

IN THE MATTER OF
THOMAS E. POWE AND F. C. HARRINGTON, PARTNERS
DOING BUSINESS UNDER THE FIRM NAME AND STYLE
THOMAS E. POWE LUMBER COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER
26, 1914

Docket 1281—July 15, 1926

SYLLABUS.

Where a firm engaged in the sale of lumber and other wood products to lumber dealers and manufacturers of furniture, cabinet work and allied products, sold and advertised as "Philippine Mahogany" and as "lauan mahogany," woods long known, sold and traded in in the Philippine Islands and in the United States as lauau and tanguile, and in its advertisements and correspondence with customers and prospective customers advocated the use of the woods in question for the manufacture of products to be sold and guaranteed as genuine mahogany, the fact being that the woods in question were the product of a different tree family than genuine mahogany, lacked many characteristics possessed by mahogany which prevented them from serving certain uses to which mahogany is put, were not mahogany, either botanically or otherwise, and were sold at from one-third to two-thirds the price of genuine mahogany, and that the sale of said woods as mahogany in the Philippine Islands was not permitted by the Philippine Government; with the effect of causing many dealers in furniture, cabinet work and related commodities to purchase said woods as and for mahogany, and sell to retail dealers commodities made therefrom as and for mahogany, and thereby cause said retail dealers and eventually the consuming public to purchase such commodities in the mistaken belief thereby induced, and with the effect of diverting business from and otherwise prejudicing competitors dealing in genuine mahogany rightfully and truthfully represented as such and of deceiving and injuring the purchasing public in substantial numbers and inducing the purchase of products made from the aforesaid woods and sold at prices prevailing for genuine mahogany products, as and for such products:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. M. Markham Flannery for the Commission.

Forbes & Daniels, of Washington, D. C., for respondents.

Major F. G. Munson, Judge Advocate, U. S. A., of Washington, D. C., for Philippine Government, intervenor.

Mr. Gilbert H. Montague, of New York City, for Mahogany Association, intervenor.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a partnership engaged in the sale of lumber and other wood products to dealers in lumber and manufacturers of furniture, cabinet work and allied products, in the various States, and with place of business in St. Louis, with misrepresenting products and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that, for more than one year prior to the complaint respondents offered and sold as and for mahogany, lumber and other wood products, consisting of woods other than mahogany, though resembling it in general appearance, representing said lumber and other products as "mahogany," "lauan mahogany," and other purported species, and kinds of mahogany in advertisements, circular letters, and other correspondence with vendees and prospective vendees, and upon their letterheads, billheads, invoices, price lists and other trade literature, and representing the same as genuine mahogany to such vendees; with the effect of causing many such dealers and manufacturers to purchase said lumber and other products as and for mahogany, and to manufacture therefrom and to sell to wholesale and retail dealers articles of furniture, etc., as and for mahogany, and thus cause such dealers and eventually the consuming public to purchase the same, and of diverting business from and otherwise prejudicing many competitors dealing in genuine mahogany lumber and mahogany products, "who do not include any other kind of wood than mahogany in their advertisements or representations of mahogany wood, and who otherwise properly and truthfully represent the lumber and other wood products which they offer for sale"; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondents, Thomas E. Powe and F. C. Harrington, partners, doing business under the firm name and style, Thomas E. Powe Lumber Co., charging them with unfair methods of competition in commerce in violation of the said act.

Respondents having entered their appearance by their attorney, and having filed their answer herein, and the Philippine Government, intervenor, having entered its appearance by its attorney and

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filed special answer herein, hearings were held before an examiner of the Federal Trade Commission heretofore duly appointed, and testimony was thereupon offered and received in support of the allegations of said complaint and in support of the allegations of said answer of respondents, and thereupon this proceeding came on for decision, and the Commission having duly considered the record, and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents are partners doing business under the firm name and style, Thomas E. Powe Lumber Co., with their place of business in the city of St. Louis, State of Missouri. They are engaged in the sale of lumber and other wood products to dealers in lumber and manufacturers of furniture, cabinet work and allied products, located at points in various States of the United States. They cause said commodities when so sold to be transported from their said place of business in the city of St. Louis, Mo., into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of their said business respondents are in competition with other individuals, partnerships and corporations engaged in the sale of lumber and wood products in commerce between and among various States of the United States.

PAR. 2. The wood advertised and sold by respondents as mahogany grows in and is imported from the Philippine Islands. This wood for years has been known, sold, and traded in in the Philippine Islands and in the United States under the trade names or common names, lauan and tanguile. Both of said woods are the product of the tree family scientifically known as Dipterocarpaceae. During Spanish and after American occupation, the Bureau of Forestry of the Philippine Islands officially classified woods according to their uses. In the first group are placed the cabinet woods. In the third group are placed construction woods, among them lauan and tanguile. These have never been recognized or classified by the Philippine Government as cabinet woods.

