INDEX.

EXHIBITS.

Summons.

STATE OF NEW JERSEY

To HARRY E. MARTENS and WILLIAM M. J. BRIGHTLY, trading as KLEAN WAY DAMP LAUNDRY.

You are summoned to answer the annexed complaint of Harold C. Bucklelew, Trustee, in an action at law in the New Jersey Supreme Court and take notice that unless you file your answer to said complaint with the Clerk of the Supreme Court at Trenton, within twenty days after service upon you of this writ and the annexed complaint the plaintiff may proceed in the suit and judgment may be entered against you.

Witness, WILLIAM S. GUMMERE, Chief Justice of the Supreme Court at Trenton this 18th day of January, 1929.

PATRICK H. HARDING,
Attorney.

FRED L. BLOODGOOD,
Clerk.

Complaint.
(Filed Feb. 9, 1929)

NEW JERSEY SUPREME COURT.

HAROLD C. BUCKELEW, TRUSTEE, Plaintiff, vs. HARRY E. MARTENS and WILLIAM M. J. BRIGHTLY, trading as KLEAN WAY DAMP LAUNDRY, Defendants.	Judgment Record Action at Law— On Postea Judgment for Defendants.

JOSEPH H. CARR,
Attorney.

Harry E. Martens and William M. J. Brightly, trading as Klean Way Damp Laundry, defendants in this cause were summoned to answer unto Harold C. Buckelew, Trustee, the plaintiff therein in an action at law upon the following complaint:

(Summons issued January 18, 1929.)

The plaintiff, of the City of Newark, County of Essex and State of New Jersey, says:

1. That on May 31st, 1928, the defendants, Harry E. Martens and William M. J. Brightly, trading as Klean Way Damp Laundry, made and executed to plaintiff, Harold C. Buckelew, trustee, a note in the sum of one thousand dollars ($1,000.00), payable one day after date, a copy of which note is hereto annexed and made a part hereof.

2. The said note has become due and payable under the terms of a certain contract referred to

therein and by endorsement thereon, and which said contract has not been fulfilled or kept by the defendants or any of them and by reason of failure of them or any of them to keep and observe said agreement the said note under the terms thereof has become immediately due and payable because of said breach.

3. The said note accordingly has been presented for payment and payment thereof has been refused and said note accordingly protested. Said note is therefore due and payable and defendant refuses to pay the same.

4. The plaintiff is still the holder and owner of said note.

Plaintiff therefore demands as damages the sum of one thousand dollars ($1,000.00), together with interest from May 31st, 1928, protest fees upon said note in the sum of two dollars and fifty cents ($2.50), together with costs of suit.

WOLBER & GILHOOLY,
Attorneys for Plaintiff.

$1,000.00 Not negotiable,

Camden, New Jersey, May 31st, 1928.

On demand after date, I or we promise to pay to the order of Harold C. Buckelew, Trustee, one thousand dollars (1000.00), at Broadway Trust Co. Camden, N. J.

Value received with interest at (N. S %) per annum.

No. Due.

KLEAN WAY DAMP LAUNDRY,
HARRY C. MARTENS,
WILLIAM M. J. BRIGHTLY,
By.

Duly authorized to execute this note for partnerships or individuals doing business under a trade name and not incorporated.

Protested Dec. 31, 1928

BROADWAY MERCHANTS TRUST CO.
No. Collection 31497, Camden, N. J.

THIS note is subject to an agreement made , 1928, between Greater Family Laundry and others as parties of the first part and the maker hereof as party of the second part.

HAROLD C. BUCKELEW, Trustee.

(Filed: February 9, 1929)

Answer.

(Filed July 8, 1929)

The defendants, answering the plaintiff's bill of complaint, say that:

1. They deny each and every allegation of the complaint.

First Separate Defense:

The defendants say that they are not liable on the said note because no consideration was given therefor, the plaintiff herein gave no value therefor, and is not a holder thereof in due course.

Second Separate Defense:

The defendants say that they are not liable on the said note because consideration for the said note was illegal and that said note arises out of an illegal and invalid transaction, the plaintiff herein gave no value therefor and is not a holder thereof in due course.

Third Separate Defense:

The defendants say that they are not liable on the said note and that the same arises out of an illegal attempt to prevent competition, to raise prices and to create a monopoly.

Joseph H. Carr,
Attorney for Defendants.

Reply.

(Filed July 16, 1929)

Plaintiff in reply to answer of defendants, says:

He joins issue on the several separate defenses as set forth in the answer of defendant in the above cause.

WOLBER & GILHOOLY,
Attorneys for Plaintiff.

Postea.

The above case was tried before Judge Ralph W. E. Donges with a jury at the Camden Circuit on November 12th and 13th, 1929. The Court rendered a general verdict against the plaintiff and in favor of the defendants.

Whereupon it is adjudged that the complaint of the plaintiff be dismissed and that the defendants, Harry E. Martens and William M. J. Brightly, trading as Klean Way Damp Laundry do recover of the said plaintiff, Harold C. Buckelew, Trustee, the sum of Fifty-one dollars and Fifty cents costs.

Judgt. for Defts
Costs $51.50

Judgment signed and entered November 20, 1929.

(Note: It has been agreed that the verdict rendered in this matter was by the jury. The reference in the Postea to the court rendering a general verdict is a typographical error.)

WM. S. GUMMERE,
C. J.

Substitution of Attorney.

(Filed Aug. 13, 1930)

NEW JERSEY SUPREME COURT,

CAMDEN COUNTY.

HAROLD C. BUCKELEW, TRUSTEE, Plaintiff, vs. HARRY E. MARTENS and WILLIAM M. J. BRIGHTLY, trading as KLEAN WAY DAMP LAUNDRY, Defendants.	Action At Law.

It is, on this 13th day of August, A. D. nineteen hundred and thirty, ORDERED that Wolber & Gilhooly be substituted as attorneys for plaintiff in the above matter in the place of Patrick H. Harding.

I consent to the entry of the substitution.

PATRICK H. HARDING,
Attorney for Plaintiff.

Notice and Grounds of Appeal.

(Filed Aug. 22, 1930)

NEW JERSEY SUPREME COURT,

CAMDEN COUNTY.

HAROLD C. BUCKELEW, TRUSTEE,
Plaintiff-Appellant,

vs.

HARRY E. MARTENS and WILLIAM M. J. BRIGHTLY, trading as KLEAN WAY DAMP LAUNDRY,
Defendants-Appellees.

To:
JOSEPH H. CARR, Esquire,
Land Title Building, 5th and Market Streets,
Camden, New Jersey.
Attorney of Defendants-Appellees.

TAKE NOTICE, that the plaintiff appeals to the Court of Errors and Appeals of New Jersey from the whole of the judgment entered in this cause in the New Jersey Supreme Court, Camden County, on the following grounds:

1. The learned trial judge erroneously refused to grant the motion on behalf of plaintiff at the

close of the entire case for a direction of a verdict in favor of the plaintiff.

Respectfully yours,

WOLBER & GILHOOLY,
Attorneys for and of Counsel
with Plaintiff-Appellant.

Dated: August 18th, 1930.

Service of the within Notice and Grounds of Appeal is hereby acknowledged this 19th day of August, 1930.

JOSEPH H. CARR,
Attorney for and of counsel
with Defendants-Appellees.

Case.

NEW JERSEY SUPREME COURT,

CAMDEN COUNTY.

HAROLD C. BUCKELEW, TRUSTEE, Plaintiff, vs. HARRY E. MARTENS and WILLIAM M. J. BRIGHTLY, trading as KLEAN WAY DAMP LAUNDRY, Defendants.	Action at Law.

BEFORE DONGES (*J.*) and JURY.

November 12 and 13, 1929.

APPEARANCES:

For the Plaintiff, PATRICK H. HARDING, Esq.

For the Defendants, JOSEPH H. CARR, Esq.

(Mr. Harding opened the case for the Plaintiff to the Jury.)

(Mr. Carr opened the case for the Defendants to the Jury.)

Mr. Harding: If your Honor please, I understand, by consent of counsel for the defendants, the making of the note in question is admitted, and I will ask that it be marked Exhibit P-1.

(Received and marked P-1.)

Mr. Harding: The making of the agreement is also admitted, and I ask that be marked P-2.

(Received and marked P-2.)

Mr. Harding: And respective counsel stipulates and agree that the agreement and the addendum have been breached.

Mr. Carr: You don't say in your pleadings how it's breached. I admit that we broke it by the relationship with bob-tails. In other words, I admit, for the purpose of the record in this case, we did employ, or have business relations with bob-tails, contrary to that provision.

Mr. Harding: The agreement is breached?

Mr. Carr: Yes.

The Court: That becomes part of the record.

Mr. Harding: With that we rest, if your Honor please.

THE CASE FOR THE DEFENDANTS

WILLIAM M. J. BRIGHTLY, Sworn.

DIRECT EXAMINATION BY MR. CARR:

Q. What is your name? A. Brightly, William M. J.

Q. You are a member of the former partnership of the Klean-way Laundry? A. I was.

Q. That partnership is not now in business, is it? A. It is not.

Q. When did they discontinue business, about? A. I don't remember the date.

Q. Approximately when, there was a sale? A. A Sheriff's sale.

Q. When was that? A. Around August 10th, I should say.

Q. Of this year? A. This year.

Q. The business is now being operated by a corporation? A. A corporation.

Q. What is your connection with the corporation. A. I am Vice-President and Secretary.

Q. Are you active in the business? A. Yes.

Q. Who else is active in the business? A. Mr. Martens.

Q. He was a former member of that partnership? A. Yes.

Q. You were in business in the laundry business in Camden in 1928? A. Yes.

Q. What prices, state to the Court and Jury, what prices were charged for laundry in February, or, March, a month or two prior to this agreement, February or March of 1928? A. Thirty pounds for a dollar.

The Court: A little louder.
(Answer repeated.)

Q. Were there any other prices than that price, any scale of prices? A. I believe not at that time.

Q. Was there a difference in the days of the week? A. Yes, there was.

Q. Tell us that? A. 35 pounds for a dollar on Tuesday.

Q. Suppose you didn't have 30 pounds, or 35 pounds, how would you charge? A. It was a dollar, anyhow. I don't know whether, at that particular time, there was 15 pounds for sixty cents, but, previous to that, it was a dollar minimum rate.

Q. Suppose it was more than 35 pounds, how much was charged? A. Five cents a pound.

Q. Over? A. Over 30.

Q. How many on Tuesday? A. Tuesday, the same, over 35 pounds.

Q. Were there laundries in Camden at that time charging a lower price than that? A. Some of them were taking all you could put in a bag for a dollar.

Q. At that time? A. Yes.

The Court: When was that?

Mr. Carr: Rebruary and March.

The Court: 1928?

Mr. Carr: Yes.

Q. Were you present at a meeting of laundrymen prior to the execution of this agreement? A. Yes.

Q. Who else was there, if you know? A. There's quite a few of them.

Q. Do you know who was present? A. I believe Mr. Buckelew and Mr. Lucas, Mr. Walker.

Q. Is that all you remember? A. Mr. Walther, I believe, was there.

Q. How many, altogether, were there there? A. I could not really tell you the exact amount.

Mr. Carr: Mr. Harding, do your minutes show how many were present?

Mr. Harding: I think thirteen were present at that time.

Q. You understand there were thirteen laundrymen present at that meeting? A. Yes.

Q. Who addressed the meeting? A. I don't recall that, personally. One time we had the State—

Q. How long was that before the agreement was signed? A. Approximately, about a month.

W. M. J. Brightly. Called by Defendant. Direct.

Q. You don't know who spoke to the meeting? A. I don't remember his name. I think he was a man from the State Association.

Q. Mr. Buckelew? A. Mr. Buckelew spoke.

Q. Would you recognize him if you saw him? A. Yes, but I got it mixed. I don't remember whether he is the State man.

Q. But Mr. Buckelew spoke at that meeting? A. I believe he did.

Q. Did anyone else speak at that meeting? A. I think he brought a man from the State Association, the State President, I think, of the Association, I believe.

Q. Were prices discussed at this meeting? A. Yes, there was various prices discussed. They all made different suggestions, and—

Q. What did Mr. Buckelew have to say? A. He said we ought to get together on some prices. I don't think he recommended any particular price. That was up to the men, themselves.

Q. Following the signing of the agreement, did you carry out the price scale fixed by the agreement? A. We did.

Q. For how long a time did you charge the prices fixed in the agreement? A. On our routes, we carried them right along, to this day, some of them.

Q. The prices under this agreement, you are still charging those prices in some cases? A. We are.

Q. What did you first do to break this agreement, Mr. Brightly? A. We realized we could not go on any more. We did not have enough business to operate our plant, except at a loss, so we took to bobtailers, Steelman Brothers.

Q. Were you in financial difficulty at that time? A. We were.

Q. You took on Steelman Brothers, they were two bob-tailers? A. Yes.

Q. Where had they formerly been going? A. Various laundries. When we operated our plant in the beginning, they were all Klean-way.

Q. Then they went somewhere else, and came back again? A. That's it.

Q. Who was doing their work, or who were they associated with, on May 31, 1928, the date of this agreement? A. I believe the Broadway Laundry was.

Q. Did you take Steelman Brothers on before, or after, Broadway failed? A. After.

Q. Broadway Laundry went out of business, didn't they? A. They did.

BY THE COURT:

Q. Were they parties to this agreement? A. They were not.

BY MR. CARR:

Q. You took on Steelman Brothers, but who, then, was doing their laundry at that time, how was their washing done? A. They were taking some to Philadelphia, and a couple of weeks, between the time—

Q. You did not take these two bob-tailers from any other laundry, who was a party to this agreement? A. No, we did not.

Q. Did any of the laundries, who were parties to the agreement, object to that? A. To us taking them?

Q. Yes? A. They did.

Q. Who objected; if you know, mention some? A. All of them, I guess, objected, Mr. Lucas, Mr. Morgan, Mr. Walker, Mr. Walther, Mr. Cheever.

Q. They all objected to you, personally, you mean? A. Well, I talked to a few of them.

Q. Tell us, as far as you can, who you talked to about taking these two men, of those whose names you have given us? A. Yes, at some time, or another.

Q. Take Mr. Walther, what did Mr. Walther say about it? A. I don't recall the exact words he said.

Q. As near as you can? A. They all told us that we had said that we might take them, but they all advised us not to.

Q. What did they say besides that? A. They said it was a violation of the agreement, and we would be liable for the note.

Q. What did you say to them? A. We said we had to take them; we had to get business.

Q. Did they say anything about what Steelman Brothers ought to do with their laundry? A. Not to my knowledge.

Q. After—I am not sure that I covered this, but I will ask the question—Up to this time you employed Steelman Brothers, you had maintained prices according to this schedule? A. We had maintained prices, yes.

Q. When did you first cut that price? A. We cut prices when—in fact we had the Steelman Brothers ready to take on at the same prices, but Morgans, they hired one of our drivers, and they sent him down over our routes to every customer on the route that I was driving on at that time. He gave away free washes, anything to knock either Klean-way or De Luxe.

Q. Who were De Luxe? A. They were Steelman Brothers, so we found that in that competition we would have to reduce prices back to, approximately, our old scale.

Q. The scale that existed before the contract, do you mean? A. Yes, on those routes. Otherwise, we maintained the prices.

Q. You maintained the prices where you could? A. Yes.

Q. In addition—you say Morgans did these washes free—in addition to that were there other laundries, who broke the price scale fixed by this contract? A. Yes, we found it all along the route that other laundries done cheaper washing than we did.

Q. That was before you took on these bob-tailers? A. Yes.

Q. Did you complain about that to anyone? A. Yes, but they said "you will have to get a written agreement from the woman who got the laundry cheaper" and you can't do that, because they won't give it to you. If they are getting something cheaper, they won't sign anything.

Q. How do you know they did it cheaper? A. Our drivers, especially our Camden driver. Our Camden driver, his own friends would give to the other laundry, because they said they got it done cheaper with them.

Q. You drove a wagon yourself? A. I did, yes.

Q. Did you ever charge these people, who have done washing for less money, make a complaint against them? A. I complained to Mr. Walker, of the Association, and he said "Try to prove it", but you can't get anybody to make a signed statement.

Mr. Carr: Take the witness.

W. M. J. Brightly. Called by Defendant. Cross.

CROSS EXAMINATION BY MR. HARDING:

Q. Mr. Brightley, the conferences which took place prior to May of 1928, where were they held, mostly? A. At the Hotel Walt Whitman.

Q. About how many were there? A. To my knowledge, about two or three.

Q. What was the reason for calling these conferences, do you know? A. To form the Association.

Q. What was the reason for forming an Association? A. To get all the laundries agreed on certain prices.

Q. Was it to protect the laundry industry? A. I suppose it was.

Q. Did you attend any of these conferences? A. Not all of them.

Q. How many of them did you attend? A. I think I was there to about two.

Q. Prior to May, the charge for laundry, you say, was about a dollar for 30 pounds? A. Yes. I would not say the exact date. It might have been that we did have a minimum just before that.

Q. How much were you charging before this agreement went into effect? A. We were charging thirty pounds for a dollar.

Q. You were charging a dollar for 30 pounds? A. Yes.

Q. How many other laundries were charging a dollar for thirty pounds? A. I guess about four or five, probably more than that. I really could not answer that.

Q. There were quite a number of laundries charging sixty cents for 15 pounds? A. I believe there was, yes.

W. M. J. Brightly. Called by Defendant. Cross.

Q. About how many laundries were there in existence at that time? A. In existence?

Q. Yes, in this vicinity? A. I really could not tell you that. I saw a list of laundries, but I have never heard how many there were in that list.

Q. Were there not about 18 laundries doing business in and about Camden County at that time? A. About 16 or 18 active laundries.

Q. About three of them adhered to the price of a dollar for thirty pounds? A. I don't know whether there was more than that, or not.

Q. Was that price of a dollar for 30 pounds satisfactory to the laundry trade in general? A. I could not say whether it was satisfactory, or not. The more you get, the more money you make.

Q. And the mere fact that it was not satisfactory was the reason that these conferences were called, wasn't it? A. I guess it is.

Q. The laundry trade felt they could not live on one dollar for 30 pounds, isn't that true? A. Yes.

Q. That's the reason these conferences were called, and that's the reason you particiapted in the conferences? A. That's right.

Q. At the time you signed the agreement, referred to as P-1 or P-2, you felt at that time that the laundry trade was not getting sufficient to maintain itself, didn't you? A. Yes.

Q. You went in in good faith, and signed that, to change the schedule, as fixed in that agreement? A. Yes.

Q. When did you come to the conclusion that you had to make a change in the rates fixed in that agreement in order to maintain yourself, approximately when? A. When did we make a change?

