liverpool, solicitor. Notice of any appointment under this clause shall be from time to time given by the appointer to the other parties hereto. The mode of service sanctioned by this clause is not in any way to prejudice or preclude any mode of service which would be allowable if this clause were omitted.

21. The validity of this agreement is not to be impeached on the ground that the vendors, as promoters or otherwise, stand in a fiduciary relationship to the British-American Company, and that the directors thereof being interested in the vendors' businesses do not constitute an independent board. Upon the adoption hereof by the British-American Company in such manner as to render the same binding on that company in favour of the vendors, the said Williamson Whitehead Fuller and James Inskip shall be discharged from all liability hereunder.

22. The cost of and incidental to the formation and registration of the British-American Company shall be borne by that company.

In witness whereof the said parties of the first, second, and third parts have hereunto affixed their common seals, and the said parties of the fourth, fifth, and sixth parts have executed this agreement under the hand of their respective presidents, and the parties of the seventh part have hereunto subscribed their names the day and year first before written.

[SEAL.]

The common seal of the Imperial Company was hereunto affixed by order of the board in the presence of—

GEORGE ALFRED WILLS,

C. E. LAMBERT,

*Directors.*

H. W. GUNN, *Secretary.*

[SEAL.]

The common seal of Ogden's Limited was hereunto affixed in the presence of—

R. W. WALTERS,  
JOHN MACDONNAL,  
*Directors.*

[SEAL.]

The common seal of The American Tobacco Company was hereunto affixed in the presence of—

J. B. DUKE, *Prest.*

CONTINENTAL TOBACCO Co.,  
By J. B. DUKE, *Prest.*

Continental Tobacco Company has executed this agreement under the hand of James Buchanan Duke, its president, in the presence of—

JOSEPH HOOD,  
*Solicitor, Liverpool.*

AMERICAN CIGAR Co.,  
By J. B. COBB, *Prest.*

American Cigar Company has executed this agreement under the hand of John Blackwell Cobb, its president, in the presence of—

W. R. HARRIS,  
*Director American Cigar Co.*

CONSOLIDATED TOBACCO Co.,  
By J. B. DUKE, *Prest.*

Consolidated Tobacco Company has executed this agreement under the hand of James Buchanan Duke, its president, in the presence of—

W. R. HARRIS,  
*Treasurer, Consolidated Tobacco Co.*

W. W. FULLER.  
JAMES INSKIP.

Signed by the said Williamson Whitehead Fuller and James Inskip in the presence of—

JOSEPH HOOD.

## EXHIBIT 3.

*To all to whom these presents may come, greeting:*

Whereas, on September 27th, 1902, an agreement was entered into, to which agreement Ogden's, Limited, was party of the first part; The American Tobacco Company, party of the second part; Continental Tobacco Company, party of the third part; American Cigar Company, party of the fourth part; Consolidated Tobacco Company, party of the fifth part; British Tobacco Company, Limited, party of the sixth part, and The Imperial Tobacco Company (of Great Britain and Ireland), Limited, party of the seventh part, under and by the terms of which contract all the business, property, and undertaking of party of the first part were sold to party of the seventh part, and as a part of the same transaction and business in the United Kingdom of the parties of the second, third, fourth, and fifth parts were also sold to said party of the seventh part; and said party of the seventh part agreed to sell its products for use in the United States to the party of the second part, the party of the third part, and the party of the fourth part, at a price equal to the cost of manufacturing and packing thereof, plus ten per cent (10 per cent), the said purchasing company to pay freights, customs charges, and duties;

To assure to said parties of the second, third, and fourth parts the advantages and rights provided for in said contract aforesaid, the said party of the seventh part in said contract covenanted that it would not at any time after the transfer of the said business therein contemplated to be transferred, except as in said contract expressly excepted, either solely or jointly with any other person or persons, company or companies, directly or indirectly, carry on or be employed, engaged, or concerned, or interested in the business in the United States of a tobacco manufacturer or in any dealing in tobacco or its products therein, or sanction the use of its name in connection with any such business therein, save so far as said party of the seventh part should as a member of any company formed or to be formed with the concurrence of the party of the second part, the said party of the third part, the party of the fourth part, or the party of the fifth part be interested in the business thereof, and save and except that the said party of the seventh part should be at liberty to buy and treat leaf tobacco and other materials in

the United States for the purpose of its business, and save and except such business as should be carried on through or in connection with the party of the second part, the party of the third part, the party of the fourth part, and the party of the fifth part, and covenanted further that it would procure the following of its directors, to wit, Sir William Henry Wills, Henry Overton Wills, Sir Edward Payson Wills, Sir Frederick Wills, George Alfred Wills, Henry Herbert Wills, Walter Melville Wills, Charles Edward Lambert, John Dane Player, Walter Butler, William Goodacre Player, and William Ruddell Clark, and would use its best endeavors to procure such other directors as should be required by said party of the second part, the party of the third part, the party of the fourth part, and the party of the fifth part, to enter into a covenant similar to that entered into by said party of the seventh part; and

Whereas, each of the parties hereto undersigned is a director in said The Imperial Tobacco Company (of Great Britain and Ireland), Limited,