The Philippine Government does not permit lauan or tanguile to be sold in the Philippine Islands as mahogany. For years the Philippine Government officially opposed the practice of certain American importers of selling lauan and tanguile in the United States under the name "Philippine Mahogany," and took the position that tanguile and red lauan belong to the Dipterocarpaceae family of trees and are not related to mahogany. Further, that any

willful misstatements concerning these woods would be used to the disadvantage of the Philippine Islands, and that the practice of advertising and selling so-called "Philippine Mahogany," amounts to selling products of the Philippines under false pretenses; that so-called "Philippine Mahogany" in no way reaches the measure of value of true mahogany. "That the woods in question are not in fact mahogany and the sale thereof as mahogany will naturally injure the Philippine lumber trade if continued." Active opposition on the part of officials of the Philippine Government abated about 1916, but a few months prior to the starting of the investigation of this matter by the Federal Trade Commission a statement by the forester of the Philippine Government, published in the *Hardwood Record*, a trade journal, deplored the selling of Philippine wood as true mahogany, "a practice which always will be opposed by the Bureau of Forestry of the Philippine Government both because of the false pretenses and because of the fact that the Philippine woods have sufficient good qualities to stand on their own merits."

The term "Philippine Mahogany" was first applied to the wood commonly called narra which, although "too valuable" to be imported into the United States "is inferior to mahogany on account of its porosity." Later, said term "was applied at times to tanguile and red lauan."

Narra was referred to in a literary way by an English author in 1870 as "the mahogany of the Philippines," but the term "Philippine Mahogany" was not used prior to the American occupation. Its use prior to 1901, even as applied to narra, "which was the prized cabinet wood under Spanish occupation," was exceedingly limited. When the large lumbering concerns started operations in 1904, the propaganda from this source in advertisements and use of the term "Philippine Mahogany" was such as to cause the then Director of Forestry of the Bureau of Forestry of the Philippine Islands to voice a protest on the ground that purchasers might be defrauded. The Annual Report of the Director of Forestry for the fiscal year ending June 30, 1913, denounced the term as "spurious."

PAR. 3. Mahogany is the product of certain species of the mahogany tree family scientifically called "meliaceae." These particular species grow principally in the West Indies, southern Florida, southern Mexico, Central America, Venezuela, and Peru. No species of the mahogany tree family from which mahogany wood is produced grows in the Philippine Islands. The several woods sold as "Philippine Mahogany" are the products of different tree families, neither of which are more closely related to the mahogany tree family than are the tree families which produce birch and oak.

PAR. 4. While many widely different kinds of woods have some properties and characteristics in common, it is the difference in these characteristics which distinguishes one wood from another. Woods have no natural properties or characteristics which are not botanical, and wood of one kind can be distinguished from wood of another kind by botanical properties and characteristics only. The laborer in the lumber yard who, having no knowledge of botany, distinguishes between the various kinds of woods which he handles, and whether his method consists in recognizing the grain, pore, scent, weight, or other identifications, whether conscious of it or not, he is using botanical characteristics placed in the wood as it was formed in the tree, and these correspond with like characteristics placed by nature in every tree of the same species. Wood technologists by reason of their expert knowledge compare these and many other properties and characteristics with such precise results as to satisfy the requirements of both science and commerce, and according to such identifications neither lauan nor tanguile are mahogany botanically or otherwise.

In commerce when a question arises as to whether wood is one kind or another, the matter is submitted to a wood technologist for determination. A wood technologist officially identifies wood according to the species, genus, tribe and family, as classified, established and agreed upon by botanists. The United States Department of Agriculture, in its forest products laboratory at Madison, Wis., constantly and officially determines for those engaged in commerce the question whether wood is of one kind or another. Mr. Samuel J. Record, professor, forest products, Yale University, Mr. Arthur B. Recknagel, of Cornell University, and other wood technologists, frequently perform such service.

Aside from the scientific and more specific identifications used by wood technologists many characteristics possessed by mahogany are lacking in lauan and tanguile, which are sold by respondents as mahogany under the name "Philippine Mahogany." The absence of these characteristics prevents lauan and tanguile from serving certain uses to which mahogany is put. Some of these are: Lauan and tanguile are taken out of the cabinet wood market because of the great prevalence of wormholes which constitutes serious defects in all Philippine woods; they are used for the manufacture of cloth-covered caskets in order that manufacturers "can say they are mahogany"; they can not be used in the construction of lamps as they finish too badly; they are too soft to be used as flooring; they are not susceptible to the finish required by piano manufacturers on the exposed surface of pianos, and can not be used for such a purpose;

where used in furniture the finish at times finally sinks into the wormholes; they are not suitable for carving; they require rules for grading different from rules under which mahogany is graded, and such rules are provided by the hardwood associations.

PAR. 5. Railroads of the official classification territory in or about March, 1920, placed woods of the type sold by respondents as "Philippine Mahogany" into the same classification with mahogany wood for the purpose of making railroad freight rates. The Indiana Quartered Oak Co., and Black & Yates, Inc., two of the larger distributors of this so-called "Philippine Mahogany," filed with the Interstate Commerce Commission a complaint against said railroads for so classifying said woods, which resulted in the railroads charging for the transportation of "Philippine Mahogany" the same freight rates as charged for the transportation of African mahogany, Mexican mahogany, ebony, lignum vitae and rosewood. Said complaint alleged in effect that African mahogany, Mexican mahogany, ebony, lignum vitae and rosewood are higher in value than "Philippine Mahogany" and do not come into extensive competition with "Philippine Mahogany"; that "Philippine Mahogany" is a substitute for true mahogany and somewhat resembles it; that to require "Philippine Mahogany" to bear freight rates equal to that borne by mahogany, ebony, lignum vitae and rosewood is unjust and unreasonable, for the reasons, among others, that "Philippine Mahogany" closely resembles in value, in its nature and in the purposes for which it is used and for all other practical considerations that should govern classification for transportation, such woods as oak, birch, poplar (white wood), white cedar and white pine; that only about 15 per cent of the logs cut in the Philippine Islands producing the type of wood sold by respondents as "Philippine Mahogany" are of grade sufficiently good to justify exporting, and only 2 or 3 per cent of said 15 per cent can be classed as cabinet woods, and that all of the rest of said Philippine mahogany has the defect of wormholes and must be sold in the United States at about 30 per cent under the market price of true mahogany, or sold at a price sufficiently low "to induce buyers to take it and then try to conceal the wormholes with a filler."