Q. About when, back to the old prices? A. We never have done so yet, only in certain circumstances.

W. M. J. Brightly. Called by Defendant. Cross.

Q. What prices were you charging prior to the time you say you were sold out by the Sheriff? A. We were charging 12 pounds for sixty cents.

Q. You were dealing with bob-tails, were you? A. Yes.

Q. How much of that sixty cents did you get? A. We got sixty per cent. of it.

Q. Thirty-six cents, didn't you? A. Yes.

Q. You were really taking care of 12 pounds for thirty-six cents? A. That's right.

Q. Did it occur to you that was the reason, maybe, the Sheriff got you? A. No, it didn't. We didn't have any delivery costs.

Q. Do you know any of your competitors in Camden, who signed that agreement, who went out of business? A. Yes.

Q. Who? A. Greater Camden.

Q. That plant simply changed hands, didn't it? A. It changed hands, yes.

Q. Now run by a man named Rhodes? A. Yes.

Q. He took the plant over? A. Yes.

Q. Is it operating now? A. I believe so.

Q. Do you know of any others that went out of business?

Mr. Carr: May we have the time?

Mr. Harding: Since the making of this agreement.

Mr. Carr: Since when?

Mr. Harding: During the period of the agreement, since May 31st, or June 11th, 1928, whichever time you want to fix.

Mr. Carr: Until when?

Mr. Harding: Until the present day.

Mr. Carr: The agreement expired in a year.

Mr. Harding: It automatically renewed itself.

Mr. Carr: I wanted to understand what it was, thats all.

(Question repeated.)

Mr. Harding: Since the making of this agreement until the present day?

A. No, I didn't. Some of the major laundries. Some that are always changing hands, they were not in the agreement.

Q. I understand you testified that the reason you want to advance is that you got into financial difficulties. Why did you get into financial difficulties? A. Why?

Q. Yes? A. That's a question.

Q. Were you doing your ordinary line of business, exclusive of the business got from the bob-tails? A. No, business got dead. It didn't bring in enough money to pay our expenses.

Q. Was your business better before dealing with bob-tails, or worse? A. Better than what?

Q. Before you started doing business with bob-tails, was your business better at that time, or worse? A. It was about the same, just merely increased our business.

Q. Dealing with bob-tailers didn't increase your business at all? A. Yes, it did, it increased the money coming in, that much average.

Q. It increased the gross revenue? A. Yes.

Q. But your margin of profit was much smaller? A. Margin of profit when?

Q. After you started dealing with bob-tails? A. Much smaller, no, it was not, because, in taking these bob-tailers, we reduced the expense of two trucks. They were covering the territory already, and they brought their laundry into our place, anyhow. That just cut off the expense of two trucks.

Q. With the reduction in expense by reason of the dropping of two trucks, did you make any profit? A. Yes, we made a profit.

Q. Did that profit continue for any length of time? A. Yes.

Q. If the profit continued, why did you go out of business? A. Because we were in such a condition in the first place, we could not get out of it.

Q. Before signing the agreement? A. Yes.

Q. You were in bad financial condition before signing this agreement? A. Yes, we were.

Q. Signing this agreement put you in a worse condition, did it? A. I believe it did. We lost some customers that would not pay that price.

Q. Some customers would not pay that price? A. Yes.

Q. As a matter of fact, customers were paying that price, anyhow, weren't they? A. No, a lot of laundry they were not sending it.

Q. Didn't your bob-tails get the full price called for in this agreement? A. We charged that.

Q. You charged the price called for in this agreement, didn't you? Therefore, your customers were paying the same price, weren't they? A. After that, we gave them another price.

Q. After you got rid of your bob-tails, do you mean? A. After we took them.

Q. After taking the bob-tails, after taking the bob-tails, what price did you charge your customers? A. It was the bob-tailer had to charge the customer. We charged them in the laundry.

Q. What prices did they charge your customers? A. I don't know.

Q. You do know that the laundry reached your place of business, and that your price to the bob-tailer was based on sixty cents for 12 pounds, wasn't it? A. No, it was not.

W. M. J. Brightly. Called by Defendant. Cross.

Q. What was it based on? A. 15 pounds for sixty cents.

Q. When did that price go into effect? A. That price was into effect when we took bob-tails.

Q. You continued that price until you went out of business? A. That was to them, yes.

Q. From the time you signed that agreement in May of 1928 you continued in business until this suit was brought? A. We what?

Q. You continued in business until this suit was brought. You can answer that, yes or no? A. What was that?

(Question repeated.)

A. When was the suit brought?

Q. The suit was brought January, 1929, you were in business then? A. Yes.

Q. When did you go out of business? A. About April 1st, as far as I know. I haven't looked it up.

Q. Did you go out of business to escape the liability of this suit, or did you go out of business because you could not get along? A. Just an adjustment of the whole situation.

Q. Sold out under a chattel mortgage, weren't you? A. No.

Q. How were you sold out? A. On a judgment.

Q. Who had the judgment? A. Mr. Holton.

Q. Is he your father-in-law, or Mr. Marten's father-in-law? A. He's mine.

Q. What kind of a judgment? A. I really don't know.

Q. Just a judgment and sale? A. That's it. It had nothing to do with this suit.

Q. Did you stop the operation of your business for any time? A. No.

W. M. J. Brightly. Called by Defendant. Cross.

Q. You just simply organized a new corporation, didn't you? A. Yes.

Q. You continued the same business? A. Yes.

Q. You have the same customers, haven't you? A. Yes.

Q. You are still operating today? A. Yes.

Q. What prices are you charging today for 12 or 15 pounds wet wash? A. Charging 12 pounds for sixty cents.

Mr. Harding: That's all.

By Mr. Carr:

Q. Is that the same price charged before? A. Yes, that's the Association price.

Q. Since Mr. Holton took over this business, have you made any change in your prices? A. No.

Q. Do you still, now your financial difficulties are over, the difficulties of this new company are over, do you still have these bob-tailers doing work at the laundry? A. We have.

Q. What price? A. We charge them sixty cents, fifteen pounds for sixty cents.

Q. That's the same as before the sale? A. That's the same.

Q. There was some reference to this sale. Have you, yourself, any money in this business now, or are you working there as an employee of Mr. Holton? A. I am working there as an employee.

Q. Have you any money in the business? A. One share of stock.

Q. How about your former partner? A. He owns one share.

Q. This business as it is now, who has all of the stock? A. Mr. Holton.

Q. Is the business making money now, working with these bob-tails? A. We just went through a

building operation, and it is pretty hard to find out whether we have, or not, made a profit. Previous to that, we were making money.

Q. You were making money before that? A. A slight margin of profit.

Q. Forty per cent of the sixty cents you allowed the bob-tailers for delivery. How would you say that compared with your own cost of delivery on other routes? A. I would say you could not deliver it, unless you had a certain amount of business on that route. You would have to have, before you would make money by delivering at forty cents on the dollar, you would have to have at least $150. or $250. on the route, cash money.

Q. Under this agreement, Mr. Brightley, it was permitted any laundry, having business relations with bob-tailers, to continue with that bob-tailer. Did you have any bob-tailers associated with yourself until you went with Steelman Brothers? A. No, we had when we first took over the laundry.

Q. I mean at the time of agreement? A. No.

Q. Do you know what price was charged bob-tailers by other laundries who were parties to the agreement, under this contract? A. I do not.

Q. It is provided in this agreement that you would see to it that the bob-tailer obtained the prices for laundry that you agreed to charge. Did you see to that, or not? A. We tried to see to it. We tried to get it, but they are not changed over night. They had agreed to make a gradual change, but with somebody pounding on you all the time, they never could come to that.

Q. Who had you reference to, as pounding on you? A. The Association.

Mr. Carr: That's all.

W. M. J. Brightly. Called by Defendant. Cross.

By Mr. Harding:

Q. Thirteen men signed this agreement? A. I believe there were.

Q. You are the only one that violated its terms, is that right? A. No.

Q. Who else did? A. You can prove others did.

Q. You are the only one that got out, and was sued as a result of violation? A. Yes.

Q. Mr. Brightley, what active participation does your father-in-law take in this business? A. None.

Q. None at all; and if I understand your testimony, you are Vice President of the Company? A. Yes.

Q. Who is President? A. Mr. Martens.

Q. Does your father-in-law hold any official position in it? A. He's Treasurer.

Q. Can you tell us what is the approximate cost of picking up and delivery in your business? A. I could not, no. It is a certain amount of business, and the cost is different.

Q. It would never equal forty per cent, would it? A. Yes, it would equal more than that, if the collection of money was under $100.

Q. Would you say that a route that would only bring in $100. in gross revenue was a profitable route? A. No.

Q. So that you would not calculate on that basis, would you? A. No.

Q. Take the trade in general. You are familiar with it. I assume you know it. Isn't it a fact that twenty per cent or less is the figure on picking up and delivery in your business? A. That's all according to how much business one man on a truck can do. That's the point.

Q. Taking an average pick-up, an average in the trade, isn't twenty per cent the maximum for pick-up and delivery? A. No, I would say 25 per cent.

Q. But you would say that it never equals forty, as an average, is that right? A. No, I would say if it was under $100 it would equal fifty.

Q. I understand; but I asked you the question what you were charging at the present time for 12 pounds, and you testified sixty cents, that's correct? A. That's on our own route.

Q. But when the bob-tailer brings it in, you charge sixty cents for 15 pounds? A. Yes.

Mr. Harding: That's all.

HARRY E. MARTENS, Sworn.

DIRECT EXAMINATION BY MR. CARR:

Q. You are one of the defendants in this case? A. Yes, sir.

Q. You were formerly in partnership in the Klean-way Laundry? A. That's right.

Q. You are in the Klean-way Laundry that has been referred to by Mr. Brightley? A. Yes, as President.

Q. Have you any money in that business, yourself? A. Of course, originally, I had $8,000 in it.

Q. In the corporation? A. Not in the corporation as it stands.

Q. You are no relation to Mr. Holton, and I would like you to tell me of the events at that factory? A. Mr. Holton originally bought that property there, and, of course, he was somewhat interested in it all the way through, and then we got

into a hole, of course, where it was a matter of, I would say, at least 15 or 20 judgments against us, and he thought it a shame that there should be these judgments, and he settled these debts, all outstanding debts were settled, and, of course, that was a debt that we owed him. In turn, of course, he had that judgment against us, and he sold the business out for this judgment.

Q. Took it over himself? A. Yes.

Q. Were you present at this meeting at which this agreement was discussed, prior to the time it was signed? A. Yes.

Q. Do you remember who spoke at that meeting? A. I don't recall the man's name, but he was the President of the Association.

Q. Was any reference made to the fixing of prices? A. Yes, the prices were to be, to get it down to one price all through this community, and through this district.

Q. Was that to be a lower, or higher, price than heretofore? A. Higher price.

Q. How long did your laundry stick to that price, Mr. Martens? A. Our laundry adhered to the price right to the time we took on the bob-tailers, or even we kept that price on longer that that. We even went so far as to have the bob-tailers, they were going to change their price and join with us, and Morgan Brothers come right down in the territory advertising free washes, right down in Paulsboro advertising free washes, and—

Q. Paulsboro? A. Right in Paulsboro.

Q. Did they have a plant in Paulsboro? A. No, but they were collecting laundry there.

Q. And what? A. They were giving away free washes to get trade, and, of course, those boys coming into the business could not stand for that.

They had to go out and keep their price just the same.

Q. Were there other laundries, besides Morgan? Did Morgan sign this agreement? A. Yes.

Q. Were there other laundries besides Morgan, who did not stick to the price scale? A. That's a point that's hard to say. All along the route you heard rumors. You lost a customer, and asked her what was wrong. She said she was getting it cheaper from New Sanitary, or cheaper from this one, or that one. There were only about four laundries I heard any complaint against.

Q. Did you go to see this laundry with this complaint? A. Yes, I went to Baker, of New Sanitary, one time, and told him, and it was a friend of mine that made the complaint, and she was getting 30 pounds for a dollar.

Q. What did Baker say? A. He says she's just telling fairy stories.

Q. He didn't admit it? A. No, he didn't admit it.

Q. Mr. Martens, were you on a wagon, or were you inside? A. At that particular time I was on a truck.

Q. Where are you now? A. In the laundry.

Q. Can you give us some idea of the relationship of the forty per cent. you paid the bob-tailers, to the cost of delivery? A. Our main trouble that we got into was that we were collecting down through the country on our trucks, and that forty per cent., our cost was more than forty per cent., because we were collecting out in the country so far, and along with that we had the driver to pay, we had tires and gas, and that forty per cent. was more than the actual cost, and by turning over to the bob-tailers—

Q. You mean more or less than the actual cost? A. Our cost was more than forty per cent., that didn't include the driver's wages. In the forty per cent. that we allowed the bob-tailers, there was no wages in that. We don't stand for trucks, tires, gas, there is no expense other than the washing and the equipment.

Q. Did you find it improved your earnings, or decreased them, by taking on these bob-tails? A. It improved our earnings; right from there we went up, because it eliminated those trucks, it eliminated the trucks, and is also brought in a larger volume of business. We were suffering more from need of more business. We had a large plant there; could possibly handle at least 1,400 washes a week, and we didn't have them to do. We only had around 600 washes.

Q. Did you have any conversation with any of these laundrymen about Steelmen Brothers, taking on Steelman Brothers? A. Yes.

Q. Who did you discuss it with? A. We were pretty well—we were not very good financially, and I was down at Mr. Walker's, in his office.

Q. Walker has a laundry? A. Walker is the Favorite Home, and I didn't know what to do, so I went in there, and I talked to Walker, and I told him things was in a very bad way, we were losing business, and it was a question of me losing every cent I had worked for. I told him that I didn't think that I wanted to do that. There was nothing else for me to do at the present time but to take on bob-tails. I said "I don't intend losing my money. I have to do something. I suppose it's perfectly legitimate for me to take on business, because it's not taking it from some other fellow. They were around to people, trying to get some-

body to do it, so it was not taking anything from my Association members."

Q. What did Mr. Walker say to that? A. He didn't say much, he just shrugged his shoulders. He said, "If there is anything we can do for you, all right;" but what could they do?

Q. He brought suit against you. Did you talk with any of the rest of them about this Steelman matter? A. No, I don't recall talking to any of them.

Q. Did Mr. Walker say anything to you as to what Steelman Brothers should do with their laundry? A. No, he didn't say much about it at all.

Q. Where were they taking their laundry prior to the time you took it? A. First they took their business to some laundry in Philadelphia.

Q. They were taking it across the river? A. Yes.

Q. Where did you say they were taking their laundry prior to the time you took it? A. They first took it to Broadway. Broadway went out of business, and they took their business to some laundry in Philadelphia.

Q. Broadway was not on this contract, were they? A. No, Broadway was not on that contract.

Q. What rates did they charge, if you know, at the time they failed? A. Broadway was charging —I imagine, I am pretty sure they were taking a full bag for a dollar.

Q. How many laundries in Camden and suburban territory were there, who were not signatories to this agreement? A. I think around six, at least.

Q. I mean damp wash laundries, A. Yes.

Q. Can you tell us who they were? A. Broadway, at that particular time, Mrs. Young.

Q. Where is she? A. In Gloucester.

Q. Gloucester City? A. Yes, Young's Damp Wash.

Q. Did she have much of a laundry? A. I never was in the plant, although I know they got at least two trucks on the street.

Q. What are the others, Munter's? A. Yes. I am pretty sure Cramer Hill was in business at the time, too.

Q. What others, if any? A. Riverside. Of course, they were gathering laundry in this particular district.

Q. What I have particular reference to are laundries who carry on business in Camden and Camden suburbs? A. Yes, Riverside would be included in that.

Q. Any others within that area? A. Hammonton.

Q. Would you include Hammonton in Camden territory? A. I guess they are doing as much as any of them in this district right now. There's one more.

Q. There is one more in Camden, or where? A. I can't recall it at the present time.

Q. How many laundries did you do in a week. Is that the way you figure it, by the week? A. Yes.

Q. How many laundries did you do in a week? A. At what time?

Q. At the time you signed this agreement? A. About 750.

Q. What was your capacity? A. About 1,400.

Mr. Carr: Cross examine.

Cross Examination by Mr. Harding:

Q. Mr. Martens, you attended these conferences at the Walt Whitman Hotel before you signed this agreement? A. Yes.

Q. About how many conferences did you attend? A. I don't say they were conferences, the first, but there were conferences. After that, of course, it became meetings of the Association.

Q. How many meetings did you attend? A. I would say at least six or seven.

Q. Were they held at short intervals, these meetings? A. At first they were. The first were held, I think, a week apart. Then once they formed the Association, of course, they were held, I don't recall whether it was once every two weeks, or once every month.

Q. What was the cause for these meetings? A. There was, as far as I can recall, it seemed to be a matter of getting them together, and getting them under one price.

Q. What was the reason for getting them under one price? A. Of course, the basic fact, the idea was to get them all on one price, so that customers could not be jumping from one to the other. That was the main idea.

Q. Was there any other reason besides that? A. Of course, everybody was in business to make money, but there was one thing about it, they were trying to keep this jumping around in prices. One laundry would do so and so, saying "I will do the laundry for 30 pounds for the dollar," and another one would say 20 pounds to the dollar, and so on. The fact was they tried to get it down to where everybody charged the same, and hung on to what customers they had.

Q. The laundry business was in pretty bad shape around that time, all round? A. Not that I recall. I don't know what the other laundries done.

Q. Were you in pretty good shape at that time? A. We were not.

Harry E. Martens. Called by Defendant. Cross.

Q. Do you know of any other laundry that was in pretty good shape at that time, financially? A. I don't know anything about their books, but, of course, it appears there was quite a few of them in good shape at the time.

Q. Do you know how many laundries there were in Camden and vicinity at that time? A. I would say about 24, anyway.

Q. About how many attended these conferences? A. I think they finally settled, when it was signed, there was thirteen that signed. Of course, there were some way out in the outskirts that they didn't bother about, but Young, Munter, the one I mentioned before, are the ones that did not sign, what I seen of the names.

Q. Was not the purpose of these men attending the conference and signing this agreement, to stabilize prices? A. Yes, there was the stabilizing of the prices, and Young and the others to be either put out of business, or in shape where they could force them into the Association.

Q. Young and the others were charging less prices than the prices fixed in this agreement? A. Young and Munter were charging less.

Q. Upon what theory could they be driven out of business, if they were charging less prices than the prices fixed in this agreement? A. They could go to this extent, they could boycott them on their supplies, which they tried to do with us.