Now, therefore, for and in consideration of the premises and of the sum of one dollar to each of the parties hereto undersigned paid by the Continental Tobacco Company, the receipt whereof is hereby fully acknowledged, and for divers other good, valuable, and sufficient considerations the receipt whereof is hereby fully acknowledged, each of the parties hereto for himself, and not one for any of the others, hereby agrees, covenants, and binds himself to and with the Continental Tobacco Company, that he will not at any time or times hereafter, except as hereinafter expressly excepted, either solely or jointly with any other person or persons, company or companies, directly or indirectly carry on, or be employed, engaged, concerned, or interested in the business in the United States of a tobacco manufacturer, or in any dealing in tobacco or its products therein, or sanction the use of his name in connection with any such business therein, save so far as he shall as a member of any other company formed or to be formed with the concurrence of The American Tobacco Company, Continental Tobacco Company, American Cigar Company, or Consolidated Tobacco Company be interested in the business thereof, with the provision, however, that he may be and continue a member of The Imperial Tobacco Company (of Great Britain and Ireland), Limited,



which said The Imperial Tobacco Company (of Great Britain and Ireland), Limited, shall be at liberty to buy and treat tobacco leaf and other materials in the United States for the purpose of its business, and may carry on business in the United States through or in connection with The American Tobacco Company, Continental Tobacco Company, American Cigar Company, or the Consolidated Tobacco Company, as provided for in said contract of September 27th, 1902; the term "United States" wherever herein contained shall mean and be construed to mean the United States of America, as now constituted—Cuba, Porto Rico, the Hawaiian Islands, and the Philippine Islands.

In witness whereof, and of all the foregoing, the undersigned have hereunto set their names and affixed their seals this 21st day of January, 1903.

W. H. WILLS.	[SEAL.]
H. O. WILLS.	[SEAL.]
E. P. WILLS.	[SEAL.]
FREDERICK WILLS.	[SEAL.]
GEORGE A. WILLS.	[SEAL.]
H. H. WILLS.	[SEAL.]
W. M. WILLS.	[SEAL.]
C. E. LAMBERT.	[SEAL.]
J. D. PLAYER,	[SEAL.]
WALTER BUTLER.	[SEAL.]
WILLIAM G. PLAYER.	[SEAL.]
WILLIAM R. CLARK.	[SEAL.]

#### EXHIBIT 4.

*To all to whom these presents may come, greeting:*

Whereas, on September 27th, 1902, an agreement was entered into, to which agreement Ogden's, Limited, was party of the first part; The American Tobacco Company, party of the second part; Continental Tobacco Company, party of the third part; American Cigar Company, party of the fourth part; Consolidated Tobacco Company, party of the fifth part; British Tobacco Company, Limited, party of the sixth part, and The Imperial Tobacco Company (of Great Britain and Ireland), Limited, party of the seventh part; under and by the terms of which contract all the business, property, and undertaking of party of the first part were sold to party of

the seventh part, and as a part of the same transaction the business in the United Kingdom of the parties of the second, third, fourth, and fifth parts were also sold to said party of the seventh part;

To assure to said party of the seventh part the good will so thereby conveyed, all of the parties of the first six parts, each for himself and not one for any others, agreed and covenanted to and with said party of the seventh part that the covenanting party would not at any time after the transfer of the said business, except as in said contract expressly excepted, either solely or jointly with any other person or persons, company or companies, directly or indirectly, carry on or be employed, engaged or concerned or interested in the business in the United Kingdom of a tobacco manufacturer, or in any dealing in tobacco or its products therein, or sanction the use of its name in connection with any such business therein, save so far as the covenanting party should be a member of party of the seventh part, or as a member of any company manufacturing cigars in the United States, or of any other companies formed or to be formed, with the concurrence of the party of the seventh part, be interested in the business thereof or through or in connection with the party of the seventh part, and covenanted further that they would procure the following directors of some or one of them, namely: James Buchanan Duke, Benjamin Newton Duke, Thomas Fortune Ryan, John Blackwell Cobb, Williamson Whitehead Fuller, William Rees Harris, Percival Smith Hill, and Caleb Conley Dula, and would, respectively, use their best endeavors to procure such other directors as should be required by said party of the seventh part to enter into a covenant with said party of the seventh part, said The Imperial Tobacco Company of Great Britain and Ireland, Limited, similar to that entered into by said parties of the second, third, fourth, fifth, and sixth parts herein set out; and

Whereas each of the parties hereto undersigned is a director in some or one of said companies as aforesaid, to wit, Ogden's, Limited, The American Tobacco Company, Continental Tobacco Company, American Cigar Company, Consolidated Tobacco Company, and British Tobacco Company, Limited:

Now therefore for and in consideration of the premises,

and of the sum of one dollar to each of the parties hereto undersigned paid by The Imperial Tobacco Company of Great Britain and Ireland, Limited, the receipt whereof is hereby fully acknowledged, and for divers other good, valuable, and sufficient considerations, the receipt whereof is fully acknowledged, each of the parties hereto, for himself and not one for any others, hereby agrees, covenants, and binds himself to and with said The Imperial Tobacco Company of Great Britain and Ireland, Limited, that he will not at any time or times hereafter, except as hereinafter expressly excepted, either solely or jointly with any other person or persons, company or companies, directly or indirectly, carry on or be employed, engaged, concerned, or interested in the business in the United Kingdom of a tobacco manufacturer, or in any dealing in tobacco or its products therein, or sanction the use of his name in connection with any such business therein, save so far as he shall as a member of The Imperial Tobacco Company of Great Britain and Ireland, Limited, or as a member of any company manufacturing cigars in the United States, or of any other companies formed or to be formed with the concurrence of The Imperial Tobacco Company of Great Britain and Ireland, Limited, be interested in the business thereof or through or in connection with said The Imperial Tobacco Company of Great Britain and Ireland, Limited.

In this agreement the words "United Kingdom," wherever appearing, mean Great Britain and Ireland and the Isle of Man.

The words "United States," wherever appearing, mean the United States of America as now constituted, Cuba, Porto Rico, the Hawaiian Islands and the Philippine Islands.

In witness whereof, and of all the foregoing, the undersigned have hereunto set their names and affixed their seals this 21st day of January, 1903.