PAR. 6. The respondents have for more than ten years operated plants or mills and yards in the States of Missouri, Arkansas, and Alabama, and purchase and sell annually more than three-quarters of a million feet of lauan and tanguile as "Philippine Mahogany." Said lumber was purchased from firms located in the State of New York and elsewhere, the same having been previously imported from the Philippine Islands. To induce the sale of lauan and tanguile

under the name "Philippine Mahogany," respondents advertised in other ways by means of circular letters and correspondence, which were sent by them to the trade generally. In such advertisements and correspondence, respondents advised customers and prospective customers and the public generally that they could guarantee products made from these woods as products made of "genuine mahogany," one of such circular letters, like many others of the same tenor was broadly circulated throughout the several States, and reads in part as follows:

Would you like to be in a position of guaranteeing to your trade that your products are made of GENUINE MAHOGANY?

Can we interest you in mahogany lumber at a price that will allow you to use it along with quartered white oak, red birch and other domestic woods—and still give you real mahogany—a wood that needs no imitation—no false staining—and a genuine mahogany grain after it comes from the finishing room?

* * * Our LAUAN MAHOGANY fills a long-felt want.

WHAT IS LAUAN MAHOGANY? A mahogany cut exclusively in the Philippine Islands, imported by us direct. A mahogany of exceptional value, gaining popularity not only in the U. S., but other countries as well. * * *

* * * the more you use of our stock—the more the saving we can effect you in your mahogany purposes.

Among various shipments by respondents are shipments to a furniture manufacturer located at Indianapolis, Ind., and to a lumber dealer at Louisville, Ky.

The furniture manufacturing concern at Indianapolis, Ind., purchased from respondents wood as described above and advertised, and in turn said concern manufactured these woods into products which it advertised and sold in the State of Ohio and other States, as and for products made of mahogany wood.

PAR. 7. A retail furniture dealer of Columbus, Ohio, made purchases from said manufacturer located at Indianapolis, Ind., consisting of a sectional bookcase. This item was accompanied in said manufacturer's catalog by information showing different prices for "Mahogany" and for "Imitation Mahogany." The order was placed for the mahogany piece and a price higher than that asked for imitation mahogany was paid. After delivery samples were sawed from the bookcase and sent to the United States Department of Agriculture, Forest Service, Forest Products Laboratory, at Madison, Wis., and there identified as Shorea. Shorea is of the Dipterocarpaceae tree family and is not mahogany, nor is it of the mahogany family.

Other furniture advertised and sold as mahogany by said manufacturer at Indianapolis, Ind., is made not of mahogany but of

lauan or tanguile, sold by respondents as mahogany in accordance with the letter hereinabove set out in part.

PAR. 8. The lumber dealer referred to in paragraph 6 hereof, and located at Louisville, Ky., refused to continue to handle lauau and tanguile sold by respondents as "Philippine Mahogany," because the name "Mahogany" applied to this wood which is not mahogany caused confusion in the minds of their customers.

Due to the interruption of commercial shipping to and from Atlantic ports during the period of the world war, mahogany was difficult to secure. Manufacturers of mahogany furniture then began to use gum wood and birch wood which they stained to imitate mahogany, and sold products made therefrom as mahogany products. When shipping conditions were relieved and they had gradually ceased to use these domestic woods as substitutes for mahogany, letters such as referred to above were circulated by respondents.

PAR. 9. The aforesaid representations made by respondents have had and now have the capacity and tendency to, and did and do, cause many dealers in furniture, cabinet work and related commodities to purchase said wood products in the belief that the same consist of mahogany wood, and to sell to retail dealers articles of furniture, cabinet work and related commodities as and for articles of mahogany wood, and thus to cause said dealers and eventually the consuming public to purchase furniture, cabinet work, and other articles made of said lumber and wood products in the belief that the articles so purchased are made of mahogany wood.

PAR. 10. About 85 per cent of the Philippine woods sold as "Philippine Mahogany," imported into the United States by way of the Pacific coast ports, is imported under the trade or native names, lauau, tanguile, almon, bataau and apitong. Some importers sell these woods to lumber dealers, manufacturers and others under their native or trade names. But importers, generally, so sell it as "Philippine Mahogany." After the sale by the importers the word "Philippine" is omitted, the manufactured product is sold to retail furniture dealers as "Mahogany," "Genuine Mahogany," or "Solid Mahogany." The word "Philippine," if it remained as part of the designation until the product was sold to the ultimate purchaser, would not be notice to the ultimate purchaser that so-called "Philippine Mahogany" is not mahogany.