Q. When did they start to boycott you on supplies? A. I don't know the exact date, but it was shortly after we took the bob-tailers.

Q. Can you give me any name of any person to whom any representative went to boycott you? A. It was not done in that way. It was done in this manner: "If you deal with such and such a laun-

dry, there is, of course, I would rather not do business with one which does that sort of thing." They didn't come to it directly.

Q. Can you give me the name of any of these 13, or anybody representing any of the 13, who went to any person you dealt with, and told them to boycott you, or the Klean-way Laundry? A. Only as I explained to you before, they did it in an offhand way. They didn't do it directly, because they would not have done it.

Q. You give me the name of any person who did it? A. I can't mention the name, but the party told me it came to him in an offhand manner.

Q. Did you go to any member of this organization of 13, and ask them if they had made any effort to boycott you? A. No, that was done after the break came about. After that, I never bothered with them.

Q. Was the Klean-way Laundry, which you and Mr. Brightley composed, making money at the time you signed this agreement? A. We were not.

Q. Did you make any money at all after the time you signed the agreement? A. No, at no time; in fact, we got into worse difficulties.

Q. In other words, from the time you signed the agreement, you got into worse difficulties than you were in before? A. Yes.

Q. When were most of these judgments entered against you that you spoke of? A. They were entered—I will give it to you as a period—they were entered, possibly, from October, or, let me see, from around September until up to the first of the year, 1929. That was the period they came in.

Q. About this period of time, you were having quite a lot of trouble with this Association about

the violation of this agreement? A. No, we were not.

Q. Had they not sent a representative to you, and written you letters, about your violation of this agreement? A. I am not sure of the date when we dropped out of the Association.

Q. Did you ever serve notice that you were droping out of the Association? A. No, we did not, only told them that we were going to take Steelmans in.

Q. I understand you to say that you went to a Mr. Baker. Was that the New Favorite Laundry? A. No, Sanitary.

Q. To complain about other members of the Association charging less prices than that? A. I never made a complaint about anybody to the other fellow. I went to make a complaint about himself.

Q. About himself? A. Yes.

Q. What was the complaint you made to him about himself? A. That I had heard rumors that he was taking laundry at a lower rate; and also that a friend of mine told me that they were still paying a dollar for their laundry.

Q. What did he say? A. He said "You will hear them stories," and that sort of thing.

Q. That's the only complaint you ever made about any member of the organization violating the terms of this agreement? A. It was the only one I actually went to them about, to tell them about that sort of thing, because there were cases where I had trouble with idle rumors all the time coming in, and so forth, that it got to be a joke.

Q. You know Mr. Walker, don't you? A. Yes.

Q. He represents the State Association here in Camden County? A. Yes.

Q. Did you make any complaint to him about any members of the organization violating the terms of this agreement? A. I recall it now. Brightley and I talked it over with Mr. Walker at one time, and he said we would have to get some sort of a written statement from the woman, and that that was the case, and, well, the average woman would rather drop you than get hauled into Court about the matter of her laundry.

Q. Mr. Walker told you that, in order to have proof that some member of the organization was violating the terms of this agreement, you should see the customer, and either get their written statement, or some verbal statement that would be satisfactory? A. Yes, that's right.

Q. Did you do it? A. I had in mind a statement for Mr. Walker, but I didn't take it to him.

Q. Why? A. Because I thought they were practically all doing it, as I said. There was only four in the Association that I felt was carrying it through to the fullest.

Q. You mean to tell us that 13 men who signed this agreement have openly violated the terms of the agreement, is that right? A. I feel that way about it, yes.

Q. You have met nearly all those men here today, haven't you? A. Yes.

Q. What is your position with this present laundry? A. President.

Q. What is the name of the laundry? A. Kleanway Laundry, Incorporated.

Q. I understood you to say you had $8,000 in the old organization? A. That's right.

Q. What part of the $8,000 enters into the new organization? A. None.

Harry E. Martens. Called by Defendant. Cross.

Q. You lost all of the $8,000 in the other organization? A. That's right.

Q. You own some of the stock in this organization? A. One share.

Q. You two are the active men in the business, and each own one share? A. That's right.

Q. The balance of the stock is in the name of Mr. Brightley's father-in-law? A. That's right.

Q. You and Mr. Brightley each hold a position in the present laundry? A. Yes.

Q. Are you on salary? A. Yes.

Q. You don't get any participation in the profits? A. Yes.

Q. You do get a participation of the profits? A. Yes, whatever, as it stands at the present time, we have, of course, we have our one share of stock, as it stands, but there's been no dividends to draw on.

Q. Are you making any money? A. At the present time we made out fine. In fact, we have gone to the extent of putting up a new boiler, water softener, and renovating the plant from the ground up. Of course, at the present time, we can't tell whether we are making any money, but we are more than breaking even. What I mean is, we are not losing anything, but we are not making any volume of money at the present time.

Q. Did you ever, at any time, while you were operating the Klean-way Laundry, keep any books, or cost figures, of your operation? A. Not until this year.

Q. Not until this year? A. Until we incorporated.

Q. Have you the books here? A. Of our present organization?

Q. No, of the old organization? A. I have, the books here shows what was taken in every week,

what each wrote down, but I have not got books to show what was spent.

Q. In other words, they will show your receipts, but not expenditures? A. That's right.

Q. Have you books or papers of the present organization, to show what your receipts and expenditures are? A. Not at the present time, no. I have books of the present organization up until the time we started in, possibly before the first of September. Mr. Brightley takes care of that.

Mr. Carr: They are here, if you want to see them.

Q. I understand your books will show a loss in the Klean-way Laundry, so we will save time? A. Sure.

Q. The books and papers, and so forth, you have not here today? A. Yes, he just told you that.

Mr. Harding: Mr. Brightley can testify to that?

Mr. Brightley: At the present time.

Mr. Carr: We will get whatever you want.

By Mr. Carr:

Q. You said four of these people, you thought, kept this agreement? A. Yes.

Q. What four were they? A. I would not want to be held exactly to four, Mr. Lucas, of the Crystal Laundry, I never heard his name, or Mr. Walker, of the Favorite Home, he kept his agreement, and I never heard a complaint of Morgan Brothers, I never heard a complaint about. I heard one or two complaints about the Garden State, but I never could get any real basis to believe it.

Harry E. Martens. Called by Defendant. Cross.

Q. You assumed they were all right? A. Yes, and they were the four.

Q. In addition to your one share of stock down there, you have got a job? A. Yes.

Q. Mr. Harding asked a question he didn't pursue. I would like to open it up again. He asked you how the Association might drive Mrs. Young and Mr. Munter out of business. You started in to say that one thing was to boycott. Any other ways you have in mind? A. They carried on that sort of a campaign this year again. It was not directed against us. It was directed against another laundry, the Bond Laundry.

Q. Were they on this contract? A. They were on there. Since then they dropped out.

Q. What methods were they? A. By taking and offering a premium to their men for every wash they could get of Bond's particular wash, and even so far as gave that laundry to them if they could get one of Bond's.

Q. Who has done that? Mr. Martens? A. As far as I understand its Morgans done it, Crystal done it, and that's all I know of at the present time.

By Mr. Harding:

Q. Was that a concerted movement of all the men in the Association, or was it just a few? A. I only know what I saw on the street.

Q. If I understand it, your complaint was that the laundry owner would give the driver a premium for business? A. Yes.

Q. Is there anything wrong about that? A. He would give him a premium for Bond's business, particularly.

Q. In other words, the driver of the Favorite was asked to go in on Bond's territory, and get Bond's business, and got a premium if they got it? A. Yes.

Q. You know that? A. If I had to, I think I could prove it, but I could not prove it myself.

Q. Mr. Martens, you heard about it, didn't you? A. I have parties here that—

Q. No, you heard about this, didn't you? A. Yes, it was told me.

Q. Did you go and make a statement to Mr. Walker, or anybody? A. It was not my business to make a complaint. I was not even in the Association.

Q. It was unfair business methods, wasn't it, in your judgment, was it not unfair business methods for one member of this organization to try and get the customers of the others by unfair practices? A. Yes, but I was not a member of the Association.

Q. You were at that time? A. Not at that time. This was this year.

Q. That is since you got out? A. Since I got out.

Q. You say the Bond Laundry is no longer in the Association? A. No.

Q. You mean by that it's out of business, isn't it? A. No.

Q. It is in business yet? A. It is, and it just put an addition to the plant since dropping out.

Q. When did they go out of the Association? A. At the expiration of the contract.

Q. In other words, they waived notice, as required under the contract, and got out? A. That's what they told me.

Q. You gave the names of certain people, or dealers, who were not in the Association, saying there were about six, in your judgment, that were carrying on business at the fixed price, is that right, who were not signatories to this agreement? A. Yes.

Q. I think you gave the name of the Broadway as one? A. Yes.

Q. That's out of business? A. Yes.

Q. Failed? A. Yes.

Q. And you gave the name of Cramer Hill as another? A. Yes.

Q. That's out of business? A. Yes.

Q. Failed? A. Yes.

Q. Did you ever hear of the Fairview Laundry? A. Yes.

Q. That was never in the Association, was it? A. No, it was not in.

Q. He is out of business? A. Yes.

Q. And failed? A. Yes.

Q. Did you ever hear of the Snow White at Collingswood? A. Mostly as bob-tailers. I never was to their place, I don't know a thing about their plant, and I have heard of them mostly as bob-tailers.

Q. Most of these laundries you have testified to that are outside the organization, why did they fail, do you know? A. You didn't ask me about the worst of them.

Q. Answer the question I asked you: Did those laundries you have testified to, that are outside of this organization, and have failed, do you know why they failed? A. No, I do not.

Q. You do not? A. I could imagine why they failed.

Q. What is your imagination? A. The Cramer—will you name them again, and I will try to explain them?

Q. Take the Broadway, why did they go out of business? A. Broadway was doing bob-tail work for fifty cents, paying all claims, and there was no reason why they should not have gone out of business.

Harry E. Martens. Called by Defendant. Cross.

Q. How about Fairview? A. Fairview had no set rate that I can find out.

Q. No fixed rate at all? A. No.

Q. How about Cramer Hill? A. I don't know much about Cramer Hill. I was only in his plant once, and I don't know what his rate was at all.

Q. And the Snow White at Collingswood you say was a bob-tailer? A. I only knew of it as a bob-tailer.

Q. He failed three or four times, didn't he? A. That I could not say.

Q. That's out of business? A. No, somebody is operating the plant.

Q. Is it still operating? A. Sure.

Q. You referred in your testimony to members, both in and out of the organization, at the time prior to this contract, taking laundry for what you termed "a dollar a bag"? A. Yes.

Q. How many pounds were contained in the bag? A. If I stated it a bag, a dollar a bag, I meant an average bag. They would take, would hold, possibly as high as forty pounds. They might get more in them bags for a dollar.

Q. All you could get in the bag? A. Yes.

Q. Did that kind of business pay, or not? A. It didn't pay any of them.

BY THE COURT:

Q. You didn't do that kind of business? A. No.

Mr. Carr: That's all.

Mr. Harding: That's all.

Thomas S. Walker. Called by Defendant. Direct.

THOMAS S. WALKER, Sworn.

DIRECT EXAMINATION BY MR. CARR:

Q. You are here under my subpoena? A. Yes, sir.

Q. You are one of the plaintiffs in this case. You carry on business as the Favorite Home Laundry? A. Yes.

Q. Where is it? A. Fourth and Washington.

Q. In May, 1928, May 31, 1928, what was your weekly turn out of washes, how many damp washes did you do in a week? A. 1928, about 500.

Q. What is your capacity? A. About 700.

Q. Have you, since May 31, 1928, in all respects carried out the prices according to the agreement of that date? A. What's that?

Q. Have you always charged the prices fixed by the agreement of May 31, 1928? A. Yes, sir.

Q. At that time did you have a contract, or arrangement, with any bob-tailer? A. No, sir.

Q. You have not now? A. Never did have.

Q. Prior to the agreement of May 31, 1928, what price did you charge for? A. A dollar minimum.

Q. For hom much? A. 26 pounds.

Q. Any difference according to the day of the week? A. What's that?

Q. Did that price vary according to the day of the week? A. No, not at that time, it was all the same.

Q. For how long a period, prior to May 31, 1928, had you charged a dollar minimum for 26 pounds? A. Seven or eight years.

Q. What did you charge for any amounts over 26 pounds? A. Five cents a pound.

Thomas S. Walker. Called by Defendant. Direct.

BY THE COURT:

Q. You were damp, or dry? A. Dry.

BY MR. CARR:

Q. You weigh it as you send it out? A. No, weigh it as we bring it in.

Mr. Carr: Cross examine, or no, just a minute.

Q. Did you ever solicit free washes, ever solicit work, agreeing to do the laundry free, at the start? A. I did for a while, yes.

Q. Since the agreement? A. Yes, we did two bundles free.

Q. Since May 31st, 1928, you did start it? A. Yes, and we did two free bundles.

Q. You stopped it right away then? A. Yes, bad business.

Q. There were other laundries that were doing it, were there not? A. I don't know.

Q. When did you do it, Mr. Walker? A. In the month of July, this year, I think.

Q. 1929? A. Yes, sir.

Q. Was that at the time of the quarrel with Bond? A. Yes, if you want to term it a quarrel.

Mr. Carr: A dispute, we will call it. Cross examine.

CROSS EXAMINATION:

Mr. Harding: No questions.

Thomas W. Baker. Called by Defendant. Direct.

THOMAS W. BAKER, Sworn.

DIRECT EXAMINATION BY MR. CARR:

Q. Where is your laundry? A. West Collingswood.

Q. Was it in that location in May, 1928? A. It was.

Q. You are one of the parties interested in this thousand dollars, if you collect it? A. I am.

Q. On May 31st, 1928, what was your capacity? A. The capacity, the amount I could do, around 1,400 or 1,500.

Q. In a week? A. In a week.

Q. What did you do? A. Around 1,000 or 1,100.

Q. Prior to May 31st, 1928, what did you charge for laundry? A. 26 pounds, or less, a dollar, and five cents a pound for over 26 pounds.

Q. How much for over? A. Five cents a pound.

Q. Was that uniform prior to the agreement, or did you cut that when you found it necessary? A. What do you mean, uniform?

Q. Did you charge all your customers, or not, that price? A. I charged them a dollar. If it was 10 pounds, or 15 pounds, as long as it was under 26, it was a dollar. Our rate was higher before this agreement, and averaged more per wash.

Q. Did you charge that to all customers, or did you make a cut in the price? A. I done no laundry for less than a dollar, prior to that date.

Q. Didn't you do wash 21 pounds for 75 cents, or 26 pounds for 75 cents? A. No, sir.

Q. 21 pounds, I mean? A. No, sir.

Q. Since May 31st, 1928, what price have you charged? A. It's been as low as 12 pounds for 60 cents.

Q. That's the contract price? A. Yes.

Q. What price have you charged? A. I have charged 12 pounds for 60 cents, and four cents a pound additional.

Q. At times, you have cut that price, haven't you? A. I have never done less than 12 pounds for 60 cents.

Q. At times, you have cut that price, haven't you? A. If the wash is 8 or 9 pounds, they pay me 60 cents, just the same.

Q. Have you not, at times, cut that price? A. No, I have never cut the price.

Q. How about Paulsboro? A. 12 pounds for 60 cents.

Q. At Paulsboro you cut the price? A. At Paulsboro the price was 12 pounds for 60 cents.

Q. You never cut the price at Paulsboro? A. No, I never cut them.

Q. You have never cut prices in Paulsboro? A. No, they paid me 12 pounds for 60 cents.

Q. You are satisfied to say that you never cut prices in Paulsboro? A. I do.

Q. Are all your trucks, do they operate all under the name of the Sanitary Laundry? A. All but one.

Q. Which one is that? A. The one that goes to Paulsboro.

Q. What name is that under? A. De Luxe.

Q. The wash the De Luxe truck collects was at what price? A. 12 pounds for 60 cents.

Q. Who runs that truck, Mr. Baker? A. A boy by the name of Joseph Ashton.

Q. Does he keep a book showing the amount of laundry he collects, and what he gets for it? A. Yes, he does.

Q. Have you that book here? A. No, but I can get it.

Q. When can you get it? A. I guess I can get it around five o'clock this afternoon, when he comes in.

Q. What records do you keep in your laundry? A. We keep a duplicate copy of every wagon coming in, and give the driver a copy of his load. The original copy we keep, and we give the other copy.

Q. Have you a record in your laundry that will show how many pounds of laundry you did in any one week, and what you got for it, by names? A. Yes.

Q. Will you produce that? A. I will.

Q. Have you it here? A. No, I haven't. It's the pin number, and name, and price.

Q. Has it got the weight? A. The weight is punched through on the back of the ticket.

Q. That is all in this book? A. I can show you the books.

Q. You were subpoenaed to bring the books, weren't you? A. They didn't tell me to bring the books.

Q. It's on your subpoena? A. I can get them, though.

Mr. Carr: I will ask to have this witness stand aside until he produces the books.

Witness: You want the price list we get for Paulsboro and also—

Mr. Carr: I want the record of Paulsboro.

Harold D. Morgan. Called by Defendant. Direct.

HAROLD D. MORGAN, Sworn.

DIRECT EXAMINATION BY MR. CARR:

Q. What is your name? A. Harold D. Morgan.

Q. You carry on a wet wash business? A. Yes.

Q. Where? A. Westmont, New Jersey.

Q. On May 31st, 1928, what was the capacity of your plant, in washes per week? A. About 6,000 a week.

Q. How many did you do per week at that time? A. About 5,000.

Q. Prior to the date of the agreement, what price had you charged? A. For five or six years, we charged 26 pounds for a dollar, the regular price, but six months before that we went to 15 pounds for sixty cents.

Q. About six months before May? A. Yes.

Q. Did you carry that price on down to the time of the contract? A. Yes.

Q. In fact, it was your price that brought about this meeting, wasn't it? A. No, there were already two other laundries in Camden charging that price, before we were doing it, for a year, or more.

Q. Before you did? A. Yes.

Q. Who were they? A. The Crescent Laundry, that was Munter, and the Family was another one.

Q. Who was that? A. Rhodes.

Q. After the agreement, did you charge the agreement price? A. Yes, sir.

Q. Did you make any change in bob-tailers? A. No, sir.

Q. You kept the same bob-tailers as before? A. We never had any.

Q. You did not have any before the agreement, and have not had any since? A. No.

Harold D. Morgan. Called by Defendant. Direct.