JAMES BUCHANAN DUKE.	[SEAL.]
WILLIAMSON WHITEHEAD FULLER.	[SEAL.]
WILLIAM REES HARRIS.	[SEAL.]
BENJAMIN NEWTON DUKE.	[SEAL.]
JOHN BLACKWELL CORR.	[SEAL.]
THOMAS FORTUNE RYAN.	[SEAL.]
PERCIVAL SMITH HILL.	[SEAL.]
CALEB CONLEY DULA.	[SEAL.]

## EXHIBIT 5.

*The Companies Acts—1862 to 1900.*

## COMPANY LIMITED BY SHARES.

## Memorandum of association of British-American Tobacco Company, Limited.

(Registered with Articles of Association.)

1. The name of the company is British-American Tobacco Company, Limited.

2. The registered office of the company will be situated in England.

3. The objects for which the company is established are:

(a) To adopt, enter into, and carry into effect, with or without modification, an agreement proposed to be made between the Imperial Tobacco Company (of Great Britain and Ireland), Limited, of the first part; Ogden's, Limited, of the second part; the American Tobacco Company, of the third part; Continental Tobacco Company, of the fourth part; American Cigar Company, of the fifth part; Consolidated Tobacco Company, of the sixth part; and Williamson Whitehead Fuller and James Inskip, on behalf of a company intended to be formed under the Companies Acts, 1862 to 1900, with the name of British-American Tobacco Company, Limited, of the seventh part.

(b) To carry on the business of growers of tobacco, manufacturers of and dealers in tobacco, cigars, cigarettes, and snuff, and any business arising out of or in connection with either or any of such commodities.

(c) To carry on, conduct, manage, develop, and prosecute any of these businesses in such manner and in such place or places, either in England or elsewhere, as the company may think requisite or proper, and generally to buy, sell, grow, cultivate, manipulate, manufacture, import, export, and deal (both wholesale and retail) in tobacco, tobacco crops, cigars, cigarettes, or other products or forms of tobacco, and also any articles or things connected with such business or commonly dealt in by tobacconists, or which are likely to be required in any shape or form by consumers of tobacco.

(d) To carry on in the United Kingdom or elsewhere the

trade or business of tobacco brokers or dealers in all its branches, including the purchase and selling of tobacco, either growing or otherwise, or any produce or form of tobacco, or the advancing of money by way of loan upon the security of or in respect of the same, or upon or against bills of lading, dock warrants, or other documents of title representing the same.

(e) To carry on, in such manner and in such place or places, either in England or elsewhere, as the company may think requisite or proper, any other business, whether manufacturing or otherwise, which may seem to the company capable of being conveniently carried on in connection with any of the above-specified objects, or calculated, directly or indirectly, to enhance the value of or render profitable any of the company's property or rights.

(f) To buy, sell, and deal in apparatus, machinery, materials, and articles of all kinds which shall be capable of being used for the purpose of any business herein mentioned, or likely to be required by customers of any such business.

(g) To purchase, take-on, lease, hire, or otherwise acquire, in the United Kingdom or elsewhere, any real or personal property, or any rights or interests therein, which the company may think necessary or convenient for effectuating any of its objects, and in particular any land, plantations, houses, factories, warehouses, plant, machinery, patents, concessions, trade-marks, trade names, copyright, licenses, stock, material, or property of any description, and to work, use, maintain and improve, sell, let, surrender, mortgage, charge, dispose of, or otherwise deal with the same or any other property of the company, including, in respect of any patent or patent rights belonging to the company, the grant of licenses or authorities to any person, corporation, trust, or company to work the same.

(h) To apply for and obtain letters patent or privileges of monopoly, either in the United Kingdom or elsewhere, for any kind of invention acquired by or in which the company is interested.

(i) To erect, maintain, or alter, on any land, any factories, drying houses, curing houses, warehouses, storehouses, or buildings for carrying on or to be used in connection with the business of the company.

(j) To purchase or otherwise acquire or undertake the



whole or any part of the business, assets, and liabilities, including shares, stock, bonds, debentures, mortgages, or other obligations, or any or either of them, of any other company, trust, corporation, or person carrying on any business which this company is authorized to carry on, or possessed of any property or right suitable for the purposes of this company, and to acquire the business of any company, corporation, or trust, if deemed expedient, by amalgamation with such company, corporation, or trust, instead of by purchase in the ordinary way.

(k) To pay for any business or undertaking, or any property or rights acquired by the company, either in cash or shares, with or without preferred or deferred rights in respect of dividend or repayment of capital, or otherwise, or by any securities which the company has power to issue, or partly in one mode and partly in another, and generally on such terms as the company shall determine.

(l) To engage in any business or transact within the limits of the company's objects, in conjunction with any other person, corporation, trust company, or firm, and to hold shares, stock, or bonds in any such company, corporation, or trust.

(m) To sell the business or undertaking of the company or any part thereof, including any shares, stock, bonds, debentures, mortgages, or other obligations or securities, or any or either of them, patents, trade-marks, trade names, copyright, licences, or authorities or any estate rights, property, privileges, or assets of any kind.

(n) To accept payment for the business or undertaking of the company or any part thereof, or for any property or rights sold or otherwise disposed of or dealt with by the company, either in cash, by instalments or otherwise, or in shares or bonds of any company, trust, or corporation with or without deferred or preferred rights in respect of dividends or repayment of capital or otherwise, or by means of a mortgage, or by debenture, debenture stock or mortgage debenture or bonds of any company, trust, or corporation, or partly in one mode and partly in another, and generally on such terms as the company determine.

(o) To promote, form, subsidize, and establish any company or companies, trusts, or corporations whose objects shall include the acquisition of all or any of the property rights

and liabilities of the company or the carrying on of any such business aforesaid.