PAR. 11. Mahogany is practically always sold to dealers in lumber and to manufacturers under names indicating origin, such as "Honduras Mahogany," "Mexican Mahogany," "Cuban Mahogany,"

etc. These prefixes in the form of geographical names are understood by the trade and by the general public to mean that the particular mahogany so designated comes from the country or place known by the geographical name so prefixed. Likewise, the term "Philippine Mahogany" indicates to the mind of the average purchaser that such wood is mahogany wood grown in the Philippine Islands.

Fifty per cent of the retail lumber dealers throughout the United States would be deceived if, on ordering so-called "Philippine Mahogany," they received either tanguile or lauan. Ultimate purchasers of furniture have a definite idea of what mahogany is and know it as a wood of high reputation which is manufactured into the finer and higher priced grades of the best furniture.

PAR. 12. The reputation of mahogany is familiar to the average ultimate purchaser of furniture and the association of such reputation with this household word mahogany finds its origin in recollections of, and association with, objects of furniture familiar to them since childhood, such as a piano or other furniture handed down from generation to generation, and when such purchaser is offered products made of so-called "Philippine Mahogany" he is deceived by receiving furniture, boats, baskets or interior trim for his home made of wood which is not mahogany. The ultimate purchasers of such products, except in rare instances, never heard the term "Philippine Mahogany," but when they did hear it they were led into the belief that it meant mahogany, not a substitute.

In buying furniture the ultimate purchasers depend upon the representations made to them by the retail dealers from whom they purchase furniture as to whether the furniture offered for sale is or is not made of mahogany wood.

PAR. 13. Persons engaged in buying furniture for large retail furniture stores in practically every city of the United States almost without exception depend on the representations made to them by manufacturers as to the kind of wood entering into the furniture they purchase. Furniture purchased by retail dealers is ordered largely from photographs and catalogues, and at times from samples. If the furniture is represented by the manufacturer to be made of mahogany wood, and invoiced as mahogany furniture, retail dealers in practically every city of the United States sell such furniture to ultimate purchasers as and for mahogany furniture. Furniture is never represented to retail dealers as made of "Philippine Mahogany," nor sold by them under that description. Prefixes such as "Honduras," "San Domingo," and "Cuban," used by manufacturers and importers, are seldom if ever used in the retail furniture

trade. But the purchasing public, having in mind the reputation which mahogany has borne for hundreds of years, depend on retail dealers to supply mahogany if that is the kind of furniture asked for. Such buyers have seldom heard the term "Philippine Mahogany." Very few have ever knowingly seen the wood sold by respondents as "Philippine Mahogany," and fewer still are aware that they have bought such wood and sold it as mahogany.

PAR. 14. Many of the retail dealers of the class referred to in paragraph 13 hereof do buy furniture from such manufacturers as described in said paragraph, which furniture is made of lauan or tanguile and is sold by said retail dealers to the public as and for mahogany. Among others, the proprietor of a retail furniture store at Cleveland, Ohio, in the regular course of his business purchases furniture from various manufacturing concerns, among which is a company located at Jamestown, N. Y. From the catalogue of this company he has in the past and does now purchase tables which are described therein as having "solid mahogany tops." From such catalogue he has, in accordance with the circumstances just related, bought items of furniture, depending on the representations and descriptions shown in said catalogue in connection with each piece, and so relying thereon has sold said tables to customers as and for tables having tops of solid mahogany wood. Such table tops were not made of mahogany but were made of tanguile or lauan.

Another customer of the said manufacturer at Jamestown a retail dealer at Boston, ordered from a catalogue circulated by said manufacturer a table therein advertised as a "solid mahogany sewing table." The retail dealer at Boston expected to receive "what is called mahogany; what the manufacturers list as mahogany" and which is "supposed to be the best mahogany wood used in the manufacture of better lines of furniture, and also cabinet work." Samples were sawed from this table, submitted to the United States Products Laboratory, and there identified as belonging to the genus Shorea, which grows in the Philippine Islands and is not mahogany.

PAR. 15. Another manufacturing company of Jamestown, N. Y., manufactured mahogany furniture for fifty years and built up a reputation on the sale of mahogany. It began to use so-called "Philippine Mahogany" about ten years ago. It sells products which it manufactures therefrom as products made of "solid mahogany."

The wood which dealers, manufacturers and consumers understand and have in mind when they want mahogany or believe something is mahogany is now and has always been the wood derived from trees which belong to the meliaceae or mahogany family.

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Lauan and tanguile and other woods sold by respondents under the name of "Philippine Mahogany" are not what dealers, manufacturers and ultimate purchasers have in mind when they want mahogany or what they believe is mahogany.