Q. You have kept to the price scale fixed in the contract? A. Yes, sir.

Q. You have, however, in your efforts to get new business, offered to do laundry free, haven't you? A. We have a few cases, yes.

Q. You advertised in the paper in that territory? A. Yes, in Paulsboro, when we went there, we would give a free wash to anyone.

Q. That is one of the places where these two gentlemen had a route, in Paulsboro? A. Yes. I don't know whether they had one there. I don't think they did. I think De Luxe was down there. I don't know whether they had one, or not. I know De Luxe went there.

Q. You went down there, at any rate, and offered to give them free washes if they would bring you their business? A. The first week.

Q. After the first week you charged the regular price? A. Yes.

Q. They could come to you and get one week's wash for nothing? A. Yes.

Q. Did you think that was in compliance with the contract? A. There is nothing in the contract which would say that you should not do that, the first week, to give them a trial bundle, a free sample.

Q. How could you do the work for nothing, and be within this contract? A. For one week, to give them a trial, yes.

Q. You thought it was all right to do that? A. Yes, they do it in other places, Philadelphia, and different places.

Q. Where else did you advertise to that effect, besides Paulsboro? A. That's the only place. We only went to Paulsboro, and when we started there, we did it the first week.

Q. When was this, around what time? A. I could not say, but it was probably a year ago, about a year.

Q. Just about the time that Mr. Brightley and Mr. Martens took on the bob-tailers, wasn't it? A. About that time, yes.

Q. You adopted the same policy with respect to the Bond Laundry, didn't you, just lately? A. We have allowed some drivers to give free washes, when they are soliciting.

Q Since October of last year? A. Yes.

Q. That was to try and get the laundry that had been done by Bond? A. That was in any case, we allowed a certain amount of free washes to the drivers for soliciting for trial.

Q. You have been successful. You have got a big business. You are still doing that, as a matter of fact? A. Yes.

Q. And will continue to do it? A. Yes, not a great amount we don't. We probably only give three or four washes a week away.

Q. You only do that where it is necessary, to establish a new connection, is that right? A. Yes.

By the Court:

Q. Your rate is one dollar for thirty pounds? A. No.

Q. What is it? A. Right now, or right at that time.

Q. Right now? A. Right now it is eighty cents for fifteen pounds. It is higher now than then. We have raised the price since.

By Mr. Carr:

Q. Is that the contract rate? A. No, we raised over the contract. The contract price was not enough.

Q. You could get more than this calls for? A. Yes.

Q. The contract price for that would be 72 cents? A. Yes.

Q. You are getting eighty? A. Yes.

Mr. Carr: No, I am wrong on them. Cross examine.

CROSS EXAMINATION BY MR. HARDING:

Q. Your contract here, the scale is the minimum price? A. Yes.

Q. You don't violate the contract by not paying that price is business necessitates it? A. No, sir.

Q. So we can understand these free or sample washes. Will you explain why you give a free, or sample wash. What the purpose of it is? A. Just another point to convince the lady we can do it better. There was nothing wrong in telling them you could do it better, but some of them would not believe it unless they saw it.

Q. It is just progressive advertising? A. Yes, sir.

Mr. Harding: That's all.

FRANK C. LUCAS, Sworn.

DIRECT EXAMINATION BY MR. CARR:

Q. Do you do business as the Crystal Laundry? A. Yes, sir.

Q. An May 31st, 1928, what was your capacity? A. 2,000 bundles.

Q. What did you do? A. About 1,450, or 1,300, something like that, between 1,350 and 1,300.

Q. Prior to May 31st of 1928, what price did you charge? A. One dollar for 26 pounds, and four cents a pound over weight.

Q. Was that a uniform price, or did you vary that? A. That was a uniform price at that time.

Q. You did what Mr. Morgan did, gave free laundry occasionally. A. We always done it, ever since we have been in business, allow the driver so many bundles a week.

Q. You do that? A. Yes, sir.

Q. After the making of this agreement, what price did you charge for laundry? A. 60 cents for 15 pounds, four cents a pound for over weight.

Q. 60 cents for 15 pounds? A. No, 12 pounds, rather.

Q. Four cents a pound over? A. Four cents a pound over.

Q. What do you charge now? A. 15 pounds for 80 cents, four cents a pound over weight.

Q. How many free laundries do you allow your drivers a week? A. We allow each driver three bundles a week. Some weeks they don't use that many, some weeks they go one or two over, and we don't complain.

Q. You don't hold them strictly to that. If they find it necessary to have four or five, that's all right? A. We don't allow them to go over five. Three we try to hold them to, if possible.

BY THE COURT:

Q. The practice of you laundrymen seems to be to charge less for 12 or 15 pounds, as the case may be, and more for a smaller quantity? A. We do that to try and get a smaller bundle.

Q. You don't encourage more business? A. We do encourage more business, but we have got to have a profit, and we figured a minimum bundle of 15 pounds was a small family bundle.

Q. You charge less, proportionately less, for small bundles than you do for those over your minimum. You charge, for example, 80 cents for how many pounds? A. 15 pounds.

Q. And how much above that? A. Four cents a pound over weight.

Q. That doesn't work out with your other bundle, 15 pounds for 60 cents, and 4 cents or 5 cents a pound over that? A. That was a bad bundle, 15 pounds for 60 cents.

By Mr. Carr:

Q. At the time of the dispute with Bond's Laundry, did you increase the number of free washes to give away? A. No, sir.

Q. How did you come to know about the dispute? A. I knew about the dispute.

Q. Did you pay a premium anywhere to get Bond's business? A. No, sir, I didn't have any dispute with Bond. I don't fight with anybody. I didn't fight with these boys. I don't have to have anyone against me, I mean as business, or me, personally.

Q. As far as you are concerned, you didn't make any special drive for his business? A. Driving for everybody's business at all times.

Mr. Carr: Cross examine.

Cross Examination by Mr. Harding:

Q. So that we can clear up the question, as long as it has been asked you, when it comes to your

agreement, or contract, I will read the paragraphs so that we can understand just what the scale, or prices, are for the washes: "And for wet wash to be delivered Wednesday, or thereafter, for the remaining days of the week, during said term, the charge is————wet wash service, minimum price of sixty cents for twelve pounds wet wash, and four cents a pound for all wet wash thereover, except when a charge to a customer, at the rate as aforesaid, amounts to one dollar, then the price to remain at one dollar for wet wash up to thirty pounds." That's correct, isn't it? A. It is, according to the contract, yes.

Q. In answer to his Honor's question, you testified that you charged 80 cents for 15 pounds. A. 15 pounds.

Q. That is at the minimum? A. Yes.

Q. But suppose a person sent you 30 pounds of wash, what is the charge for that? A. If they sent me 30 pounds of wash on Monday or Tuesday, there would be a charge of 4 cents a pound for every pound over 15 pounds.

Q. How about the other days of the week? A. If they sent it Wednesday, or Thursday, we would give them 25 to 30 pounds for a dollar.

Mr. Harding: That's all.

ROY D. CHEEVER, Sworn.

DIRECT EXAMINATION BY MR. CARR:

Q. May 31st, 1928, you were in business as the I. X. L. Laundry? A. Yes, sir.

Q. Where? A. 1300 Walnut Street, Camden.

Q. Are you still in business at that location? A. Yes, sir.

Q. Under the same name? A. That's right.

Q. Prior to May 31, 1928, what price did you charge for laundry? A. A dollar a bag.

Q. How much in a bag? A. Whatever they put in it.

Q. One of those liberal men? A. Yes.

Q. After that you charged what? A. At the time of the agreement, 12 pounds for 60 cents, and 4 cents additional.

Q. I neglected to ask you what your capacity was there, Mr. Cheever? A. About 1,200 washes.

Q. How many did you do? A. Doing about 800 at that time.

Q. Have you stuck to that price right through? A. Yes.

Q. 12 pounds for 60 cents and 4 cents additional? A. Yes.

Q. Still charging it now? A. No, charge a higher price now.

Q. What do you charge now? A. 15 pounds for 80 cents, and 4 cents each additional pound, allowing 30 pounds for the dollar.

Q. 4 cents for additional? A. Yes.

Q. And allowing what? A. 30 pounds for the dollar, Wednesday and Thursday delivery.

Q. That's special arrangements you make? A. No.

Q. 30 pounds for a dollar on Wednesday and Thursday only? A. That's right.

Q. That's lower prices on Wednesday and Thursday? A. That's right.

Q. Isn't that substantially less than the agreement price, isn't it, Mr. Cheever? A. No, the original agreement allowed 30 pounds for a dollar, I believe, on Wednesday and Thursday delivery.

Q. I ask you to look at that contract. This is the original paper, Mr. Cheever. I would like you to read it to yourself. Look at that paragraph, this one, and tell me whether 30 pounds for a dollar is not a lower rate than the contract rate? A. It says that—

Q. 60 pounds for 12 cents? A. 60 cents for 12 pounds.

Q. Did you say 30, that would be 18 more pounds at 4 cents, and that would bring it up to $1.32 for 30 pounds? A. Monday and Tuesday delivery. We are now talking of Wednesday and Thursday delivery, you see, 30 pounds for a dollar, if you continued on that paragraph.

Q. In that paragraph it says that the rate shall be effective Monday and Tuesday of each week, and in the next paragraph it gives the same rate? A. But, further down it says 30 pounds for one dollar for Wednesday and Thursday delivery.

Q. You are right. Have you stuck to that rate ever since? A. Yes, sir.

Q. How about bob-tailers, what do you charge then? A. 60 per cent. of the gross receipts. That is, they can charge the price that the contract calls for, and then when their gross business is summed up at the end of the week, we charge them 60 per cent. of that amount.

Q. On 12 pounds of wash which the bob-tailer brings you in to do, you get from him 40 per cent. of 60 cents? A. No, we get 60 per cent. and the bob-tailer gets 40.

Q. You allow him 40 per cent. for bringing the laundry, and for delivering, whatever he may do? A. That's right.

Q. Was that the rate at the time of the signing of the agreement? A. Yes.

Q. How many bob-tailers do you have? A. Three.

Q. Are those the same three you had at the time the agreement was signed? A. The same three.

Q. As a matter of fact, what do they do, have the name of some laundry, their laundry? A. Yes, practically.

Q. When you say one of their wagons, they don't have a laundry? A. No.

Q. They bring their wash to you, and you wash it for them? A. Yes, that's right.

Q. You don't know whether the bob-tailer gets 60 cents for 12 pounds. All you know is you charge him on that basis? A. That's right.

Q. He might get 35 cents. You would not know, if he gave you your 60 per cent. of 60 cents? A. No, there's no way of me determining it.

Q. How is that charged. Is that proportioned according to the number of washes? A. No, gross business by the dealer. For instance, $100, we would charge him $60.

Q. Is each individual wash weighed out for the bob-tailer? A. Yes, and marked with our own weight ticket, with our name printed on them.

Q. Do you give free washes? A. No, sir.

Q. Do you give a bonus for getting any special business of any special person? A. No, sir, can't afford it.

Mr. Carr: Cross examine.

CROSS EXAMINATION BY MR. HARDING:

Q. The bob-tailers you deal with were bob-tailers you had before the agreement was entered into? A. Yes, sir.

Q. And under the terms of the agreement, you were permitted to deal with those you had before entering into the agreement? A. That's right.

Mr. Harding: That's all.

By Mr. Carr:

Q. If, under that agreement, you went out of business, those bob-tailers would have to go out of business, would they not? A. Not necessarily.

Q. Unless they went to somebody outside of the Association? A. Yes, but I imagine that the Association members would be well satisfied to agree among themselves to take care of them, if they were asked to do that.

Q. You are a member of this Association, and you are one of the beneficiaries in this $1,000 if it is collected. You know they are suing us, because we did that, don't you?

Mr. Harding: Objected to. That is not true.

Mr. Carr: He said we violated the agreement in taking one bob-tailer.

Mr. Harding: This gentleman is testifying relative to bob-tailers that were there before the contract was signed.

The Court: Mr. Carr's question was, whether or not, the witness doesn't know, having testified that he thought the gentlemen in the Association would take on bob-tailers, if they were requested, Mr. Carr's question now, in view of that statement, is "Don't you know that is one of the reasons this suit was brought, because the defendants did take bob-tailers."

Mr. Harding: That's true.

The Court: The Court will now recess until ten o'clock tomorrow morning.

November 13, 1929.

(Trial of cause resumed at 10 A. M. in the presence of counsel for the respective parties.)

Mr. Carr: Mr. Harding has agreed with me that Mr. Munter was not able to come back this morning, and would testify, if he were here, that the capacity of his laundry on May 31st, 1928, was 500 washes a week, and that he was actually doing 285 washes a week at that time. That he was not a signer of this contract, one of those that did not sign. We also agree that he would testify no effort was made to put him out of business by the Association, and I so stipulate. Is that your understanding, Mr. Harding?

Mr. Harding: Yes.

ISAAC J. RHODES, sworn:

DIRECT EXAMINATION BY MR. CARR:

Q. What is your business, Mr. Rhodes? A. Laundry business.

Q. What do you call it? A. Wet Wash Laundry.

Q. What is the name of the laundry? A. Camden Family Wash.

Q. You signed the agreement of May 31, 1928, did you? A. No, sir.

Q. You did not? A. No, sir.

Q. Were you operating a business yourself on May 31, 1928? A. 1928?

Q. Yes? A. No, sir.

Q. You had operated it prior to May 31, 1928, had you not? A. Yes.

Q. Who was operating it in May, 1928? A. Why, the Greater Camden Laundry Company, Incorporated.

Q. The Greater Camden Family Laundry, is not that the correct wording? A. No, the Greater Camden Laundry Company, Incorporated, I think.

Q. When did you take the business back? A. In February 29, 1929.

Q. After one year, you sold it to the Greater Camden people? A. Yes.

Q. Are you able to tell us what the capacity of the laundry was on May 31st, 1928, as to the number of washes that could be done there a week, the capacity of the laundry? A. Yes, about 1,400.

Q. Are you able to say how many washes that laundry was turning out in a week at that time, how near to that figure? A. About 1,400.

Q. Running at capacity, were they? A. Yes, well, yes.

Q. What I am directing your attention to, is what they could do, and what they actually were doing? A. That plant, perhaps, could take care of 2,500 washes, could do 2,500 washes a week.

Q. That's what I wanted to know in the first place, what the capacity of the plant was? A. I didn't understand.

Q. About 2,500? A. A week, yes.

Q. What do you say they actually were doing, as near as you can tell? A. About 1,400.

Q. Were you in and out of that laundry during the time Mr. Borstein was running it? A. Yes.

Q. You sold it in February, 1928? A. I took it back in February, 28th or 29th, 1929.

Q. You took it back on a chattel mortgage? A. Yes.

Q. When did you sell it to these other people? A. I don't remember the exact date, but about May 15th, perhaps, 1928.

Q. Do you know whether or not that laundry was operated at a profit from May, 1928, when you sold it to the Greater Camden people, up to the time you took it back in February of this year? A. I could not say.

Q. You don't know whether they operated at a profit, or not? A. No, I do not, evidently not.

Q. Why do you say that? A. They were obliged to turn the business back.

Q. Didn't keep up their payments, you mean? Are you a member of this Association? A. No, sir.

Q. You are not now? A. I am not now, and have not been for five years.

Q. You can't tell us the prices you collected for laundry up to the time you sold the business in May, 1928. What prices were you getting at that laundry? A. I think it was 12 pounds for 60 cents, and 4 cents a pound over 12 pounds.

Q. That was prior to the time of your sale? A. Yes.

Q. Was that rate the same all through the week? A. At that time, yes.

Q. How long had you been operating under that rule, Mr. Rhodes? A. I could not just say.

Q. A short while? A. May be a year, may be a year, or more.

Q. Do you have any connection with bob-tailers at that plant? A. Yes, I think one bob-tail.

Q. What do you charge the bob-tail? A. 60 and 40. I get 60 and the bob-tail gets 40 on the dollar.

Issac J. Rhodes. Called by Defendant. Cross.

Q. How long have you been charging that price to the bob-tailer? A. Since I went back in the business, 1929.

Q. Did you have a bob-tailer prior to the time you sold? A. No.

Q. You did not at that time? A. Not prior to the time I sold.

Mr. Carr: Cross examine.

Cross Examination by Mr. Harding:

Q. Mr. Rhodes, I understand you sold this laundry about May 15th, 1928? A. About that.

Q. Prior to that time, you were charging the minimum rate as shown in this agreement, is that right? A. I was charging 60 cents for 12 pounds.

Q. And 4 cents over 12? A. Yes.

Q. After the laundry was sold, do you know what Mr. Borstein charged? A. No, I could not say.

Q. You had Mr. Borstein sign this agreement for the laundry? A. I could not perhaps say that he did, because I didn't see him when he signed it. I understand he signed with the rest of the Association.

Q. The Greater Camden Family Laundry, was not that the name of it? A. The original name was the Camden Family Wash Laundry.

Q. Was the name changed when they took it back? A. The name was changed to the Greater Camden Laundry Company, Incorporated.

Q. That laundry happens to be a party to this agreement. The laundry was operated by Mr. Borstein, wasn't it? A. Yes.

Q. At that time, you were obliged to foreclose the chattel mortgage you had, and take the laundry over? A. Yes.

Q. Since that time you have operated it yourself, have you? A. Yes.

Q. What price do you charge now for laundry? A. 80 cents for 15 pounds and 4 cents a pound over 15 pounds.

Q. That price is proportionately higher than the old price? A. Yes, it might appear so.

Q. Why did you increase the price? A. To protect my business, perhaps.

Q. In other words, did the old prices net you a proper return on your investment? A. I don't think so.

Q. They did not? A. No.

Q. That's the reason you increased the price? A. Yes.

Q. You are not a member of this Association at all, are you? A. No.

Mr. Harding: That's all.

HARRY A. WALTHER, Sworn.

DIRECT EXAMINATION BY MR. CARR:

Q. What is your business, Mr. Walther? A. Laundryman.

Q. Under what name do you do business? A. Garden State Laundry Company.

Q. Are you an official of this Laundrymen's Association? A. Secretary.

Q. What is the name of the organization? A. South Jersey Damp Wash Association.

Q. As said Secretary, do you keep minutes of its meetings? A. Yes, sir.

Q. Have you got the book here? A. I have.

Q. Will you let me see it, please. You were one of the signers of this agreement? A. Yes.

Q. On May 31, 1928? A. Yes, sir.

Q. Prior to the signing of this agreement, what price did you charge for laundry work? A. 26 pounds for a dollar, 4 cents each pound additional.