(p) To lend money upon such terms as the company may think fit, to persons, companies, trusts, or corporations, having dealings with the company, or otherwise, upon such security as shall be thought fit, or without security, and to guarantee the performance of contracts by any such persons, companies, trusts, or corporations, and to receive money on deposit at interest or otherwise.

(q) To enter into arrangements for partnership, sharing profits, reciprocal concessions, cooperation, or otherwise, with any company, corporation, trust, or person having objects altogether or in part similar to those of this company, or carrying on, or about to carry on, any business capable of being conducted so as directly or indirectly to benefit this company.

(r) To establish or support or aid in the establishment or support of associations for the benefit of persons employed by the company.

(s) To borrow, raise, or secure money in such manner as the company shall think fit, and in particular by the issue of debentures or debenture stock, perpetual or otherwise, bonds or mortgages charged upon all or any of the property of the company (both present and future), including its uncalled capital for the time being.

(t) To draw, make, accept, endorse, discount, execute, and issue bills of exchange, promissory notes, debentures, and other negotiable or transferable instruments.

(u) To procure any parliamentary powers to enable the company to extend its object or to carry any of these objects into effect.

(v) To distribute any of the property of the company amongst the members in specie or otherwise, but so that no distribution amounting to a reduction of capital be made except with the sanction (if any) for the time being required by law.

(w) To do all or any of the above things in any part of the world, and as principals, agents, contractors, trustees or otherwise, and by or through trustees, agents, or otherwise and either alone or in conjunction with others.

(x) To do all such other things as are incidental or conducive to the above objects or any of them.

4. The liability of the members is limited.

5. The capital of the company is £6,000,000, divided into 6,000,000 shares of £1 each, with power to increase the capital and to divide the shares in the capital for the time being into several classes, and to attach thereto any preferential, deferred, qualified, or special rights, privileges, or conditions.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, addresses, and descriptions of subscribers.	Number of shares taken by each subscriber.
James Buchanan Duke, 111 5th ave., New York, presl. of the Am. Tobacco Co.	1 ord'y share.
Williamson Whitehead Fuller, 111 5th ave., New York. American counsel.	1 ord'y share.
Robert Henry Walters, Nethway, Birkdale, tobacco manufacturer.	1 ord'y share.
William Barker Ogden, "Inglenook," Blundellsand, Liverpool, tobacco mfr.	1 ord'y share.
George Alfred Wills, Leigh Woods, Bristol, tobacco manufacturer.	1 ord'y share.
William Nelson Mitchell, 3 Great Western terrace, Glasgow, tobacco mfr.	1 ord'y share.
John Dane Player, Alexandra Park, Nottingham, tobacco manufacturer.	1 ord'y share.

Dated the 27th day of September, 1902.

Witness to the signature of the above-named James Buchanan Duke, Williamson Whitehead Fuller, Robert Henry Walters, and William Barker Ogden, in the presence of—

JOSEPH HOOD,

*Solicitor, 41 Castle street, Liverpool.*

Witness to the signatures of the above-named George Alfred Wills, William Nelson Mitchell, and John Dane Player.

JAMES INSKIP, *Solicitor, Bristol.*

A true copy.

H. F. BARTLETT,

*Registrar of Joint Stock Companies.*



## EXHIBIT 6.

This indenture, made the twenty-fifth day of November, one thousand nine hundred and five, between The American Tobacco Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, one of the States of the United States of America (hereinafter referred to as "The American Company"), of the first part; The Imperial Tobacco Company (of Great Britain and Ireland), Limited, a company incorporated under the laws of the British Parliament, and having its registered office at Bedminster, Bristol (hereinafter referred to as "The Imperial Company"), of the second part, and British-American Tobacco Company, Limited, a company incorporated under the laws of the British Parliament relating to companies, and having its registered office at Cecil Chambers, 86 Strand, London, W. C. (hereinafter referred to as "British-American Company"), of the third part, witnesseth as follows:

1. The American Company, The Imperial Company, and the British-American Company shall, as from the first day of January, one thousand nine hundred and six, subject to determination by any party by six months' notice in writing, addressed to the others, to expire on the first day of January in any year, become jointly interested in the business of purchasing, treating, curing, selling, and disposing of tobacco grown in the Empire of Turkey, and the selling or disposing of such tobacco or any part thereof in any other parts of the Continent of Europe, and / or the United Kingdom, the primary object of the arrangement and joint undertaking being to purchase or otherwise acquire such quantities of Turkish and Latakia tobacco as may be required for the purpose of their respective businesses by the American Company, the Imperial Company, and British-American Company, or either of them, or their respective subsidiary companies, and for the sale and disposal of any surplus not required by any of them. Purchases for the subsidiary companies of either of the three companies shall, for the purposes hereof, be treated as purchased by the principal company.

2. Pending any other arrangement, all the operations shall be conducted under the name of The American Tobacco Company, as heretofore, and for the carrying out thereof The American Tobacco Company shall give any necessary powers of attorney.

3. The business shall be carried on at Cavalla and / or at such other place or places in the Empire of Turkey as the parties shall hereafter determine, except so far as the surplus tobacco, which may be sold or disposed of on the Continent of Europe and / or the United Kingdom as contemplated by clause 1 hereof.