PAR. 16. A number of manufacturers engaged for the last few years in manufacturing furniture of lauan or tanguile, called by some "Philippine Mahogany," have built up their reputation during periods of 18 to 40 years by manufacturing and selling to retail dealers furniture made of mahogany wood. This so-called "Philippine Mahogany" is at times represented to manufacturers as mahogany which comes from the Philippine Islands. The name mahogany is regarded by such manufacturers as essential to the successful sale of furniture made of lauan and tanguile. Some manufacturers who have over long periods of years built up a reputation by manufacturing furniture made of mahogany wood are now substituting lauan and tanguile therefor in the manufacture of such furniture. The manufacturing company at Jamestown, N. Y., referred to in the preceding paragraph, is engaged in manufacturing tables exclusively of so-called "Philippine Mahogany," which it has been using since 1919. These tables it advertises and sells as "solid mahogany." This company has been in business for fifteen years, during thirteen of which it built up a reputation by manufacturing furniture out of mahogany wood. So-called "Philippine Mahogany" is regarded by this company to be as good as any other mahogany insofar as looks are concerned. The ordinary dealer to whom it sells furniture made of so-called "Philippine Mahogany" is not aware that he is receiving a substitute for mahogany, and does not know the difference after it is stained and finished.

PAR. 17. An ultimate purchaser located at Portland, Oreg., was acquainted with the reputation of mahogany and the fact that it takes a high polish and increases in beauty with age; said purchaser ordered mahogany lumber from a lumber dealer and expected to receive the mahogany with which he was acquainted; that said purchaser was sold and received lumber which was not mahogany, since it was not of the meliaceae or mahogany family but was Shorea, and was wood of the type sold by respondents as "Philippine Mahogany" and represented by them to be mahogany.

PAR. 18. A furniture manufacturer of Belleville, Ill., made inquiry, on or about May 1, 1925, for the purchase of mahogany lumber from a lumber company dealing in hardwoods in Kansas City, Mo.; said company agreed to sell said customer mahogany lumber and subsequently sold and delivered to said customer lumber which it designated "3-Star Philippine Mahogany"; said customer purchased and

received said lumber, believing that he was purchasing and receiving the mahogany wood which he has known for over twenty-five years to be the wood with a reputation as a fine cabinet wood, which reputation has been maintained by mahogany for hundreds of years; thereafter said lumber warped and twisted contrary to said customer's former experience with mahogany wood. Said lumber was not mahogany since it was not of the meliaceae family but was Shorea, and was of the same type of wood sold by respondents as "Philippine Mahogany" and represented by them to be mahogany.

PAR. 19. Lauan and tanguile, the woods sold by respondents as "Philippine Mahogany," are sold for from two-thirds to one-third of the price at which mahogany is sold. Products made from lauau and tanguile, and sold as "solid mahogany" or "genuine mahogany," are sold at the same price to retail dealers as are similar products made of mahogany.

PAR. 20. Many of the importers and a substantial number of lumber dealers and manufacturers in this country use and deal in the woods of the type which respondents sell as "Philippine Mahogany" but under the native or common names such as red lauau, white lauau, tanguile, bataau, lamao, almon, orion, batang, bagaac, batac and balacbacan.

Said native or common names are generally employed by the trade and public in the Philippine Islands and the Philippine Government designates said woods by said native and common names in the certificates of origin governing the exportation of said woods from the Philippine Islands.

PAR. 21. There is no scarcity of the available supply of mahogany. The supply is amply sufficient for many years in the future. Birch has been used as a substitute for mahogany for more than one hundred years.

PAR. 22. There are among the competitors of respondents in commerce among the several States many who deal in and sell lumber and other wood products consisting of mahogany who rightfully and truthfully represent their said lumber and other wood products to be composed of mahogany wood, and the above alleged acts and practices of respondents tend to and do divert business from and otherwise prejudice said competitors.

PAR. 23. The sale of the woods lauau and tanguile by respondents to its customers and ultimately to the purchasing public under the name mahogany as hereinbefore described, has the tendency and capacity to and does deceive and injure the purchasing public in substantial numbers and induces the ordinary purchaser of products

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made from such woods to purchase said products as and for products made of mahogany wood, or in part of mahogany wood, to the injury and prejudice of the purchasing public.

CONCLUSION

The practices of said respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, and testimony and evidence submitted, the trial examiner's report upon the facts and exceptions thereto, and briefs and oral argument, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

Now, therefore, it is ordered, That the respondents, Thomas E. Powe and F. C. Harrington, partners, doing business under the firm name and style, Thomas E. Powe Lumber Co., its officers, agents, employees, and successors, do cease and desist from advertising, describing or otherwise designating or selling or offering for sale, under the term "Mahogany," "Philippine Mahogany," or any other term of similar import, woods known under the common or trade names, "red lauan," "white lauan," "tanguile," "narra," "apitong," "bataa," "lamao," "almon," "orion," "batang," "bagaac," "batak" and "balacbacan," or any other wood, lumber or wood products, unless such wood or lumber, or the wood from which such products are made, is derived from the trees of the Mahogany or Meliaceae family.

It is further ordered, That the respondents, Thomas E. Powe and F. C. Harrington, partners, doing business under the firm name and style, Thomas E. Powe Lumber Co., shall within sixty days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

Dissenting opinion of Commissioner Humphrey

I agree with the majority that the word mahogany should not be applied to the woods of that species from the Philippine Islands without the prefix "Philippine." This would be in accordance with the common usage, as in the trade it is customary to say "African Mahogany," "Honduras Mahogany," "Mexican Mahogany," "Cuban Mahogany," etc.

If the majority is consistent, it appears to me that it will at once proceed against the Mahogany association for using the term "African Mahogany," as this wood, like the Philippine product, is not mahogany botanically.