Q. Did you have any exceptions to that rate? A. None at all.

Q. The same on any day of the week? A. Every day of the week.

Q. Did you adhere uniformly to that rate? A. Yes, sir.

Q. Made no cuts or ever charged any more? A. Nothing less, nothing more.

Q. That was a lower price than the agreement price, wasn't it? A. I term it a higher price.

Q. 26 pounds for a dollar is a higher price? A. A higher price.

Q. Than the price fixed by the agreement? A. Yes, sir.

Q. This book you produce, Mr. Walther, is the minutes of the South Jersey Damp Wash Association, and contains the first entry, June 22nd, 1928? A. No minutes were taken before that date.

Q. No minutes were made of the earlier meetings? A. No, sir.

Q. There is no minutes of the meeting at which this agreement was settled upon? A. No, sir.

By the Court:

Q. When was your Association organized? A. The organization took place practically at the opening of the minute book.

Q. Not before June, whatever date it is? A. Yes.

Q. You had not organized before that date? A. We had met.

Q. Had you elected officers? A. No, sir.

By Mr. Carr:

Q. The meeting to which you refer, at which you had met, was that the meeting when this agreement was determined upon? A. I didn't understand your question, Mr. Carr.

Q. You said it met prior to June. Was that the meeting you just referred to, the meeting when this agreement of May 31st was agreed upon? A. I don't get your question properly.

Q. In answer to the Court's question, you said that prior to June 22nd, 1928, you had met, this Association had had a meeting, that's right, isn't it? A. I would not term it an Association. At that time it was an open meeting.

Q. When was that meeting? A. I could not say.

Q. Was it prior to the making of this agreement? A. Yes, sir.

Q. At that meeting— A. We had several meetings.

Q. At that meeting, or one of those meetings, prior to the making of this agreement, the making of the agreement was discussed, was it not? A. Exactly.

Q. And the legality of the agreement was discussed, was it not? A. Yes.

Q. You had an attorney present at the meeting? A. Yes.

Q. He discussed with you the legality of it? A. Yes, sir.

Q. He did discuss the legality of it? A. Yes, sir.

Q. Some minutes were made of that meeting, were they not? A. No, sir.

Q. I ask you to explain, if you will. I see here is an entry, June 22nd, is that your handwriting? A. No, sir, that's the office girl's handwriting.

Q. Is this a correct statement of the minutes? A. Yes, sir.

Q. I call your attention to the fact that it starts out by saying "Regular meeting of the South Jersey Damp Wash Association was held at the Walt Whitman Hotel on the above date," and so forth, and "the minutes of the previous meeting were dispensed with due to the absence of the Secretary." Where are those earlier minutes? A. I have none.

Q. I call your attention to the next paragraph: "Mr. Buckelew, Secretary of the State Association, informed us that the Board of Directors of the State Association decided against paying for attorney's fees on the price adjustment agreement, due to no authority under the State Association by-laws, and, if done, would establish a poor precedent." Was the matter of the payment of the fees for this adjustment agreement discussed at that meeting by the Association? A. It was discussed at some former meeting.

Q. Referring to the next paragraph: "On information from Mr. Buckelew, that if payment for attorney's fees was made through office of State Association, attorney would make a rebate of $100. It was decided to do so. Discussion as to the method of pro-rating fee resulted in a motion by Mr. Walker, seconded by Mr. Goeibs, that this be done as per number of trucks operated by members." Is that the way the fee was pro-rated? A. Yes, sir.

Harry A. Walther. Called by Defendant. Direct.

Q. I refer you to the further provision in the same minutes, "Mr. Borstein made motion, seconded by Mr. G. Morgan, that a Committee be appointed with full power to take all lawful means to check prices and weights of other laundries. The motion was carried. Chairman appointed Mr. Borstein, Mr. Baker, and Mrs. Deemer"? A. Yes.

Q. When were you first selected as Secretary of this Association? A. As far as I know, that date.

Q. The date of this meeting? A. Yes.

BY THE COURT:

Q. You mean June 22nd? A. Yes.

BY MR. CARR:

Q. Is there any record in the minutes of your appointment as Secretary? A. I see none.

Q. Or of Mr. Harold Morgan's appointment as Presiding Officer? A. I see no reference to it there.

Q. When was that settled upon? A. The appointment of Mr. Harold Morgan as President?

Q. Yes, when was that determined upon? A. As far as I know, at that same meeting.

BY THE COURT:

Q. That is, June 22nd? A. Yes.

BY MR. CARR:

Q. You have some memorandums in here, Mr. Walther. I call your attention to bill of the Walt Whitman Hotel dated May 17, 1919?

The Court: 1919?

Witness: That's the wrong date.

BY MR. CARR:

Q. What is that meant to be? A. 1929.

Q. I show you constitution and by-laws found in the minute book. When were they adopted? A. I don't know.

Q. Can you tell by referring to the minutes? A. Possibly I could.

Q. Please do so? I see you are looking in December, 1928. Were not these by-laws adopted earlier? A. They were not. According to the minutes they were not.

Q. I am asking you when they were adopted. You say you have some minutes there that are not in the book? A. They were not adopted before this book.

Q. You are sure of that? A. Positively, I have it right here.

Q. These by-laws were adopted November 2, 1928? A. I didn't read it. I knew I had come to it. I see where it's adopted.

Q. You had better read it. After looking at the minute book, will you tell us when the by-laws were adopted? A. November 16, 1928.

Q. Are these sheets found in the minute book actually the by-laws as adopted? A. Yes.

Mr. Carr: I offer them in evidence.
(Received and marked D-1.)

Q. You said that at the time it was discussed, the legality of the proposed agreement was discussed by an attorney, he was present with the members, is that correct? A. Yes, sir.

Q. What particular angle of the agreement was made the subject of discussion, as far as the legality was concerned? A. There were several angles.

Q. The question of price fixing, was that discussed? A. The question of price was one.

Q. How about bob-tail men? A. The question of bob-tails was another.

Q. You all knew there would be a question as to whether the agreement was legal or not, didn't you? A. Yes, sir.

Q. You knew the agreement did fix prices for laundry, did you not? A. Yes, sir.

Q. You knew that it very likely would have a tendency to put some people out of business, did you not? A. I could not say I did. I never gave it a thought.

Q. You never thought what would happen to these bob-tailers, for instance, who could not have their work done? A. No, sir.

Q. It was generally conceded that the agreement raised the price of laundry, was it not? A. In some cases it was an increase, and in some cases it was a decrease.

Q. Generally speaking, it was an increase in price? A. No, sir.

Q. There were more laundries, who charged less than that, prior to the agreement? A. No, a few charged more, and quite a few charged less.

Q. Do you know whether there were more laundries, doing more washes, charging less, or more, prior to this agreement? A. I have no check on that. I can't answer that question definitely.

Q. You don't know? A. I don't know.

Q. Is it not a fact that this discussion, in which you participated, the legal question arose because it was understood you were raising prices? A. We didn't consider raising prices. It was a set price for everybody concerned.

BY THE COURT:

Q. It was a question of fixing prices, rather than raising prices, you considered? A. There were so many different fixed prices.

Q. It was a question of fixing price, rather than the lowering or raising of prices, that you considered? A. Yes, sir.

BY MR. CARR:

Q. Can you tell why the provision regarding bob-tails is contained in a separate agreement, Mr. Walther. Do you know the answer. Was that all considered at one time? A. It was not all considered at one time. The question of bob-tail was considered later.

Q. Was the first agreement considered at a meeting of this Association, these men? A. Yes, sir.

Q. And the bob-tail supplement was also considered at a meeting of the same persons later? A. Yes.

Q. Was this attorney present both times? A. Yes, sir.

Q. If I may have his name, what was his name? A. Yauch.

Q. How many washes was your laundry able to do at the time you signed this agreement? A. One thousand.

Q. Your capacity was a thousand? A. Yes, sir.

Q. How many did you do at that time? A. 550

BY THE COURT:

Q. Were all the signers of this agreement members of the Association? A. There was no Association.

Q. Did they become members of the Association? A. Yes, sir.

Q. Did any become members of the Association, who did not sign the agreement? A. No, sir.

Q. The group that signed the agreement became members of the Association? A. Yes, sir, exactly.

BY MR. CARR:

Q. After the making of this agreement, what price did you charge? A. 12 pounds for 60 cents, 4 cents a pound additional.

Q. That's the agreement price? A. Yes, sir.

Q. Were you one of the laundries that solicited new business by doing free washes? A. Occasionally.

Q. That continued throughout the period from May 31st on? A. No, sir.

Q. What were the occasions when you did free wash? A. On occasions that I thought it was necessary to do some advertising to increase business.

Q. How did it happen one of those periods was in October, 1928? A. I could not say.

Q. It may have been? A. It might have been.

Q. How did it happen that the occasion you gave away free washes, laundry, was this year when the difficulty or dispute arose with Bond Laundry? A. I could not say.

Q. You won't say? A. I can't say the date, because I do it periodically.

Q. You don't feel you are prevented from giving free washes, if you see fit? A. No, I feel its good advertising.

BY THE COURT:

Q. If I understand, this Association was composed of those who were in the wet laundry busi-

ness, as distinguished from those who were in the general business? A. Entirely damp wash.

Q. You, as I understand it, do no ironing? A. None at all.

Q. You wash? A. We wash, and wring.

Q. And you deliver the rough dry stuff to the owner? A. Yes, sir.

Q. You don't iron anything? A. Nothing.

BY MR. CARR:

Q. None of the laundries, who were parties to this agreement, did anything except what is known as damp, or wet wash laundry? A. At that time.

Q. Do they now? A. One does finished work now.

Q. Who? A. Morgan Brothers.

Q. Laundries, which were doing what we call finished work— A. No.

Q. —were not members of the Association—A. No.

Q. —not parties to this price fixing arrangement, and not parties to the agreement? A. No, sir.

BY THE COURT:

Q. I presume none of the other laundrymen, the finished laundrymen, were invited, were they? A. Not at that time.

BY MR. CARR:

Q. This is the damp wash industry; the finished business is the finished business, or the finished laundry business? A. Yes, sir.

Harry A. Walther. Called by Defendant. Cross.

Mr. Carr: I am going to ask the privilege to recall Mr. Walther later, after I have had an opportunity to look further at the agreement. Cross examine.

CROSS EXAMINATION BY MR. HARDING:

Q. This South Jersey Laundrymen's Association is not an incorporated body, is it? A. No, sir.

Q. And was there any former meeting held, before the June meeting referred to in your minutes? A. There were meetings held. I don't know whether you would term them formal meetings. There were meetings held to discuss this agreement.

BY THE COURT:

Q. At those meetings, did you also discuss the question of organization? A. No, sir.

Q. You didn't discuss at all the questions of organization? A. No, sir.

BY MR. HARDING:

Q. The reference in the June minutes to the reading of the minutes of the previous meeting be dispensed with, because the Secretary was not present; had there, in fact, been a meeting prior to June? A. There were meetings prior to June, yes.

Q. Was there a Secretary appointed, or named, to take care of the minutes? A. I could not say whether there was, or no.

Q. Did you know of any Secretary holding office, prior to yourself? A. No, sir.

Q. So that when you wrote in the June minutes "Minutes of the previous meeting were dispensed

with, due to the absence of the Secretary", that was sort of a matter of habit that Secretaries have of writing that way, or had there been any previous minutes, or had there been any previous Secretary? A. The only thing I could say, if there was a Secretary appointed for that particular meeting, I could not say. As far as the official Secretary, I was the only one.

Q. You never heard of any other Secretary? A. No other Secretary.

Q. This was put in the minutes—

Mr. Carr: I don't think Counsel ought to lead him too far. This is a party to the suit.

The Court: Yes, I suppose so.

Q. The minutes, then, the June minutes, as far as you were concerned, simply contained this entry, in case there was a previous Secretary, so in case there were previous minutes— A. Yes.

Q. How many times Mr. Walther, did the attorney come down to discuss the makig of this agreement, with the members of the South Jersey Laundrymen's Association? A. As far as I remember, two times.

Q. On either occasion, did the attorney have the agreement with him? A. He had the agreement, I believe, both times.

Q. It was discussed by all the members there? A. Yes, sir.

Q. The members there practically constituted those who were named in the agreement? A. Yes, sir.

Q. Was the agreement discussed from the standpoint as to whether it would be legal or not? A. Yes, sir.

Harry A. Walther. Called by Defendant. Cross.

Q. Did the attorney tell you that he had examined the authorities, and was satisfied it was legal? A. Yes, sir.

Q. Was it as a result of that you authorized the making of the agreement? A. Yes, sir.

Q. Was there any discussion at that time about bob-tails? A. Yes, sir.

Q. Was the addendum to the original agreement proposed, in order to protect the Association against these bob-tails? A. Yes, sir.

By Mr. Carr:

Q. In answer to Counsel's question where you referred to the fact that there was no other Secretary, what you meant, as I understand you, is that you do not know where any other person acted as Secretary of the meeting. Was there an official Secretary of the Association then, or not? A. There was no official Secretary of the Association.

Q. You say that for what reason. Why do you say no official Secretary? A. They were just appointed for that particular meeting.

Q. There may have been a Secretary appointed for that previous meeting? A. Yes, possibly so.

Q. And he was present at the meeting, of which you should have had the minutes? A. Yes.

Q. Your recollection would be more clear in June, 1928, when the minutes were written, than it would be now? A. Yes, sir.

Q. What laundries were carrying on a damp wash business having their establishments in Camden, and the suburbs, at the time of this agreement, May 31, 1928 in addition to those who were parties. Is that clear? A. You want me to name them all?

Harry A. Walther. Called by Defendant. Cross.

Q. Those who were not parties to this agreement of May 31, 1928. What were their names? A. Mrs. Young.

Q. Yes? A. Do you want the location?

Q. Yes? A. That was Gloucester.

Q. Yes? A. Fairview, Gloucester, Merchantville, Merchantville, Twin Cities Laundry, Merchantville, Snow White Laundry, Collingswood, Riverton Laundry, Riverton, Riverside Laundry, Riverside.

Q. Didn't they come in afterwards? A. No, sir.

Q. Sure about that? A. They never joined the Association.

Q. Didn't they come into this territory afterwards? A. No. They were working the territory all the time as far as I know.

Q. All right any others? A. Munter.

Q. He was Camden? A. That's all I can think of.

Q. Munter's Laundry was quite small, a one-man proposition? A. There's a laundry in the Association pretty near as small.

Q. Munter's Laundry was quite a small laundry? A. Yes.

Q. Snow White was a small laundry? A. I don't know their capacity.

Q. A small or large laundry? A. I don't know what you would term a small laundry.

Q. You would rather not answer that question, is that it? A. I do a thousand bundles. I don't consider myself a large laundry. I consider myself a small laundry.

Q. How about Riverton? Do you know what their capacity was? A. I don't know their capacity. I have never been there.

Harry A. Walther. Called by Defendant. Cross.

Q. How about Twin Cities? A. I don't know their capacity. It's a small laundry.

Q. Fairview? A. Fairview is small.

Q. Mrs. Young? A. Mrs. Young is small, about 500 bundles.

Q. These last three you mention would be about 500 bundles each, or less? A. Fairview, I believe, done around 700 or 800.

Q. How about the other two, were they about 500? A. Which ones are you referring to?

Q. Young and Twin Cities? A. Twin Cities is about 500.

Q. How about Mrs. Young? A. Mrs. Young could do about 600.

Q. These figures you have given us are what they could do? A. Approximately, from my observation.

Q. Snow White, Riverton and Riverside, you don't know about? A. No, I would not want to say anything definite.

Q. Domestic Laundry doesn't do any wet wash? A. No wet wash at all.

Q. The laundry now known as the Camden Family Wet Wash is the one which Bornstein had formerly in the agreement? A. Yes, sir.

By Mr. Harding:

Q. Do you know how many laundries signed the agreement? A. Thirteen.

Q. Do you know how many there are in the laundry business, excluding, of course, Chinese, outside of the agreement, doing business in Camden, Burlington, and Gloucester Counties?

The Court: Wet wash?

Mr. Harding: Wet Wash.

A. Quite a few more than I stated, but some of them don't reach Camden.

Q. Approximately how many doing business in any of those three counties? A. Name the counties again?

Q. Camden, Burlington and Gloucester? A. I would say about, approximately, ten.

Q. You mean ten altogether? A. In excess of what I named.

Q. In excess of those you named? A. Yes.

Q. In addition to that, have you competition in the laundry business from bob-tailers who come from Philadelphia? A. Not in damp wash.

Q. No competition at all coming from Philadelphia? A. I understand lately there has been.

By Mr. Carr:

Q. Those ten you spoke of are the ones that do not come in Camden? A. I only named those that came in Camden.

Q. Came in this territory here? A. Yes.

Mr. Carr: That is all.

George Nemec, Sworn.

Direct Examination by Mr. Carr:

Q. Your name is what, Nemec? A. George Nemec.

Q. N-e-m-e-c? A. That's correct.

Q. What business are you in? A. In the contracting business now.

George Nemec. Called by Defendant. Direct.

Q. Were you formerly in the laundry business? A. Yes, sir.

Q. Under what name did you do business? A. Cramer Hill Laundry, Blue Bird Laundry, Cramer Hill Damp Wash.

Q. You were in the East End Laundry? A. No, sir.

Q. You are not a party to this Laundry Association? A. I belonged to the Association, but I didn't sign no papers. I was out of the Association at the time when the signing was to be done.

Q. How long had you been a member of the Association? A. Almost a year.

Q. Prior to the time the agreement came up for signing, how long had the Association been active? A. That I could not tell you, because I—

Q. How long had you been a member? A. Almost a year.

By the Court:

Q. Before the agreement was signed? A. Yes. I didn't know anything about the agreement. I have just heard about it.

Q. Who were the officers of the Association during the year you say you were a member, before the agreement was signed? A. The only man I knew was Mr. Buckelew. He was the State man, but what capacity, I think he was Secretary, or something, I don't know.

Q. You didn't know of any local officers? A. I have never went into it that deep. I have—

Q. You attended meetings, did you? A. Yes, three or four.

Q. Who presided at those meetings? A. This Mr. Buckelew was all I saw.

Q. Who presided, who seemed to be in charge? A. The only one I knew was Mr. Buckelew.

Q. Who presided, did he? A. Yes.

Q. He ran the meeting? A. At that time, yes sir.

By Mr. Carr:

Q. What was the capacity of your laundry, Mr. Nemec? A. The capacity was about 600.

Q. How many washes did you do? A. 300.

Q. What price did you charge for laundry? A. At that time it was 26 pounds for a dollar, five cents excess.

Q. How long since you have been in business? A. One year and three months.

Q. Since you went out of business? A. Yes.

By the Court:

Q. That would be August, 1928? A. Yes, sir.

By Mr. Carr:

Q. After this agreement was signed, you knew that the Laundry Association had made an agreement? A. I just heard it from one of the drivers. What it was all about, I could not say. I have never read one, and they just said it was 12 pounds for 60 cents. What the excess was now, I could not even tell you.