4. All quantities of tobacco purchased shall, as far as possible, be allocated in the various classes, grades, and kinds as heretofore required by the American Company and its subsidiary company, the Anargyros Company, the Imperial Company, and British-American Company, and / or its subsidiary company, the Georg A. Jasmatzki Company, respectively, by the manager, representative, or representatives herein provided for who shall decide the price to be charged upon each class, grade, or kind of tobacco; and in arriving at such price or prices, as the case may be, the manager, representative, or representatives shall be guided by the ruling price on the market on the spot of similar classes, grades, and kinds of tobacco, so that upon the adjustment of each parcel the total prices shall equal the actual price paid for the parcel, and if in making such adjustment it is found that the total exceeds or is less than the actual price paid the reduction or excess, as the case may be, shall be divided fairly (on the proportionate value) as between the different parts of the parcel. Purchases shall be made for the American Company, the Imperial Company, and the British-American Company, and for their respective subsidiary companies only on requisitions made by such intending purchasers, which requisitions shall state and set out the district of production, quality—including class, grade, and kind and quantity—of tobacco required, and maximum price, and the party making such requisitions shall be obliged to receive and pay, as hereinafter provided, for tobacco purchased under and in accordance with such requisitions, provided that if the requisitions call for more tobacco of any particular district, quality, class, grade, or kind than is purchased then there shall be an abatement in proportion to the respective requisitions, and on the other hand, if there should be an excess each party shall be entitled to take its proportion of the excess, based upon the requisition, and any quantity not so taken shall be treated as surplus, and sold or otherwise disposed of. Provided further, that each party to this agreement shall be required to

accept the tobacco invoiced to it without any right to make reclamations for quality, condition, or any other cause.

Any party may, with the consent of the committee of management or the manager, representative, or representatives, purchase limited quantities of Turkish and Latakia tobacco outside the Empire of Turkey, but all such purchases shall be subject to the option of the other parties to take their proportion of the purchases, based upon the declared requirements as hereinbefore provided for in this clause. Notice, in writing, of any such purchases shall be given by the party purchasing to the others, and thereupon the other parties within a reasonable time shall elect, in writing, to take a proportion of the purchases at the proportionate cost, including all expenses and interest upon expenditure after the rate of five per centum per annum until payment or not. If the option is not exercised, then the tobacco shall be retained by the party purchasing.

5. The kinds and grades, and therefore the price of tobacco required by the different parties varying, the following shall be the method and basis of charging the expenses incidental to the buying, handling, and shipping of the different grades and kinds of tobacco, namely:

Labor .....	Specific as nearly as possible.
Stevedore .....	Value basis.
Commissions .....	Specific.
Insurance .....	Value basis.
Wrapping material.....	Specific.
Cartage and portorage.....	Oke basis (inward).
Portorage and lighterage.....	Specific on Oke basis (outward).
Interest on leaf.....	At the time of invoicing the amount of interest standing against the tobacco will be ascertained and the pro rata amount belonging to the shipment will be charged on a value basis.

Rent .....	}	To remain on the books undistributed until the close of the year, when distribution be made on the basis of the value of the using of the preceding year of Turkish and Latakia tobaccos by each of them for the purpose of making such apportionment.
General expenses.....		
Traveling expenses and salaries .....		

Each of the parties hereto shall make a report to the office at Cavalla, as early as possible in each year, of the actual quantity and value of Turkish and Latakia tobacco used by it during the preceding year and or by any of its subsidiary companies coming within the scope of this agreement. In arriving at the value for the purpose of the foregoing provision there shall be deducted by each company all duty, freight, and other expenses to get the tobacco to place of manufacture—in other words, to figure the various grades back to the cost, f. o . b. Cavalla, no deduction to be made for interest, storage, or other expenses after the tobacco is shipped, the Cavalla value being the objective basis value. Should tobacco be purchased locally the deduction will be only duty and estimated freight.

6. Payment for the tobacco purchased under this agreement (other than that purchased under the authority contained in the latter part of clause 4) or for any expense incidental to the carrying out of this agreement shall in the first instance be made by the British-American Company, who shall be at liberty to charge the other parties interest at the rate of five pounds per centum per annum on the respective amounts payable by them.

7. A statement shall be rendered and paid quarterly with liberty for the British-American Company to render statements at any time and call for earlier payment or for payment at any time, if it so elects.

8. The assets of the business hitherto carried on at Cavalla aforesaid, excepting leaf tobacco, shall, as from the first day of January, one thousand nine hundred and six, be taken to be the sum ascertained by the stock taking on the thirty-first day of December, one thousand nine hundred and five, and shall be contributed equally by the three parties.

9. The rent of the houses, warehouses, and buildings in Cavalla aforesaid, and any other buildings or premises where the business shall be carried on, and the cost of repairs and alterations and all rates, taxes, payments for insurance, and other outgoings whatsoever in respect of the same, and the salaries, wages, and remunerations of all persons employed in the said business all other monies to become payable on account of the said business, and all losses which shall happen in the same shall be paid by the parties in accordance with clause 5 hereof.

10. The business shall be managed by representatives selected by the parties hereto, and each of them shall be entitled to nominate two persons to form a committee of management, and such committee shall have the appointment of any managers, clerks, workmen, or servants required for the business, and may delegate to any manager or other representative the appointment of any clerks, workmen, or servants under him.

11. The persons at present engaged in the business in Turkey shall be taken over by the new undertaking.

12. Books of account shall be kept of the conduct of the undertaking, and proper entries made therein of all its purchases, sales, receipts, payments, engagements, transactions, and property, and the said books of account and all securities, papers, and writings shall be kept at such place or places where the business is carried on, or such other place as the committee may determine.

13. The committee of management may at any time, or from time to time, at its discretion enter into engagements to purchase leaf tobacco grown in the Empire of Turkey for any person, firm, or corporation other than the parties hereto or some one or more of their respective subsidiary companies, but such other person, firm, or corporation shall pay into the treasury of said new undertaking a sum equal to at least two and a half per centum of the total other cost of such tobacco as compensation for the services rendered by such new undertaking, to be held or distributed as herein provided for the profits generally of said new undertaking.