GOVERNMENT AUTHORITIES HAVE RULED THAT THE TERM PHILIPPINE
MAHOGANY IS CORRECT

The Hardwood Lumber Association, in 1916, classified the wood in controversy as "Philippine Mahogany." The Forest Service of the United States, when the matter was submitted to them in September, 1914, after a thorough consideration of it, endorsed the use of the term "Philippine Mahogany." The Department of Commerce has long used the term "Philippine Mahogany" in its reports. The Interstate Commerce Commission, in a controversy involving the question, after full hearing on the record and brief in the case of, *Indiana Quartered Oak Co. v. Atlantic City Ry. Co.*, approved the use of the term "Philippine Mahogany." The following quotations are from that decision:

The term mahogany applies to woods in two senses, the botanical sense and the commercial sense.

* * * * *

Mahogany in the commercial sense includes chiefly (a) Mexican and Cuban mahoganies, which are true mahoganies in the botanical sense and very valuable woods; (b) African mahogany, which is not a true mahogany in the botanical sense, but which grows large and clear, has a fine figure and is suitable for veneers; (c) baywood, which is a true mahogany in the botanical sense but, on account of its soft inferior quality, less valuable than other species; and (d) Philippine mahogany, which is not a true mahogany in the botanical sense. Philippine mahogany is classified by the United States Forestry Bureau as a commercial mahogany.

Apparently the majority is of the opinion that one of the chief functions of the Commission is to correct the opinions and rules of the other departments of the Government; more particularly to correct the errors made by the Agricultural Department, the Department of Justice, the Department of Commerce, and the Interstate Commerce Commission. I am constrained to believe that Con-

gress never intended the Federal Trade Commission to be a super court to reverse the rules of other departments, a power that the Supreme Court has decided neither it nor any other court possesses. This is expressly declared in many decisions. *Houston et al. v. St. Louis Independent Packing Co.*, 249 U. S., 479-487. *Brougham v. Blanton Mfg. Co.*, 249 U. S., 495-502.

NO PUBLIC INTEREST

No public interest appears in this case. The reason of complaint herein is not because the user does not know what he is buying, but because he does know. It is a controversy entirely between the Mahogany Association and the users of Philippine Mahogany. There is no substantial evidence in the record that any ultimate consumer of Philippine Mahogany has either been deceived or has complained that he has been defrauded.

The "milk in the cocoanut" in this controversy is that Philippine Mahogany, being a product of one of our insular possessions, is admitted into this country free of duty, and this fact together with the fact that it grows in considerable bodies instead of single trees, as other mahoganies, enables it to be sold in the United States at a lower price than the other mahoganies, and its qualities are so appealing that it is becoming a serious competitor of the Mahogany Association.

To prevent the use of the term "Philippine Mahogany" in this case will not protect the public, because it is not injured and has not complained. Only its competitor objects to its use. It will not be in the public interest because it will tend to give the Mahogany Association a monopoly of the American markets; will tend to increase the price of mahogany to the consumer, and would greatly injure the Philippine mahogany industry in this country, and more greatly injure it in the Philippine Islands.

There is another fact, that while it is not a legal reason, should have consideration as bearing upon the public interest, and that is, the Philippine mahogany industry both in this country and in the Philippines is conducted almost exclusively by Americans and is one of the chief products of the Philippine Islands, and one of the chief products making up the cargoes of American ships coming in from the Philippines to the United States.

WHAT IS MAHOGANY?

What is mahogany as applied to wood? Is it the wood from the tree botanically known as mahogany? It is. But to restrict it to

such meaning is false and misleading. Mahogany wood or lumber may or may not be produced from the tree botanically classified as mahogany. A tree is usually classified from its flower or seed botanically. A wood is classified according to its qualities—not from the botanical name of the tree from which it is produced. Botanically the wood in dispute is not mahogany—commercially it is. To apply its botanical classification to its commercial use is wholly misleading. Botanical classification has nothing whatever to do with the commercial classification of the wood in controversy. The botanical classification of this wood is not involved in the issues of this case, and the only result of discussing the botanical classification is to confuse and mislead. Below are cited some definitions as to what constitutes mahogany:

MAHOGANY

Botanically: A tropical American meliaceaceous tree (*Swietenia mahagoni*), with pinnate leaves and panicles of small greenish flowers.—*Webster's Dictionary*.

The valuable hardwood of this tree, used extensively for furniture and cabinet work.—*Webster's Dictionary*.

Commercially: Any of many trees related to, or resembling the mahogany; as in Australia, species of *Eucalyptus*; in India, various meliaceaceous trees of the genera *Soymida*, *Chrkrassia*, and *Tona*; in Africa, *Khaya senegalensis*; in the United States, *Rhus integrifolia*, species of *Cercocarpus*, etc.—*Webster's Dictionary* (*italics mine*).

Applied chiefly with qualifications to various woods resembling mahogany and to the trees producing them.—*New English Dictionary and History of 1903*.

Mahogany, the popular name for timber of several unrelated trees, among which are various species of *Eucalyptus*.—*Encyclopedia Americana*, 1903 edition.

I would be unable to describe the wood without calling it mahogany, because it has the looks, the appearance, the grain, and all of the things that go to make up mahogany.—*Witness Sands, Seattle, Rec.*, p. 15.