Q. Did that have any effect on your business, that agreement? A. No.

Q. Why did you go out of business? A. There was lots of reasons. One reason I had was much discontent in the family, and sickness, and everything else, and I could not stand the pressure.

Mr. Carr: Cross examine.

George Nemec. Called by Defendant. Cross.

CROSS EXAMINATION BY MR. HARDING:

Q. Any other reasons why you went out of business? A. People, the reason that I promised them that I would stay with them as long as possible, charging them a dollar for 26 pounds, and there were so many other laundries right around me doing wash for fifty cents, I could not get a dollar for what they were doing for fifty cents, but after then I understand they have agreed on one price.

Q. In other words, you suffered pretty much from what is called cut rate competition? A. It was not competition that hurt me. That didn't make me stop business.

Q. Charging, as you did, a dollar for 26 pounds of wash, did you consider that was excessive to the public? A. Oh, no, no, sir.

Q. Did you consider that price was necessary to protect your business? A. Yes, sir.

Q. Could you have done the wash at any cheaper price than that, and made a profit? A. No, if I didn't have to.

Q. I understand you to say you attended meetings of the South Jersey Laundrymen's Association for, approximately, a year before this agreement was signed? A. Not the South Jersey Laundrymen's Association, no sir. I have never known it as that. All I have know it is the New Jersey—

Q. State Association? A. Yes.

Q. Of which Mr. Buckelew was an officer? A. Of the State Association.

Q. When counsel was talking to you about meetings of the South Jersey Laundrymen's Association, you thought he was talking about the South Jersey Laundrymen's Association, and not about the State Association, is that right. A. No, I be-

longed to the State Association. I never knew there was a South Jersey.

Q. You didn't know anything about it at all? A. No.

Q. All your testimony had relevancy to attending meetings of the State Association, over which Mr. Buckelew presided? A. Yes.

Mr. Harding: That's all.

By Mr. Carr:

Q. Were you ever invited to participate in this agreement? A. Not as I can recollect. I don't believe whether or not—I have just got the laundry business out of my mind when I gave it up. I didn't want to have no more to do with it.

Mr. Carr: That's all.

Mr. Harding: How is the contracting business, better?

William F. Schade, sworn.

Direct Examination by Mr. Carr:

Q. You are in the laundry business? A. Yes.

Q. In Camden? A. Yes, sir.

Q. You do damp wash? A. Yes, sir.

Q. Under what name do you trade? A. Crescent Laundry, Damp Wash Laundry.

Q. Where is your place of business? A. 1185 Liberty Street, Camden.

Q. You were one of the parties to this contract? A. Yes.

Wm. F. Schade. Called by Defendant. Cross.

Q. Prior to May 31st, 1928, what price did you charge? A. 12 pounds 60 cents, five cents each additional pound, every day in the week.

Q. That's the price fixed by the agreement? A. That's my price when I started in business.

Q. There was no change, as far as you were concerned? A. The only change I made was a lower rate on Tuesday and Wednesday.

Q. What was the rate on those days? A. Thirty pounds for a dollar.

Q. Prior to the agreement you did 12 pounds for 60 cents, and 4 cents additional? A. Every day.

Q. What was your capacity at the time of the agreement? A. At that time about 600 bundles.

Q. What were you doing at that time? A. 250, and we are doing over 500 today.

Q. You stuck to the agreement prices ever since signing? A. Positively.

Mr. Carr: Cross examine.

Cross Examination by Mr. Harding:

Q. You really charged no different price after the agreement was made, then you charged before? A. Only what we delivered Wednesday and Thursday. We used to charge 4 cents each additional pound every day in the week. When we signed the agreement, we would give them 25 or 30 pounds for a dollar, instead of charging 4 cents each additional pound, for Wednesday and Thursday delivery.

Q. After you signed the agreement you still gave them 30 pounds for a dollar? A. After, when we started. Before we did not.

Q. Under the agreement, you gave the people a better proposition than they had before? A. Positively.

Mr. Harding: That's all.

HENRY R. DE REINTRIE, JR., sworn.

DIRECT EXAMINATION BY MR. CARR:

Q. What is your business? A. Laundry.

Q. Under what name do you operate? A. United Laundries, Incorporated.

Q. Where? A. Fourth, below Mickle, Camden.

Q. What was the capacity, what was your capacity on May 31st, 1928. What could you do a week? A. 500.

Q. How many did you do at that time? A. 250.

Q. What did you charge? A. Prior to what date?

Q. Prior to the 31st of May, 1928? A. 20 pounds for 85 cents, 5 cents a pound all excess.

Q. You signed this agreement? A. I signed it.

Q. And changed your price according to the agreement? A. Yes, 12 pounds for 60 cents, 4 cents a pound additional.

Q. Have you been following that price scale ever since? A. No, sir.

Q. Do you charge more or less? A. I have charged 15 pounds for 80 cents, 4 cents a pound over weight.

Q. 15 pounds for 80 cents and 4 cents over, you have charged that, and also the agreement price, or have you charged that amount altogether? A. I could not charge two prices, only one price.

Q. You mean to say you only charge one price, at any one time to all your customers, the price was the same? A. Absolutely.

Q. Sure the price you charged was 15 pounds for 80 cents? A. Yes, sir.

Q. And 4 cents over? A. Yes, sir.

Q. You get that from your customers now? A. Every one.

Q. Do you do free laundry now and then? A. Occasionally.

Q. Ever since May, 1928, have you been doing laundry free? A. Ever since I have been in business.

Q. How long has that been? A. 1920.

Q. You didn't discontinue that when you signed this agreement? A. No, sir.

Mr. Carr: Cross examine.

Cross Examination by Mr. Harding:

Q. You did not understand that the agreement forbade you to give what you call a sample, or free wash, did it? A. No, sir, in my laundry it has been the practice to use that as an advertising medium.

Q. The price you charged in the first instance was 85 cents for 15 pounds? A. 85 cents for 20 pounds, you mean.

Q. That's correct, and 5 cents a pound for over 20 pounds. Was it necessary to charge that price? A. Absolutely, in order to make a fair profit.

Q. You subsequently reduced that to 80 cents for 15 pounds and five cents over? A. Yes, sir.

Q. Is that price a price not in excess of the minimum price in the agreement? A. Yes, sir.

By Mr. Carr:

Q. That's a larger bundle, isn't it, larger than the agreement minimum? A. Three pounds larger.

Q. For a twelve pound bundle you get 80 cents under the agreement, and you get 60 cents, is that it? A. Correct.

Q. Under 20 pounds for 85 cents, you would be, if I understand correctly, on the smaller bundles the agreement would give you, would give you more money, wouldn't it, than the price you are now charged? A. No, because my average price per bundle is reduced.

Q. The agreement would give you more money on a large bundle? A. Perhaps you don't understand me. My bundles, at 85 cents for 20 pounds gave me a larger price per bundle.

Q. Yes? A. Than 60 cents for 12 pounds would give me per bundle.

Q. That's the agreement price, isn't it? A. Yes, sir.

Q. Yes, that's 5 cents a pound, 12 pounds for 60 cents, right there? A. At that time they may be 4¢ instead of 5¢.

Royston D. Engle, sworn.

Direct Examination by Mr. Carr:

Q. What is your name? A. Royston D. Engle.

Q. You carry on business in what name? A. Moorestown Laundry.

Q. At Moorestown, New Jersey? A. Yes, sir.

Q. On May 31st, 1928, you were coming into Camden territory? A. Yes, sir.

Q. In the wet wash business? A. Yes, sir.

Q. What was your capacity on May 31st, 1928? A. 400 bundles.

Q. How many were you doing at that time? A. About 300.

Q. Prior to the date of the agreement, May 31st, 1928, what prices were you charging for laundry? A. 26 pounds for a dollar.

Q. You conformed to the agreement afterwards, did you? A. Yes, sir.

Q. Now what price are you charging? A. 15 pounds for 80 cents.

Q. As a matter of fact, the Association has raised the price, has it not, since this agreement was made? A. Raised the minimum, yes.

Q. 15 pounds for 80 cents is now the Association price? A. Yes, sir.

Q. Until the Association raised the price, you still were charging 12 pounds for 60 cents called for by this agreement? A. By the agreement, yes, sir.

Q. Are the members of the Association now, generally, charging 15 pounds for 80 cents? A. Yes, sir.

Q. Have there been any laundries added to the Association since the agreement was made? A. No, sir.

Q. There has been—the Bond is out? A. Yes.

Q. And Klean-way is out? A. Yes.

Mr. Carr: Cross examine.

CROSS EXAMINATION BY MR. HARDING:

Q. The Bond Laundry went out under the agreement, under the terms of the agreement itself? A. Yes.

Q. The Klean-way didn't give any notice, as called for in the agreement? A. No, sir.

Mr. Harding: That's all.

CHARLES M. GOELTZ, sworn.

DIRECT EXAMINATION BY MR. CARR:

Q. What is your business? A. Damp wash laundry.

Q. Under what name? A. East End.

Q. In Camden? A. Yes, sir.

Q. What capacity did your laundry have May 31, 1928? A. 450.

Q. How many wash did you do at that time? A. About that.

Q. You were running to about your capacity? A. About that.

Q. Prior to the agreement, what price had you charged? A. 70 cents 15 pounds, 4 cents each additional pound.

Q. Then you did conform to the agreement, when you signed it, as to price? A. What's that?

Q. You followed the agreement, did you, when you signed it? A. I did, yes, sir.

Q. Did you continue to charge the agreement rate until the Association raised the rate? A. I did.

Q. Now, what are you charging? A. 80 cents 15 pounds.

BY THE COURT:

Q. That means a flat rate of 80 cents up to 15 pounds? A. Up to 15 pounds, over 15, 4 cents additional.

Charles M. Goeltz. Called by Defendant. Cross.

BY MR. CARR:

Q. If you have a 9 pound wash it is 80 cents? A. 80 cents.

Q. Whereas before it would have been 60 cents? A. 60 cents.

Q. Do you give any free washes? A. I do.

Q. Whenever the occasion requires? A. In soliciting new business, I allow my drivers two washes a week.

Q. That's business some other laundryman has now? A. That makes no difference.

Q. You do it just the same? A. I give a trial bundle.

Mr. Carr: Cross examine.

CROSS EXAMINATION BY MR. HARDING:

Q. In charging the new rate of 80 cents, you are still permitted, under your agreement, to charge a minimum rate, if you want to? A. Of 60 cents, yes.

BY MR. CARR:

Q. The Association has a rate of 80 cents for 15 pounds? A. But we are allowed to charge 60 cents, because we never signed an agreement on a 80 cent price.

Q. Never gave any notice of that? A. Never done anything. 60 cents is the Association minimum price, but we are allowed to put it up, if we want to.

Q. All of you have put it up? A. I guess we have.

BY MR. HARDING:

Q. It was raised because the minimum rate was not sufficient to— A. Was not sufficient to operate our business, yes, sir.

Mr. Harding: That's all.

HAROLD R. DIEMER, Sworn.

DIRECT EXAMINATION BY MR. CARR:

Q. You are in what business? A. Laundry business.

Q. Is it Diemer? A. Yes, sir.

Q. Who is your partner? A. Matthew Glenn.

Q. Where do you carry on business? A. On Kossuth Street, South Camden.

Q. Under what name? A. Bond Laundry, Incorporated.

Q. You were one of the laundries, which signed this agreement on May 31st, 1928? A. Yes, sir.

Q. You remained in the Association for some time? A. Yes, sir.

Q. Until when? A. I think it was about a year and three months.

Q. What was the capacity of your laundry, at the time you signed the agreement? A. About a thousand bags.

Q. What were you doing at that time? A. Around a thousand, something like that.

Q. Running pretty near to capacity? A. Yes, sir.

Q. What price were you charging at that time? A. 12 pounds for 60 cents.

Q. Before the agreement, I mean? A. 15 pounds for 60 cents.

Q. How much for over? A. 4 cents each pound.

Q. Was there any different rate, according to what day of the week it was? A. On Tuesday, no, it was the same all the time.

Q. Then you signed the agreement? A. Yes, sir.

Q. You conformed to the agreement for a while? A. Yes, sir.

Q. Until when? A. Three months after the year and three months, which we were in the Association.

Q. Then you gave some sort of notice? A. Yes, three months.

Q. Until the giving of the notice, did you follow the price fixed in the agreement? A. Yes, sir.

Q. Then what price did you charge? A. 15 pounds for 60 cents.

Q. You went back to your former price. What did you do? Did you have a special rate for 30 pound bags? A. On Tuesday and Wednesday delivery.

Q. What was that?

BY THE COURT:

Q. You said Tuesday and Wednesday delivery, what do you mean by that? A. For Tuesday and Wednesday collections, and Wednesday and Thursday delivery.

BY MR. CARR:

Q. 30 pounds for a dollar, special? A. 15 pounds for 60 cents, or between 15 and 30 pounds the charge was a dollar minimum.

Q. At the time you went out of the Association, did you find that the competition you were subject to, changed in any way? A. I can't say it was changed so much.

Q. You were under the same conditions as you were before, as far as competition is concerned? A. Yes, I think so.

Q. Why did you go out of the Association? A. If I recall correctly, I think it is one hundred per cent.

membership necessary for a change in your plant, or sale of your plant, or any change you may want to make.

Q. You did change your prices? A. Yes, sir.

Q. Did you do that before you left the Association, or afterwards? A. Afterwards, about four months after I left the Association we changed the price.

Q. Not until four months? A. About that, it was.

Q. When you were in the Association, did you give free washes? A. Not to my knowledge. Sometimes a lady will say she had something wrong with her wash, and one of the drivers might give her a wash, something like that. That will happen in almost any plant.

Q. Not by you? A. Not by us, personally.

Q. Somebody had to pay for the wash when it came in? A. If we had a legitimate claim, or something like that, we have allowed it to be done.

Q. That comes under legitimate claims? A. Yes.

Q. Did you experience any special competition with respect to free washes any time? A. It has not affected our plant at all in any way.

Q. Did you have any special competition in the line of free washes? A. Not that I know of. There is almost always a certain amount of that in the laundry business. Nothing that I know of, particularly.

Mr. Carr: Cross examine.

CROSS EXAMINATION BY MR. HARDING:

Q. You never felt that the agreement restricted you in any way from giving a sample, or free wash, if you wanted to, did you? A. No, I did—

Q. Nothing in the agreement forbade that?

Mr. Carr: I object to that. The agreement says they shall not do any laundry less than a certain price.

The Court: That is a question of interpretation.

Q. In your trade, among members of the Association, the matter of free washes was not discussed at all, was it? A. In accordance with the agreement, I don't think you are supposed to do it. I don't recall.

Q. You didn't hear any of your members in the Association at the time, raise any objection, or question, about sample, or free, washes? A. Not that I recollect.

Q. You joined in this agreement about May, 1928, didn't you? A. Yes, sir.

Q. Will you tell us what your price was for laundry before you signed the agreement? A. It was 26 pounds for one dollar one time. The price has changed so much I forget what dates they were. Then 15 pounds for sixty cents, and that was changed to 12 pounds for sixty cents, 12 pounds for sixty cents, that's the Association price.

Q. The 12 pounds for sixty cents was the agreement price? A. Yes.

Q. While you were in business, under the terms of this agreement, you lived strictly in accordance with the agreement? A. Yes, sir.

Q. You didn't charge less than the minimum price fixed in the agreement? A. No, sir.

Q. When you decided to relinquish your rights under the agreement, you gave notice as called for in the agreement? A. Yes.

Q. And your brother members let you out, and there was no trouble between you about it? A. No, sir.

Q. They have not harrassed you, or annoyed you, in your business since getting out? A. No, not that I know of.

Q. Will you tell me what you charge for laundry now, at the present time? A. 15 pounds for sixty cents.

Q. Does that apply to every day in the week? A. No, we have the special Tuesday collection, and Wednesday collection, and Thursday delivery, 30 pounds for a dollar. That's the Association price now.

Q. What do you charge per pound over the minimum? A. Four cents.

Mr. Harding: Tha's all.

HARRY E. MARTENS, Recalled.

DIRECT EXAMINATION BY MR. CARR:

Q. When you were on the stand yesterday, you said that the Hammonton Laundry was one of the laundries in this territory. Did they come in before, or were they here at the time this agreement was signed? A. No, they were not in this district.

Q. At that time? A. At that time.

Q. They came in later? A. They have come in since.

Q. Can you tell us how large the Snow White Laundry, Collingswood, was? A. I think they have 150 bundles, because the man operating it now was at one time a bob-tail in our plant.

Harry A. Walther. Recalled. Direct.

Q. Have you ever seen the Riverside or Riverton Laundry? A. No, I have not.

Q. Do you know how large they are? A. No, I don't.

Mr. Harding: No questions.

HARRY A. WALTHER, Recalled.

DIRECT EXAMINATION BY MR. CARR:

Q. Referring to the minute book that you produced, I refer you to the minutes of July 13th, 1928, where it says, "Mr. Buckelew reported that the following laundries have not paid their allotment of attorney's fee—Klean-way Laundry, Bond Laundry, and United Laundries. He also stated that this bill was paid in full by the New Jersey Laundryowners' Association, and that he must have the balance immediately. Motion made and seconded that letter be written to these laundries by the Secretary." Was that done? A. Yes.

Q. Was the money paid? A. Yes, sir.

Q. Further on in the minutes of the same meeting, there appears: "Motion made and seconded that any Laundryowners joining this local after this date will be under the same obligations as the Laundryowners now members." That was passed, was it? A. Yes, sir.

Q. "Motion made by Mr. Walker, and seconded by Mr. Shievers that no additional trucks can be put on by any bob-tail being served by any member of this Association. Motion carried." Was that passed by the meeting? A. Yes, sir.

Harry A. Walther. Recalled. Direct.

Q. So that if a bob-tailer wanted to increase his business, he was not to be allowed to do it by putting an additional truck on a route? A. I don't know. I have no bob-tails.

Q. You were present at a meeting that was dealing with that resolution, wasn't it? All right, it speaks for itself, I guess. Referring to the minutes of September 14th, 1928. With reference to the minutes of October 5th, I find this: "Motion made and seconded that the Association members will support Mr. Goeltz of the East End Laundry, in a suit against Bond Laundry, informing them that their women solicitor is using improper methods, and is slandering other laundries. If this condition is not corrected, the Association will take action." Was that motion passed? A. The motion was passed.