14. On the first day of January, one thousand nine hundred and seven, and on the first day of January in every succeeding year, a general account shall be made and taken of all sales, purchases, receipts, payments, engagements, and

transactions of the undertaking during the then preceding year, and of all capital, property, engagements, and liabilities for the time being of the undertaking.

15. The parties hereto shall be entitled to the net profits arising from the said business and remaining after the payments hereinbefore directed to be made thereout in proportion to the value of the respective purchases made by them, and if there shall be any loss they shall forthwith, after the taking of the account mentioned in the last paragraph, contribute their respective proportions of such loss. In like manner, after the taking of any such account, the parties hereto may be repaid any part of the capital not then required for the purpose of this business, or the committee of management may at any time refund to the parties hereto any part of the capital not then required.

16. This agreement is to be construed and take effect as a contract made in England and in accordance with the law of England, but to the intent that either of the said parties may sue the other in its own country, and the American Company is always to have an agent for service in England and the Imperial Company and British-American Company are always to have an agent for service in the United States, and service on any such agent of any notice, summons, order, judgment, or other process or document in respect of these articles of agreement, or any matter arising thereout shall be deemed to be good service on the party appointing such agent, and the following shall be considered to be the agents of the respective parties duly appointed under this clause, namely: For the American Company, Albert Gustavus Jeffress, of Cecil Chambers, 86 Strand, London, W. C.; for the Imperial Company, Wellford Claiborne Reed, of Richmond, Virginia, United States of America; for the British-American Company, George Garland Allen, of 111 Fifth avenue, New York, United States of America.

Notice of any appointment under this clause shall from time to time be given by the appointer to the other parties hereto. The mode of service sanctioned by this clause is not in any way to prejudice or preclude any mode of service which would be allowable if this clause were omitted.

17. Upon the determination of this agreement at any time the parties shall so far as any covenants entered into in an agreement dated the twenty-seventh day of September, one

thousand nine hundred and two, and made between the Imperial Tobacco Company (of Great Britain and Ireland), Limited, of the first part, Ogdens, Limited, of the second part, The American Tobacco Company of the third part, Continental Tobacco Company of the fourth part, American Cigar Company of the fifth part, Consolidated Tobacco Company of the sixth part, and Williamson Whitehead Fuller and James Inskip on behalf of British-American Tobacco Company, Limited (being British-American Company), of the seventh part are concerned, be, respectively, relegated to the position occupied immediately after the entering into of the said last-mentioned agreement.

In witness whereof the parties hereto have caused their respective common seals to be hereunto set and affixed the day and year first above written.

[SEAL.]

The common seal of The American Tobacco Company was hereunto affixed in the presence of—

PERCIVAL SMITH HILL,  
CALEB CONLEY DULA,  
*Directors.*

W. H. MCALISTER, *Secretary.*

[SEAL.]

The common seal of The Imperial Tobacco Company (of Great Britain and Ireland), Limited, was hereunto affixed in the presence of—

GEO. A. WILLS,  
W. D. WILLS,  
*Directors.*

H. W. GUNN, *Secretary.*

[SEAL.]

The common seal of British-American Tobacco Company, Limited, was hereunto affixed in the presence of—

LAWRENCE HIGNETT,  
JOSEPH HOOD,  
*Directors.*

C. T. HILL, *Secretary.*

#### EXHIBIT 7.

An agreement made and entered into this ninth day of September, in the year nineteen hundred and four, between The American Tobacco Company, a corporation of the State

of New Jersey, by its directors; Consolidated Tobacco Company, a corporation of said State of New Jersey, by its directors; and Continental Tobacco Company, a corporation of said State of New Jersey, by its directors:

Whereas the principal and registered office of each of said corporations in the State of New Jersey is at No. 104 First street, in the city of Jersey City, county of Hudson, and C. A. Hopman is the agent therein and in charge thereof, upon whom process against each of said corporations may be served within said State; and

Whereas said The American Tobacco Company was organized pursuant to the provisions of an act of the legislature of the State of New Jersey entitled "An Act Concerning Corporations," approved April 7, 1875, and the several supplements thereto and acts amendatory thereof; and the said Consolidated Tobacco Company and Continental Tobacco Company were organized pursuant to the provisions of an act of the legislature of the State of New Jersey entitled "An Act Concerning Corporations (revision of 1896)," and the several supplements thereto and acts amendatory thereof, and all of said corporations were organized for the purpose of carrying on business of a similar nature, to wit, the manufacture and sale of tobacco and the products thereof; and

Whereas the respective boards of directors of the said corporations deem it advisable, for the purpose of greater efficiency and economy of management, as well as for the general welfare of the said corporations, to merge and consolidate them, under and pursuant to the provisions of said act entitled "An Act Concerning Corporations (revision of 1896)," and the several supplements thereto and acts amendatory thereof;

Now, therefore, in consideration of the premises and of the mutual agreements, covenants, provisions, and grants herein contained, it is hereby agreed by and between the said parties hereto as follows:

ARTICLE I. The said The American Tobacco Company, the said Consolidated Tobacco Company, and the said Continental Tobacco Company are hereby consolidated into a single corporation, under the name of "The American Tobacco Company" (hereinafter called the "merged corporation").