The furniture trade considers African, Mexican, Philippine and Honduras all mahogany.—*Witness—Rec.* p. 284.

These authorities show the conclusive soundness of the ruling of the various Departments of Government referred to herein.

DOES THE PHILIPPINE PRODUCT HAVE THE QUALITIES OF MAHOGANY?

Does the Philippine Mahogany, as Webster says, "resemble" mahogany? It seems to me that the Commission's attorneys are hardly in a position to deny that the Philippine Mahogany "resembles mahogany," and has all its necessary qualities, in view of the fact that on page 17 of their brief, they refer to the testimony of several witnesses who were experts, that bought and sold Philippine Mahogany, thinking it was the mahogany of "our grandfathers," or

as they term it, "the real mahogany." The examiner in paragraph eight of his findings says:

The resemblance between the characteristics of genuine mahogany wood and the wood sold in interstate commerce as "Philippine Mahogany" are so close that it is difficult even for an expert wood technologist to distinguish between them without the aid of instruments usually employed by wood technologists in examining various wood specimens.

In the brief of the Commission, at page 10, it is said that the Horace E. Dodge Boat Works, at Detroit, Mich., represented their vessels made of the Philippine wood as constructed of the finest mahogany. These vessels were sold to their customers and there is no showing that any purchaser of these boats ever made any complaint or doubted the truth of these representations. In fact, there is no evidence, so far as any ultimate consumer is concerned, that when the seller represented his product as of the finest mahogany, that it was not strictly true.

It is useless to quote the evidence of various witnesses upon this proposition, for there is practically no dispute in the testimony of the witnesses on both sides of the controversy, that the statement in the examiner's findings above referred to is correct.

So it is practically admitted in this case that the wood in controversy has *every quality* necessary to justify it being classified *commercially as mahogany*. It might be added, as shown by the record, that some of the true mahogany, botanically, is soft and spongy and has little value commercially. If this wood was placed on the markets as mahogany, undoubtedly there would be a great protest both from the Mahogany Association and from the public, and justly so, because while such wood would be *mahogany botanically*, it would not be *mahogany commercially*, and its sale as such would be a fraud upon the public.

No witness has been produced that has testified or even intimated that he has ever bought furniture because he thought it was made of wood botanically mahogany. But the entire evidence is that all purchasers bought what they thought contained the qualities of mahogany as defined commercially, and therefore were not deceived, and there is no showing in the record whatever *that any purchaser has complained* that the respondents have *deceived or defrauded them*.

The complaint is made that this wood sometimes contains wormholes, but this has nothing to do with the issue. This is a characteristic of all mahoganies in a more or less degree. Will it be contended that it is an unfair practice to call hickory, or oak, or walnut, by their names because these woods sometimes contain wormholes? This question is entirely a matter of grading the lum-

ber and not of determining the kind. Certainly it can hardly be contended that a hole changes the character of the wood in which it is.

The exhibitions before the Commission of two selected doors, one of the so-called genuine mahogany and the other of Philippine Mahogany, at least in so far as appearance is concerned, decisively confutes the evidence of all so-called experts as to the inferiority of the Philippine wood. In fact, the door of Philippine Mahogany was so much more beautifully figured and colored and in every appearance so much more desirable than the genuine, that most purchasers would prefer it. This exhibition conclusively demonstrated that the Philippine Mahogany possesses every desirable attribute that constitutes mahogany as defined by all the decisions and authorities.

THE NAME PHILIPPINE MAHOGANY NOT DECEPTIVE

The use of the words, "Philippine Mahogany" is not deceptive. The trade and the people generally know exactly what they are buying when they buy Philippine Mahogany. This opposition to the use of the term comes, not because it is deceptive, but because it is not. We have again in this controversy the old story of the fight against the new. Much has been said about the mahogany of our fathers—more forceful than weighty. The revered mahoganies of to-day are the despised mahoganies of yesterday. The history of the controversy is that mahogany was at first limited to the lumber produced from one tree only. Then, as this supply grew less, a new mahogany appeared. It was rejected at first but gradually came to be recognized; and so, in the future, the Philippine Mahogany will become the adored wood of our "grandfathers," and probably in a fight to shut out some new contender for public favor.

It is impossible to describe the wood in controversy so that its qualities and value will be properly understood by the public, without the use of the word mahogany. To insist that it should be called *Dipterocarpaceae*, in order that the general public might not be deceived, would be just as absurd as to insist that the present monarch of England should be called, George Frederick Ernest Albert Windsor, instead of King George, in order that the people of England might not be misled as to the person referred to.

CLASSIFICATION OF WOODS BOTANICALLY MISLEADING AND DANGEROUS

If we are to lay down the rule that it is false and misleading to describe woods commercially other than what they are botanically,

we will injure, if not destroy, one of the greatest industries in this country.

One of the finest woods in the world, that furnishes perhaps more of the timbers used in construction to-day than any other is the Douglas Fir of the Pacific Northwest. It is known by this name throughout the world and by this name its qualities are well understood. Botanically this wood that enters so largely into the commercial life of a nation is a false hemlock. There is a widespread prejudice against hemlock, because of the qualities of that wood in the East. For the lumber producers of the Northwest to be compelled to mark their product under its botanical name—False Hemlock—would be to work incalculable injury to the industry. More than 85 per cent of the wood shingles in the United States are the red cedar shingles of the Pacific Northwest. The quality is well known and understood by the trade and people generally by the term "red cedar." Botanically it is not cedar but juniper. It would cost millions of dollars to both the shingle industry and the Douglas Fir industry to educate the people to where they would know what was meant by the botanical terms of these woods. In the East, one of the great lumber trees of commerce is the poplar. Botanically it is tulip.