Q. Was any action taken under that motion? A. No, sir, the condition was corrected.

Q. The minutes of October 12th, 1928: "Mr. Walther reported Mr. B. Bornstein phoned Mr. Morgan, and complained of Bond Laundry putting a man in their territory to get his business. A Committee of three, Mr. H. Morgan Bros. and Mr. Walther interviewed Bond Laundry. Deemer and Glenn, who agreed to see Mr. Bornstein, and make definite arrangements with him, also notifying their solicitors about unfair method of getting business. After some discussion, Mr. Bornstein stated that he hired this man, employed by Bond Laundry, on Wednesday, after he did not hear from Mr. Glenn, as agreed upon. Motion made and seconded that Mr. Bornstein discontinue using this man, B. Handelton, in North Camden. Motion amended that we request Mr. Bornstein not to use him at all. Also instructing the other members not to hire him in Camden." All that took place, did it? A. I could

not answer for the last paragraph. The rest of it was taken care of by Mr. Gleen and Mr. Deemer.

Q. You don't know whether the man was made to go out of Camden to get work, or not? A. I don't know what became of the man.

Q. Minutes of October 18th, 1928: "Motion made and seconded that a committee of three be appointed to act as a Grievance Committee, to adjust complaints between members. Motion carried." "The following members were appointed: Lucas, Walther and Schade." Is that Committee still functioning? A. No, sir, not at this time.

Q. They did receive complaints between members, did they? A. Yes, sir.

Q. They did not appear in the minutes? A. There's one case here. That's what started the Grievance Committee.

Q. The Handleton matter? A. Yes, and there's another question here in reference to the Handleton matter.

Q. October 19th, 1928: "Mr. Bornstein asked the case of B. Handleton be reconsidered by the Association members. The Chairman decided to hear both sides, and refer it to the Grievance Committee. After careful consideration by the Grievance Committee, the following plan was recommended: This driver can be retained by the Greater Camden Damp Wash Laundry, if following suggestions are carried out: The driver must sign contract immediately. Wages to be the same as other drivers. Cannot be placed on North Camden territory." That all took place at the meeting, did it? A. Yes, sir.

By the Court:

Q. Why should he not be placed on North Camden territory. What was the reason? A. The case

was between Greater Camden, and the Bond Laundry, and one laundry had certain business in there, and they was afraid, if he was on that territory, he would simply take the business away from the other laundry. That was the idea.

Q. Done to prevent an invasion of what you regarded as Greater Camden territory by the Bond? A. I think it was Greater Camden territory.

Q. Or one laundry's territory by another laundry? A. Yes.

Q. To keep the invading laundrymen out of there? A. Every laundry went into that particular territory, no laundry was restricted, but in this case this man worked in this territory for a number of years, and knew certain customers, and if he was hired by another laundry, he would simply take those customers to the other laundry. That's the reason for the restriction, that's the particular reason.

Q. The ruling was that this particular man could not go into that territory, go in there for any employer in the laundry business? A. That's the idea.

By Mr. Carr:

Q. In the minutes of November 16th, 1928, I find this resolution: "Motion made and seconded that the Chairman appoint a committee of two, for a special purpose." What was that committee appointed for? A. I could not say now.

Q. You don't know what? A. I don't know.

Q. "Mr. Delantre and Mr. Walther were appointed, with full authority to act" with respect to what? A. I can't recall it.

Q. Between the minutes of November 16th and November 30th I find inserted a report dated No-

vember 26th, 1928, from Frank H. Miller? A. Frank H. Miller, detective.

Q. That paper, found in the minute book, says, "Report on Klean-way Laundry Operation" and is divided into two parts, one dated November 26th, 1928, and the other Wednesday, November 28th, 1928. Is it a fact that the South Jersey Laundrymen's Association employed a detective to watch the Klean-way business, and report on their business? A. To find out—the idea of hiring the detective was to find out whether the bob-tailers were taking work there.

Q. The Association did employ a detective to watch any spy upon the Klean-way Laundry, and find out what they were doing, is that correct? A. For one special purpose.

Q. It was done, wasn't it? A. Yes, sir.

Q. Referring to the minutes of November 30th, 1928, there's no reference made to that report. Will you tell me why the minutes omitted a reference to the detective's action, or the employment of a detective? A. I could not say that.

Q. You are Secretary? A. It isn't there.

Q. You are Secretary? A. Yes.

Q. That matter was discussed at the meeting? A. Yes.

Q. And the bill was paid at the same time? A. Yes, sir.

Q. By the Association? A. Yes, sir.

Q. Following those minutes, I find another report, signed by Frank H. Miller, inserted in the minute book, dated December 11th, 1928, and I find that that refers in there to Mr. Allen Bowne, who was injured, while working at the laundry, and that the detective had a conversation with relation to this man, and it is apparently suggested that they

be sued. That speaks for itself, but that also was discussed at the meeting of the Association, was it? A. That was in reference to compensation insurance.

Q. Somebody hurt at the laundry? A. Yes, sir.

Q. That was discussed at the meeting? A. Yes, sir.

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By the Court:

Q. Who, if you know, made the employment of Miller, who employed him, what individual dealt with him, did you, as Secretary? A. I had something to do with it, yes, sir.

By Mr. Carr:

20 Q. Isn't it a fact— A. I was on that Committee.

By the Court:

Q. You were on that Committee? A. I was on that Committee.

By Mr. Carr:

Q. Isn't it a fact that the resolution or November
30 16th, appointing a Committee of two, for a special purpose, appointing you and Mr. De la Rentrie, with full authority to act, that was a committee designed to employ a detective, and to see what could be done with the Klean-way Laundry. Is not that the Committee? A. Not to see what could be done with the Klean-way Laundry, but to see whether they were taking bob-tail work in.

Q. If that was the only purpose, why was it there was a letter written to the Department of Labor,

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asking whether or not they had compensation insurance; which reply is also in the minutes? A. What was that?

(Question repeated.)

A. I could not say what the purpose was.

Q. It is attached to page 46 of this minute book, a letter from the Workmen's Compensation Bureau, at Trenton, addressed to the Suburban Laundry Company, Newton and Greenwood Avenues, Oaklyn, New Jersey, dated January 5th, 1929, attention of Earl F. Bartling. Dear Sir: In re Kleanway Laundry: Allen Bowne: Since receipt of your letter of December 18th, we have been endeavoring to check up in reference to an insurance policy for a Klean-way Laundry, of Camden, and I wish to ask if you will please inform us when Mr. Bowne, the employee whom you mention, was injured. The Compensation Rating and Inspection Bureau inform us on September 17, 1927, the Kleanway Laundry was covered for compensation insurance by the Manufacturers' Casualty Insurance Company. We would appreciate a little further word from you. Very truly yours, Ethel M. Miller, Chief Clerk. Have you any explanation of that in this minute book? A. No, I have not.

Q. You are Secretary. I notice on December 14th, 1928, Earl F. Bartling has signed as Secretary, pro tem. Was he a laundryman? A. Yes, sir.

Q. Is he in the laundry business? A. Yes.

Q. What laundry is he associated with? A. My own.

Q. Associated with you in your laundry business? A. Yes.

Q. There is an insert in this book under December 14th. It has been crossed out pretty thorough-

ly. Can you read it, or part of it? A. I can't say that I can.

Q. "On motion of Mr. De la Rentrie, seconded by Mr. Walker or Walther—the Committee that had called on Mr. ? were instructed to advise him to proceed with the ? carried unanimously." That is the best I can make out of it. You don't know what that is? A. I can't say. Evidently, I was not at the meeting at all.

Q. It is signed and approved by Mr. Morgan? A. Yes.

Q. On January 18th, of this year, there is this extract from the minutes: "New Business. The question of price, and collection of work, was discussed. It was decided that members take this matter into consideration, and bring in questions for discussion." That was the matter of collection and price? A. Yes, sir.

Q. February 2nd, 1929: "Motion made and seconded that we appoint a committee of six to arrange a new price schedule. Carried. Deemer, Lucas, Walther, Goeltz, Delantrie and Morgan appointed. Mr. Lucas referred to a bob-tail operating in Gloucester and Westville, who was taking his work to the Queen Laundry, in Philadelphia. It was suggested that the Secretary get in touch with the Philadelphia Association, and find out if this laundry was a member." What was the objection to this bob-tail doing business in Gloucester, and taking the work to Philadelphia? A. Nothing carried along there?

Q. There was objection made? A. At the meeting.

Q. Yes, and did it develop this laundry was a member? A. Was not a member.

Harry A. Walther. Recalled. Direct.

Q. You were not able to do anything about it? A. No, we could not find out where he was taking it.

Q. Here is February 15th, 1929: "All members were present. Mr. Quensell, Riverton Laundry, Mr. Wencker, Wencker's Wet Wash, Mr. Emmons, Emmons' Wet Wash, Sanitary Laundry, of Burlington, were also present. Committee appointed to suggest price reported they had two meetings, and suggested the following prices to be adopted by the Association. Monday and Tuesday Delivery: 12 pounds, 80 cents, and 4 cents a pound over weight. 20 pounds for a dollar and 4 cents a pound over weight. Wednesday and Thursday Delivery: 12 pounds, eighty cents, and 4 cents a pound over weight. 25 pounds for a dollar and 4 cents a pound over weight. Motion made and second that we adopt this price, to take effect March 17th, 1929. Carried unanimously." Following that action, was that price scale adopted by the members? A. No, sir, it was not.

Q. Was there a later price fixed on? A. Yes, rediscussion and a later price fixed.

Q. February 21st, 1929: "Special Meeting of the South Jersey Laundry Association was held at the Walt Whitman Hotel. New laundries represented: Snow White, Collingswood, and Twin Cities, Merchantsville. The members also talked on price and after considerable discussion, the meeting adjourned with nothing done." Are the Snow White Laundry and the Twin Cities Laundry, members of the Association? A. No, sir, never were.

Q. March 1st, 1929: "The following prospective members were present: Riverton, Twin Cities, and Collingswood Laundries. After considerable discussion, the question of new price as a compromise,

Monday and Tuesday delivery, 15 pounds for 80 cents plus 4 cents a pound over weight, Wednesday and Thursday delivery, 15 pounds, 80 cents, up to 20 pounds for a dollar, and 4 cents a pound over weight. Motion made and seconded that this price be adopted. It was decided that date for new price will not be decided until we have definite information from Mr. Harding." March 15th, 1929: "Regular meeting. After considerable discussion of all things in general, it was decided not to do anything definite until the next meeting." And I find no more minutes. Are those minutes the last minutes? A. I could not say.

Q. How many meetings have you had since March 15th, that's about eight months? A. We don't hold any meetings in the summer time.

Q. I want you to refer to what appears to be a draft of the minutes of the meeting, at which the price was raised to 15 pounds for 80 cents, which I read, and which appears in the minutes. This is apparently a draft of the minutes of March 1st, 1929, and I am asking you whether that does not say "All members signing this motion are unanimously agreed" and whether that is not signed by a great many laundrymen with their own signature? A. It was never passed.

Q. I am asking you whether this has not been signed by those laundrymen with their own signature? A. Yes, sir.

Mr. Carr: I want to offer it in evidence.

Mr. Harding: I certainly object to it, if the gentleman said it was never passed. It is simply a memorandum signed by the meeting, was not passed, and is not an official document of the meeting.

The Court: Perhaps not, but if it is an agreement between—

Mr. Harding: It was never passed. It can't be an agreement; it is nothing more than a memorandum signed by the members.

Mr. Carr: He testified the minutes were correct.

The Court: I don't understand that it is being offered as being the minutes of a meeting, to show that any action was taken by the Association, but rather, that there was action by these persons, who were signatories to the agreement.

Mr. Harding: The witness said it was never passed.

BY THE COURT:

Q. These parties signed this? A. Those parties were in the room, and signed it.

Q. This paper, which they signed, purports to fix the prices, which were to be charged on this date, by these parties? A. No, sir, that was the price that was set. There was no date set, nothing definite done at all.

Q. Are these prices now being charged? A. I don't know. I didn't see it. I didn't read it just now.

Q. New price will be 15 pounds for 80 cents, 4 cents a pound over weight, Monday and Tuesday delivery? A. That's correct.

Q. 15 pounds for 80 cents, 4 cents a pound over weight, up to 20 pounds, 20 to 30 pounds for a dollar, plus 4 cents a pound over weight, Wednesday and Thursday delivery? A. That's correct.

Q. These parties, as far as you know, have been conforming to these prices? A. No, sir.

Harry A. Walther. Recalled. Direct.

Q. They have not? A. There's not ten laundries conforming to those prices today.

Mr. Carr: The proof of the earlier witness was that all members of the Association conformed to that price, and it is the price fixed in the minute book, which is already identified, under date of March 1st, 1929.

Mr. Harding: I don't believe it has much bearing on the case at all, what they did subsequent to this agreement, is certainly not an issue. I didn't think that Mr. Carr was going to proceed with this examination on this minute book.

The Court: What we are dealing with is the agreement.

Mr. Carr: And its effect.

The Court: The effect of the agreement, isn't it?

Mr. Carr: Yes, its natural effect, judged by all the circumstances, which involve this Association.

The Court: You may mark it for identification. I don't see its materiality now. We are dealing with the agreement, and complications alleged to grow out of that particular agreement.

(Received and marked D-2 for identification.)

Mr. Carr: That's all.

Noah Kuensell. Called by Defendant. Direct.
Noah Kuensell. Called by Defendant. Cross.

NOAH KUENSELL, Sworn.

DIRECT EXAMINATION BY MR. CARR:

Q. What is your business? A. Laundry.
Q. Where do you carry it on? A. East Riverton.
Q. Under what name? A. Riverton Laundry.
Q. On May 31st, 1928, what was the capacity of your laundry? A. At that time it was about between 600 and 700.
Q. How many laundries were you doing at that time? A. Around 525.
Q. What price were you charging for laundry at that time? A. At that time I was charging 15 pounds for 60 cents.
Q. You were not a member of this Laundrymen's Association? A. No, sir.
Q. You did not sign this agreement? A. No, sir.

Mr. Carr: That's all.

CROSS EXAMINATION BY MR. HARDING:

Q. Before May of 1928, you were charging 60 cents for 15 pounds. Is that correct? A. Yes.
Q. What have you charged since that time? A. The same thing.
Q. Still charging the same price? A. Yes.
Q. 60 cents for 15 pounds? A. Yes.
Q. What do you charge per pound over 15 pounds? A. 4 cents per additional pound.
Q. Suppose a person comes in with a wash weighing thirty pounds, what do you charge? A. 30 pounds would be $1.20, except Tuesday and Wednesday. Then I give 30 pounds for a dollar.

Mr. Harding: That's all.

Gilbert I. Stokley. Called by Defendant. Direct.

BY MR. CARR:

Q. Have you ever seen Riverside Laundry? A. Yes.

Q. How large is it? A. It's just a small place. He has got four electric home washers.

Q. Is it as large as yours? A. No, he had around, damp wash, I don't think he had over 75 or 80. That's what he told me two weeks ago.

Q. What is his capacity. What could he do there? A. That's all he can do.

Mr. Carr: That's all.

GILBERT I. STOKELY, sworn.

DIRECT EXAMINATION BY MR. CARR:

Q. What is your business? A. Laundry.

Q. Where? A. Merchantville.

Q. Under what name? A. Twin Cities Laundry, Incorporated.

Q. Were you in business May 31st, 1928? A. Not Twin Cities Laundry, Incorporated. It did not go into existence until October, 1928.

Q. Was that laundry operated the 31st of May, 1928? A. It was.

Q. Were you there at the time? A. No.

Q. Was the capacity in October the same as it was in May? A. The same, yes.

Q. What was the capacity in May, then? A. About 500.

Q. Do you know what they were doing in May? A. No, I don't.

Q. Not the actual number? A. No.

Gilbert I. Stokley. Called by Defendant. Cross.

Q. Do you know what price they were charging in May? A. I am not positive, but I think 26 pounds for a dollar.

Mr. Carr: Cross examine.

CROSS EXAMINATION BY MR. HARDING:

Q. You didn't go into business until October, 1928? A. October 4, 1928.

Q. Did you buy the laundry out? A. I did.

Q. Your recollection is they charged a dollar for 26 pounds? A. That's what I heard, yes.

Q. At the time you bought it out, that's what they charged? A. Yes, that's what they were charging at that time.

Q. What did you charge when you took the laundry over? A. The first two weeks we charged 60 cents for 15 pounds, and we raised the price to 12 pounds for 60 cents, 4 cents each additional pound, Tuesday and Wednesday, up to 30 pounds for a dollar.

Q. What are you charging at the present time? A. 12 pounds for 60 cents, 4 cents for each additional pound.

Q. Tuesday and Wednesday, 30 pounds for a dollar? A. Tuesday and Wednesday, 30 pounds for a dollar.

Mr. Harding: That's all.

ALFRED HILL, sworn.

DIRECT EXAMINATION BY MR. CARR:

Q. What's your business? A. Laundry.

Q. Where? A. In Woodbury.

Q. Was that laundry operating May 31st, 1928? A. No, it was not.

Q. How long have you been operating the laundry? A. Two months.

Q. Two months from now? A. Yes.

Q. So that you were not in this territory prior to that time? A. No, sir, a new business two months ago.

Mr. Carr: Cross examine.

CROSS EXAMINATION:

Mr. Harding: No questions.

Mr. Carr: That's the defendant's case.

AT SIDE BAR.

Mr. Harding: If your Honor please—

The Court: Do I understand both sides rested?

Mr. Harding: No, I don't rest.