ARTICLE II. The said merged corporation, in addition to the powers conferred by section 1 of the act concerning cor-



porations (revision of 1896), shall have the powers herein set out, and said merged corporation shall be subject to the limitations on said powers herein set out, to wit:

To dry and cure leaf tobacco and to buy, manufacture, sell, and otherwise deal in tobacco and the products of tobacco in any and all forms; to construct or otherwise acquire and hold, own, maintain, and operate warehouses, factories, offices, and other buildings, structures, and appliances for the drying, curing, storing, manufacture, sale, and distribution of tobacco and its products; to guarantee dividends on any shares of the capital stock of any corporation in which said merged corporation has an interest as stockholder, and to indorse or otherwise guarantee the principal and interest, or either, of any bonds, securities, or other evidence of indebtedness created by any corporation in which said merged corporation has such an interest, provided that authority for any such indorsement or guaranty be first given by resolution adopted by vote of at least two-thirds of the whole board of directors of said merged corporation; to carry on any business operations deemed by said merged corporation to be necessary or advisable in connection with any of the objects of its incorporation or in furtherance of any thereof, or tending to increase the value of its property or stock; but nothing herein set forth is to be construed to authorize the formation hereby of an insurance, safe deposit, or trust company, banking corporation, or savings bank or corporation deemed to possess any of the powers prohibited to corporations formed under the statutory provisions aforesaid; to conduct business in all other States, Territories, possessions, and dependencies of the United States of America, and in all foreign countries, and to have one or more offices out of the State of New Jersey, and to hold, purchase, mortgage, and convey real and personal property out of said State as well as therein. The said merged corporation shall have power to purchase or otherwise acquire and hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the shares of the capital stock or of any bonds, securities, or other evidences of indebtedness created by any other corporation or corporations of this or any other State or government, and to issue its own obligations in payment or in exchange therefor, or for any purpose of its incorporation, and to secure such obligations by pledge or mortgage under deed of trust or otherwise of

the shares of capital stock or bonds, securities, or other evidences of indebtedness so acquired, or of any property of the corporation. The power to make and alter by laws of said merged corporation is conferred upon the directors. The directors of said merged corporation may hold their meetings and have an office and keep the books of the corporation (except the stock and transfer books) in the city of New York or elsewhere outside of the State of New Jersey. The directors of said merged corporation shall have the power to fix and determine from time to time and to vary the sum to be reserved, over and above its capital stock paid in, as a working capital, before declaring any dividends among its stockholders, and to fix the time of declaring and paying any dividend, and the amount of any dividend shall be determined by the directors, unless otherwise provided by the by-laws of the corporation; and to direct and determine the use and disposition of any surplus or net profits or earnings over and above the capital stock paid in. All sums so reserved may be applied from time to time to the acquisition of property as the directors shall from time to time determine, and neither the property so acquired nor any of its capital stock held by the corporations shall be regarded as accumulated profits, for the purpose of declaration or payment of dividends, unless otherwise determined by the directors. In case of any increase in the number of the directors of said merged corporation, pursuant to its by-laws, which may provide for such increase by vote of the directors, vacancies in the board shall be deemed to be thereby created which the existing directors shall have the power to fill until the next election by stockholders, or until successors shall be otherwise chosen. The by-laws of said merged corporation may prescribe the number necessary to constitute a quorum of the directors, which may be less than a majority of the directors. No period is limited for the duration of said merged corporation, but its existence shall be perpetual.

ARTICLE III. The board of directors of said merged corporation shall be twenty-eight in number, and the names and places of residence of the first directors and officers thereof, who shall hold office until their successors are chosen or appointed as provided by the by-laws of said merged corporation, are as follows:



Vice-president, Percival S. Hill.....104 First st., Jersey  
City, N. J.  
Secretary, William H. McAlister.....104 First st., Jersey  
City, N. J.  
Assistant secretary, Josiah T. Wilcox.104 First st., Jersey  
City, N. J.  
Assistant secretary, Charles K. Fau-  
cette .....104 First st., Jersey  
City, N. J.  
Treasurer, John M. W. Hicks.....104 First st., Jersey  
City, N. J.

ARTICLE IV. The capital stock of the said merged corporation is one hundred and eighty million (\$180,000,000) dollars, divided into one million eight hundred thousand (1,800,000) shares of the par value of one hundred (\$100) dollars each. One million (1,000,000) shares shall be common stock and eight hundred thousand (800,000) shares shall be preferred stock. The rights of the holders of the said common stock and preferred stock, respectively, shall be as follows: The holders of the preferred stock shall be entitled to receive out of the surplus or net earnings, and the merged corporation shall be bound to pay thereon, as and when declared by the board of directors, a dividend at the rate of, but never exceeding, six (6 per cent) per centum per annum, cumulative from and after the first day of October, nineteen hundred and four, payable yearly, half-yearly, or quarterly, before any dividend shall be set apart or paid on the common stock; provided, however, that when all accrued dividends on the preferred stock have been paid, the directors shall, if in their judgment the surplus or net profits after deducting the amount of dividends to accrue on the preferred stock during the current year shall be sufficient for such purpose, have power in their discretion to declare and pay a dividend or dividends on the common stock. In case of liquidation or dissolution or distribution of assets of the said merged corporation, the holders of preferred stock shall be paid the par amount of their preferred shares and the amount of dividends accumulated and unpaid thereon before any amount shall be payable or paid to the holders of the common stock; the balance of the assets of said merged corporation shall be divided ratably among the holders of the common stock.

The preferred stock shall not confer on the holders the

right to attend or vote, either in person or by proxy, at elections of directors or at any meetings of stockholders, except meetings convened for increasing or decreasing the capital stock, dissolving the corporation, or passing upon other matters with respect to which the statute expressly gives the power to preferred stockholders to vote.

ARTICLE V. The said corporations are merged and consolidated upon the understanding and agreement that the present indebtedness of each of said corporations shall be assumed in full by the said merged corporation.

ARTICLE VI. All property, real, personal, and mixed, of the said corporations, parties hereto, shall vest in the said merged corporation immediately upon the adoption of this agreement by the stockholders of the said corporations, as provided by the provisions of the said act entitled "An Act Concerning Corporations (Revision of 1896)" and the several supplements thereto and acts amendatory thereof; but if the said merged corporation shall deem or be advised that any further assignments, assurances in the law, or things are necessary or desirable to vest the title to such property in the said merged corporation, the said corporations parties hereto shall execute and do all such assignments, assurances in the law, and things necessary to vest title to such property in said merged corporation, and otherwise to carry out the purposes of this agreement.