To use the terms, Philippine Mahogany, Douglas Fir, Red Cedar, and Poplar is to correctly define these woods commercially, and gives to the dealers and to the public generally the correct idea of their qualities and value. If you describe them botanically, it is safe to say that not 5,000 people in the United States would know what was meant. I can think of no proposition more absurd than to compel the use of the botanical names of these woods upon the theory that it will protect the public from false and misleading statements. Why should we use the restricted and scientific and highly technical name known by a few, and refuse to use the common, ordinary name, understood by all.

WHY THE PHILIPPINE MAHOGANY IS CHEAPER

The reason Philippine Mahogany is cheaper is not because it is less desirable, for it has all the qualities, and in its higher grades it is equal in beauty, if it does not surpass, the finest of other mahogany woods.

Philippine Mahogany is not taking a large portion of the market from the other mahoganies because of any deception, but because of its merits. As already stated, the reason that it is cheaper is because it comes in duty free and because it is more easily logged than other mahoganies.

I must enter my protest against the decision of the majority in the overruling of the classification of the Hardwood Association, the decisions of the Department of Agriculture, the Department of Commerce, and the Interstate Commerce Commission, an action that, I believe, will result in the overturning of the common usage and reversing common understanding; that will disrupt a great industry; that will establish a precedent that if followed will paralyze the lumber industry of the country; that will increase the price of mahogany and create a monopoly in the mahogany trade; that will injure the public and benefit only the Mahogany Association. Such decision in my judgment can be based only on the technical and stilted opinions of schooled but unlearned self-styled experts, who would, if consistent, insist that potatoes must be sold only as tobacco, because botanically they are of the same family, lest some dear old college professor might buy a package of cigarettes instead of a bag of "spuds".

The contention of the majority here is that if any person of common understanding wishes to buy this Philippine wood, that has all the beauty and durability of mahogany—in fact, all the best characteristics of mahogany—that it can not be described to him so as to reach the common understanding, by calling it "Philippine Mahogany", but in order to keep him from being deceived and so that he may know exactly what he is getting, he must be told that it is either lauan, tanguile, almon, bataan, apitong, lamao, orion, abatang, bagaac, bataak, or balacbacan. This proposition, it seems to me, would be highly complimented by characterizing it as absurdly ludicrous.

The majority lay down the proposition that the buyer must be told the truth—a perfectly correct one and one that I endorse, but when you chase this common sense idea into the clouds of scientific nomenclature, until not one person in a million, without consulting an encyclopedia, a botanist and a chemist, would know whether a word used to describe the wood in a kitchen chair is the name of a seasick remedy, a new planet, or a divorcee screen star, it seems to me that the proposition in some slight degree "recoils upon itself."

The sum of the Commission's case is that the purchaser of this wonderful and beautiful wood will be deceived and defrauded unless he is told that it is Dipterocarpaceae, a proposition so plain that only the intelligent will dispute it.

IN THE MATTER OF
INDIANA QUARTERED OAK COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 1316—July 15, 1926

SYLLABUS.

Where a corporation engaged in the sale of lumber and other wood products to lumber dealers and manufacturers of furniture, cabinet work and allied products, sold and advertised as "Philippine Mahogany" woods long known, sold and traded in in the Philippine Islands and in the United States, as lauan and tanguile, and in its advertisements to customers and prospective customers recommended the use of the woods in question for the manufacture of boats and for various other purposes for which genuine mahogany is used and stated therein that products manufactured from the aforesaid woods could be sold truthfully as mahogany, the fact being that the woods in question were the product of a different tree family than genuine mahogany, lacked many characteristics possessed by mahogany which prevented them from serving certain uses to which mahogany is put, were not mahogany, either botanically or otherwise and were sold at from one-third to two-thirds the price of genuine mahogany, and that the sale of said woods as mahogany in the Philippine Islands was not permitted by the Philippine Government; with the effect of causing many dealers in furniture, cabinet work and related commodities to purchase said woods as and for mahogany, and sell to retail dealers commodities made therefrom as and for mahogany, and thereby cause said retail dealers and eventually the consuming public to purchase such commodities in the mistaken belief thereby induced, and with the effect of diverting business from and otherwise prejudicing competitors dealing in genuine mahogany rightfully and truthfully represented as such and of deceiving and injuring the purchasing public in substantial numbers and inducing the purchase of products made from the aforesaid woods and sold at prices prevailing for genuine mahogany products, as and for such products: *Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. M. Markham Flannery for the Commission.

Forbes & Daniels, of Washington, D. C., for respondent.

Major F. G. Munson, Judge Advocate, U. S. A., of Washington, D. C., for Philippine Government, intervenor.

Mr. Gilbert H. Montague, of New York City, for Mahogany Association, intervenor.

SYNOPSIS OF COMPLAINT

Recting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Indiana corporation engaged in the sale of