ARTICLE VII. The capital stock of each of the said corporations parties hereto shall be converted into the common stock, the preferred stock, or the obligations of said merged corporation, and the common stock, preferred stock, and obligations of said merged corporations shall be apportioned among the stockholders of the said corporations parties hereto according to the shares held by the respective stockholders of said corporations, and shall be delivered to them upon the surrender of their certificates of stock, as follows:

There shall be apportioned to each of the holders of the eight per cent preferred noncumulative stock of the said The American Tobacco Company, party hereto, for each share of said preferred stock of the par value of \$100 held by him the obligation or bond of the said merged corporation of one hundred and thirty-three dollars thirty-three and one-third cents (\$133.33 1-3), in gold coin of the United States of the present standard of weight and fineness, due and payable on

the first day of October, 1944, at the office or agency of the said merged corporation in the city of New York, with interest thereon from October 1, 1904, at the rate of six (6 per cent) per centum per annum, said interest to be payable to the holder of such bond or obligation, or to the holder of a coupon representing such interest, at said office or agency in like gold coin, semiannually, on the first days of April and October in each year. Said bonds shall be issued in such denominations as the merged corporation shall see fit, and they shall, along with the bonds provided for in the next paragraph hereof, constitute a first charge upon the income and property of the merged corporation. There shall also be paid to the holders of said preferred stock of said The American Tobacco Company, party hereto, in lieu of dividend, an amount in cash equal to two dollars for each share of said preferred stock held by him.

There shall be apportioned to each of the holders of the seven per cent noncumulative preferred stock of said Continental Tobacco Company, party hereto, for each share of said preferred stock of the par value of \$100 held by him the obligation or bond of said merged corporation for one hundred and sixteen dollars sixty-six and two-thirds cents (\$116.66 2-3) in gold coin of the United States of the present standard of weight and fineness, due and payable on the first day of October, 1944, at the office or agency of the said merged corporation in the City of New York, with interest thereon from October 1, 1904, at the rate of six (6 per cent) per centum per annum, said interest to be payable to the holder of such bond or obligation, or to the holder of a coupon representing such interest, at said office or agency in like gold coin, semiannually, on the first days of April and October in each year. Said bonds shall be issued in such denominations as the merged corporation shall see fit, and they shall, along with the bonds provided for in the next preceding paragraph, constitute a first charge upon the income and property of the merged corporation. The holders of the said preferred stock of said Continental Tobacco Company, party hereto, shall also be entitled to receive and enjoy the dividend of one and three-quarters (1 3-4 per cent) per centum already declared on said preferred stock payable October 3, 1904.

There shall be apportioned to each of the holders of the common stock of said The American Tobacco Company, par-

ty hereto, for each two shares of said common stock of the par value of \$50 each held by him one share of the common stock of said merged corporation.

There shall be apportioned to each of the holders of the common stock of said Continental Tobacco Company, party hereto, for each share of said common stock of the par value of \$100 held by him, one share of the common stock of the said merged corporation.

There shall be apportioned to each holder of the stock of said Consolidated Tobacco Company, party hereto, for each share of said stock of the par value of \$100 held by him, one share of the common stock of said merged corporation.

By the act of merger the stocks of all the companies parties hereto held by any of the companies parties hereto shall stand and be canceled.

The preferred stock of the merged corporation herein provided for may be issued for the redemption and retirement at par of debts that by the act of merger become the debts of said merged corporation, and such preferred stock shall be issued only for such redemption or at par for cash to be used in such redemption.

ARTICLE VIII. The Morton Trust Company, of the city of New York, is hereby appointed the transfer agent of the stock and obligations of the said merged corporation in the city of New York, and the Farmers' Loan and Trust Company, of the city of New York, is hereby appointed registrar of the stock of said merged corporation; and any stockholder of any of the said corporations, parties hereto, upon presenting to the said transfer agent his certificate of stock and surrendering the same to be cancelled, shall be entitled to receive a certificate for the proper number of shares of the capital stock of said merged corporation, or to the bond or obligation of said merged corporation, pursuant to Article VII of this agreement.

ARTICLE IX. The said merged corporation shall pay all expenses of consolidation and all preliminary expenses, including legal expenses.

ARTICLE X. The principal and registered office of said merged corporation in the State of New Jersey is at No. 104 First street, city of Jersey City, county of Hudson, and C. A. Hopman is the agent therein and in charge thereof, upon

whom process against said merged corporation within the State of New Jersey may be served.

In witness whereof, the said parties to this agreement have, in pursuance of a resolution passed by the board of directors of each of the said corporations, at a regular meeting of the board of directors of each of said corporations, at which a quorum was present, caused the respective corporate seals of said corporations to be hereto affixed and these presents to be signed by their respective presidents or first vice-presidents and attested by their respective secretaries, all duly authorized thereto, the day and year first above written.

[SEAL.]

THE AMERICAN TOBACCO COMPANY,  
By PERCIVAL S. HILL,

*First Vice-President.*

Attest:

CHARLES N. STROTZ, *Secretary.*

[SEAL.]

CONSOLIDATED TOBACCO COMPANY,  
By JAMES B. DUKE, *President.*

Attest:

CHARLES S. KEENE, *Secretary.*

[SEAL.]

CONTINENTAL TOBACCO COMPANY,  
By CHARLES E. HALLIWELL,

*First Vice-President.*

Attest:

WILLIAM H. MCALISTER, *Secretary.*