Mr. Harding: As I see this case now, there is no dispute at all as to the making of the note, the making of the agreement, and the breach of the agreement; and from that point on the case takes a rather peculiar phase. In other words, the defendant proceeds with his case upon the theory that this contract is void,

or illegal, by reason of the contention he makes, that it is a price fixing agreement. The courts have universally held that all these contracts are legal until the contrary appears. Therefore, as I say, the case has taken a peculiar turn, or phase, by reason of the fact that the burden now rests on the defendant to prove that this contract is illegal. In other words, the burden rests on him to bear out his contention that the prices fixed in this contract are unreasonable. Now, it has been held that the test of unreasonableness depends practically upon the facts in each particular case. In other words you can't determine that because one contract may be unreasonable, that no contract is reasonable, so that you have got to consider the subject matter. You have got to consider the parties to the contract. You have got to consider the purpose at which the contract aims, and you have got to consider the territory in which the contract is operative. Your Honor is, no doubt, familiar with a great many cases in this State, and in the United States, where an attempt is made to fix the price of foodstuffs. Universally, almost, the Court has held that these contracts, when they attempt to monopolize the commodity the contract concerns, it is illegal, on the ground that it is detrimental to public policy, or to the public. A contract of this kind is an entirely different contract. There is no doubt, as your Honor can almost take judicial notice from the testimony in this case, that not more than. perhaps, ten per cent. of the wet wash of Camden County can possibly be affected by this contract. In other words, every housewife, every Chinaman that is in the laundry business, and every independent—when I use the

word independent I mean those outside the Association, other independent laundrymen—is a competitor of these men, so that the question of monopoly can hardly enter into the contract at all. Now, to pass on to the next question, as to the reasonableness of the charges fixed in the contract, and that seems to be the bone of contention, as I see it, in this case. As I see it, the burden of proof is on the defendant to show that these prices are unreasonable, and I ask your Honor respectfully to go over this testimony, cull it as you will, and not a single one of their witnesses, not a single one of their witnesses has uttered a single word to show that the prices fixed in this contract are not reasonable. In other words, that the prices fixed are essential to the protection of the industry and not detrimental to the public. If there is any testimony in this case, as it stands now, that shows that these prices are unreasonable, that they give the men who signed this agreement a greater measure of protection, or a greater measure of profit, than they would be entitled to in any line of industry, if there has been any testimony to show that the public has been gouged, or any attempt to gouge the public, so far, in any way, under the terms of this agreement, or any unfair competition, I have not heard the testimony, and I don't think that your Honor has heard any, and that is the reason I say, as far as the contract now stands, the Court, in my judgment, cannot do anything other than to sustain a direction, and direct the Jury at this time to find in favor of the plaintiff for the amount claimed in this suit.

The Court: Do you make a motion for direction?

Mr. Harding: Yes, sir. The reason now, that I make the motion at this time is that you asked the question when we came in here, whether both sides rested. By reason of the peculiar situation in the case, Mr. Carr, of course, in order to uphold his contention that this contract is illegal, the burden was necessarily thrown on him, as I see it, to show that the prices fixed here are unreasonable. Of course, if there is any evidence, your Honor holds there is any evidence brought out through his witnesses to show these prices are unreasonable, and it becomes a jury question, in order for us to combat that situation, we are obliged, in turn to bring back proof to show that the prices fixed are reasonable.

Mr. Carr replied.

The Court: There is here a question to be determined whether or not this agreement is, in fact, a combination substantially in the mind of those involved, to fix prices, and to control competition to the detriment of the public. I think that is a question. No question has been raised as to the unreasonableness of the prices, so that question is not now in the case. I think that it is a question for the jury to determine.

Mr. Harding: Exception, please, and at the conclusion of Mr. Carr's case, of course, I will renew my motion for a direction, so as to have the record complete. At the close of my case, I take it this motion I am making now will prevail at that time, just the same.

(Exception noted for plaintiff.)

Harold D. Morgan. Recalled. Direct.

Upon Return to the Court Room HAROLD D. MORGAN, Recalled.

DIRECT EXAMINATION BY MR. HARDING:

Q. You have been sworn, and you testified, I believe, that you have a wet wash laundry, in Westmont, Camden County? A. Yes, sir.

Q. And that you had a capacity of about 6,000 bundles a week? A. Yes, sir.

Q. In connection with your business, do you keep books? A. Yes.

Q. Can you refer to those books, and give me an approximate idea of the cost of operating your plant for any given period of time? A. Yes, sir.

Q. Will you turn to the books, and show me what it has cost you to do business in the year 1928?

Mr. Carr: Objected to, on the ground that it is immaterial and irrelevant.

The Court: I don't know whether the question we are interested in is what it cost this witness to do business at any given time. I take it the offer of Mr. Harding is to show—I assume this is a step in that effort—whether the rates provided for in this agreement were reasonable rates for the services rendered. I suppose the question is what it cost to do that particular work. He might do business at a loss, as a whole.

Q. Mr. Morgan, you are, of course, familiar with the laundry business in general? A. Yes, sir.

Q. You know the contents of this agreement? A. Yes.

Q. You are familiar with the rates set forth in this agreement? A. Yes.

Harold D. Morgan. Recalled. Direct.

Q. Taking the prices that are set forth in this agreement, and having your knowledge of the laundry business, the revenues and costs of the business, would you say, in your opinion, whether the prices fixed in this agreement are reasonable, or not?

Mr. Carr: Objected to, on the ground that it is immaterial and irrelevant.

The Court: That is the only objection?

Mr. Carr: Yes.

The Court: It seems to me that I shall permit this to be shown—what the cost of doing the work provided in this contract was. I don't think, however, the witness ought to express an opinion as to the reasonableness of the rate. I think, if it is at all a question that is material, we ought to have the facts, and let the Jury determine whether, or not, it is a reasonable rate, if that question is material.

Q. Without expressing your opinion, Mr. Morgan, are the rates charged in this agreement the rates that are charged in the damp wash laundry business in general? A. Not now, no. They have raised the price since. It was not sufficient, so they have raised it to 80 cents.

Q. Why were the prices raised? A. There was no one making any money.

Q. Are you in a position to show, from the books of your own business, whether you were making money under the schedule fixed in this agreement? A. Yes, sir.

Q. Have you your cost sheets here? A. Yes, sir.

Q. Will you open your books and let us see them?

Harold D. Morgan. Recalled. Direct.

BY THE COURT:

Q. Can you tell how much it cost you to produce, or turn out, whatever your technical work is, a wash of 12 pounds, I think that was the unit, on May 31, 1928? A. That was before the agreement was signed?

Q. At the time the agreement was signed? A. At what price?

Q. Does it matter what price, as to how much it cost you? A. Price has a good bit to do with it.

Q. The price you got? A. It would cost us a dollar's worth of business, a dollar's worth of wash, 90 cents, ten per cent. profit.

Q. Sixty cents, that would cost you 54 cents? A. Yes, sir.

BY MR. HARDING:

Q. Did you get anything, in excess of 54 cents, or did it cost you anything at all in excess of 54 cents to do 60 cents worth? A. If the amount of business in general, the minimum, is small like that, it really does cost more, and you don't make the profit on it as you would if it was larger. In general, you make ten per cent.

BY MR. CARR:

Q. Have you ever figured the cost of pick-up and delivery? A. Yes, sir, I have it all here.

Q. That is based on the unit of bundles, regardless of weight, or does it depend on the weight in the bundle, and its bulk? A. We figure on the percentage amount of business done.

Q. Not on a unit of a bundle? A. No, a dollar's worth of work we figure.

Harold D. Morgan. Recalled. Direct.

Q. That may be two bundles, or a bundle and a half? A. Yes.

BY MR. HARDING:

Q. If you had to drive your truck a mile, it would not matter much whether the bundle weighed 6 pounds or 15 pounds. It would cost just as much? A. Yes.

Mr. Carr: His records won't show the same. He divides it up according to what he gets for the work.

Q. Do you have the cost sheets here? A. The percentage cost.

Mr. Carr: If the percentage is based on receipts, and the receipts vary on what he charges, the receipts vary according to what he charges, if he bases the cost on the receipts, and the receipts vary according to what the unit charge is, they are not true charge sheets, and vary according to the money he takes in.

Q. Mr. Morgan, take—this is 1929, is it? A. 1929. This is 1928.

Q. Take 1928. Have you anything in this book here that will show the records as of May, 1928? A. Yes, sir.

Q. Take the month of May, can you tell me there by an examination of your records, what it cost you to do 60 cents worth of business. I take it that was your basis at the time, 60 cents for 12 pounds?

Mr. Carr: What we are after is the cost to him of doing 12 pounds of wash.

A. I can only tell you the amount of profit we made as a percentage. If we made 12 per cent. on a dollar, on 60 cents we would probably make about 6 or 7 cents on that wash.

Q. Can you tell us how much business you did in that month of May, or June, whatever portion of those two months make that month? A. This is four weeks up to June 16th.

Q. The four weeks prior to June 16th? A. Yes, sir. We did $18,369 in those four weeks.

Q. Can you tell me in dollars and cents what was the cost of doing that business? A. Yes, the cost of that business was 85.9 per cent. We made 13 per cent. that month.

BY THE COURT:

Q. That would be 14.1 per cent.? A. Yes, that's what the book shows.

BY MR. HARDING:

Q. That's gross profit? A. Here is our net profit, 13.1 per cent.

Q. There are other items you have taken off before breaking into profit? A. Yes.

Q. Can you take any month there that will show either the greatest volume of business, with operating cost, and the lowest amount of business, with operating cost, any month at all? A. In 1928?

Q. Yes? A. We run pretty well about the same. In some months we make 10 per cent. Other months we made 2.3 per cent. In the month of 10/7 to 11/3 2.3 per cent. The month 11/4 to 12/1 we made 4.5 per cent. At the end of the year, from December 2 to December 24, we only made 1.1 per cent.

Harold D. Morgan. Recalled. Cross.

Q. Do you know what it would average up for the year in percentage of profit? A. Yes.

Q. How much? A. Ten per cent. would average for the year.

Q. For the entire year? A. Yes.

Q. How about 1929 up to the present time. Could you tell us what has been your average profit in conducting your business? A. Yes, sir. Up to date, this year, we have made from January to this report, in 36 weeks, 3.8 per cent.

Q. That is after you increased the price? A. Yes, sir.

Q. And that takes in approximately 11 months of 1929? A. 36 weeks.

Mr. Harding: Cross examine.

Cross Examination by Mr. Carr:

Q. You say 3.8 per cent. What do you mean, that's your figure on all gross business, or on capital? A. On the gross business.

Q. So that that 3.8 per cent. would be figured on whatever gross business you had done during the year? A. Yes, sir.

Q. I notice on this statement you first referred to, June 16th, 1928, profit, says for operating profit, year to date, it says down to June 16th, 9.2. Is that on the gross business, or on capital? A. On the gross business.

Q. That 9.2 is made by you on the 26 pounds for a dollar basis? A. No, I don't know what report that is. That's June 16th, that was 15 pounds for 60 cents. I think that was before the signing of the agreement.

Q. You had quite a large plant on May 31, 1928? A. Yes.

Q. The largest in the business? A. Yes.

Q. You had built it up on 26 pounds for a dollar basis? A. Yes.

Q. You had been making money at the old basis? A. We had made 10 per cent., if you figure that.

Q. 10 per cent. on the gross business? A. Yes.

Q. What that is on your capital is another question. One other thing. As I take it, these cost records merely reflect a percentage of your sales price, so you are not able to say what a 12 pound bundle of wash, picked up at one point, delivered to your plant, and re-delivered, what that particular bundle cost you, from any of the steps in the washing process, putting it through your plant? A. I have a report here what it cost, and what it cost for delivery.

Q. Only a percentage? A. Take a 60 cent wash, it is about half.

Q. The higher the price, the smaller the cost. It actually would cost you the same, wouldn't it? A. The same to deliver a 60 cent as it would a dollar wash.

Q. If you charged a dollar for 20 pounds, or $1.50 for 20 pounds, the cost would be the same? A. You mean for delivery expenses?

Q. I mean what the cost would be to you? A. No, the cost of supplies, and everything else.

Q. 20 pounds for a dollar, or 20 pounds for $1.50. If you got $1.50, the cost would be exactly the same to you, wouldn't it? A. I don't quite understand you.

Q. Does your cost increase because you charge more? A. It increases if you have a low minimum, if you have it at 60 cents.

Q. I am talking about that bundle. There's a 20 pound bundle. You get a dollar. If the price is changed to $1.50, does it cost more to do it than if you got a dollar? A. It would show more profit.

Harold D. Morgan. Recalled. Cross.

Q. Your percentage would be the same, would it? A. The percentage would be more if we got $1.50 for it.

By Mr. Harding:

Q. You have about the largest damp wash laundry in this part of the State? A. Yes, sir.

Q. Are you in a position to say that the margin of profit you make in your business, is the prevailing profit in the damp wash laundry business in this vicinity?

Mr. Carr: Objected to, unless it appears this is merely a wet wash business.

Mr. Harding: Confine your testimony only to the damp wash laundry. I am not interested in anything else.

Witness: We were not in the finished laundry business at the time of these figures.

Mr. Carr: Which figures do you refer to?

Witness: Before the contract—

Mr. Carr: Excluding finished work?

Witness: Yes.

(Question repeated.) A. I would say, if anything, I would think we would make more than the rest, on account of the volume of business. They would not have the volume of business. I would think that we would make more than a small laundry.

By Mr. Carr:

Q. You don't think 3.8 is the average price now? A. No, what I am talking about is the straight wet wash.

Q. Your percentage has been brought down by finished work? A. This 3.8 probably is.

Q. The reduction is due to the fact that you are no longer confined to damp wash? A. Yes.

Mr. Carr: That's all.

FRANK C. LUCAS, Sworn.

DIRECT EXAMINATION BY MR. HARDING:

Q. You operate the Crystal Laundry, don't you? A. Yes, sir.

Q. Where is that located? A. Second and Division Streets, Camden.

Q. Have you a printed schedule of prices you charge for your service? A. Yes.

Q. I show you this to refresh your memory, and ask you to let me know what prices you were charging prior to May of 1928? A. A dollar for 26 pounds, 4 cents a pound over weight.

Q. What do you charge now? A. 15 pounds for 80 cents, 4 cents a pound over weight.

Q. What is the capacity of your laundry? A. Two thousand bundles.

Q. How many bundles do you turn out a week? A. Between 1,400 and 1,500.

Q. Are you in a position to tell me what profit you made in your business in 1928? A. Yes, I can give you a percentage on my investment. That's the way I figure.

Q. Any way you want to put it?

Mr. Carr: I think this is all immaterial to the issue we have here, how much money Mr. Lucas was able to make on his capital.

The Court: As I said before, what we are interested in, is what it cost to do the unit of work.

Mr. Carr: We are not getting that.

The Court: Apparently not.

Q. Can you answer that question, Mr. Lucas? A. I have a schedule here I had made up by my bookkeeper, that from January 1st to May 31st, 1928—

Mr. Carr: I object to his making use of the schedule, unless he knows about it himself.

Witness: There it is, you can look it over.

Mr. Carr: I object to the use of that.

The Court: If he has knowledge, he may use the memorandum to refresh his own recollection.

Q. Use that paper to refresh your memory? A. January 1st to May 31st, 1928, we were a dollar minimum, 26 pounds, for the period of five months we made 3¾ per cent.

Q. Can you tell me at the same time what it cost you to do that volume of business, January 1st to May 31st, 1928? A. I can't tell you by any percentage; I have the gross expenses here.

Q. Can you give us the gros expenses? A. We done $21,810.35. It cost $19,328.75 to do it.

Mr. Harding: Cross examine.

CROSS EXAMINATION BY MR. CARR:

Q. Out of that you charged off something for yourself? A. No, sir, there's a notation made on the bottom there. I am a one man business. I don't keep a set of books like Morgan's.

Q. The profits for the year, on a dollar for 26 pounds, you made 12 per cent on your investment? A. Yes.

Q. From June, 1928, to April, 1929, at the new price, you made 14.75 per cent on the investment? A. Yes.

Q. Showing the reflection of the increased price? A. This was not a lower price. This is the 60 cent price.

Q. You were one of these high priced men before? A. Yes.

Q. You charged more? A. We charged a dollar, the same as everybody else.

Q. The 60 cents for 12 pounds was a higher price than you charged before? A. No, a lower price, I got a dollar for 26 pounds.

Q. You made more money at the lower price? A. Well, we done more business.

Q. This agreement was for the purpose of reducing it? A. My idea was to get more of the small bundles from the home.

Q. The bundle at the reduced price? A. We done that in order to get the small bundle.

Mr. Carr: That's all.

Mr. Harding: That's our case.

Mr. Carr: I make a motion for a direction for the defendants, on the grounds I discussed in answering Mr. Harding's argument, and particularly relying on the number of cases which stated the construction of these contracts, and the determination of whether, or not, they do have a tendency to prohibit, is for the Court.

Mr. Harding replied.

The Court: My view is that there are question of fact, which the jury must determine.

Renewal of Plff.'s Motion for Direction of Verdict.
The Charge of the Court.

It is not a question of the interpretation of the agreement, but whether the agreement, definitely providing, and not requiring interpretation under the facts, it does amount to a contract, in view of the circumstances, it would be against public policy, and therefore void, and unenforceable. The motion is denied.

(Exception noted for defendants.)

Mr. Harding: My motion now is that the Court direct a verdict in this case in favor of the plaintiff.

The Court: That motion is denied.

(Exception noted for plaintiff.)

The Charge of the Court.

DONGES (*J.*):

LADIES AND GENTLEMEN: This suit is brought to recover the sum of one thousand dollars on a promissory note, admittedly made by the defendants, Martens and Brightley, to the plaintiff, Buckelew, as trustee for a group; and the plaintiff seeks to recover the sum of one thousand dollars, with interest, from May 31, 1928, although I take it that is not the date of the alleged breach of the agreement. There is no proof of the date, yes, I take it there is no date from which interest would be practicable. The sum of one thousand dollars, it is alleged, is due to the plaintiff, as trustee, by reason of the breach of a certain contract, for the faithful performance of which, by the defendants, the note was given.

The Charge of the Court.

The contract, I take it, is clear and unmistakable as to its terms, and requires no interpretation by the Court. It provides that the thirteen signatories, or the persons signing the agreement, contract with each other that they will, as men engaged, or industries engaged, in the business of processing laundry of a certain kind, or in a certain way, charge of such processing, or service, a price not below, or less than the price or prices mentioned in the agreement. That is one of the provisions with which you are now called upon to deal, and that provision is clear and definite, and, as I say, requires no interpretation by the Court. They agreed to maintain certain prices, or, at any rate, to charge not less than certain prices.

Another provision of the agreement, made a part thereof by supplement, entered into some days after the original agreement, and becoming a part of the original agreement, was the provision, which has been read to you, that the signatories to this contract would not engage in the work of processing, or servicing certain individuals, or groups, known as bob-tails, except such bob-tails as the signatories to the agreement were serving at the time the agreement was entered into.

That agreement was to continue for one year from May 31, 1928, and during the term of one year from May 31, 1928, that agreement was binding upon all of those parties by its terms, and none, during that period could withdraw from the engagement. In other words, during the first twelve months, the first year the agreement was to be effective, none could withdraw.

There was a provision, as I recall it, but you will read the agreement, and be governed by your own reading of it as to its terms, that if any de-

sired to withdraw after the period of one year, the signatory might do so upon giving notice of his intention to withdraw, after the first year, or any year, of its continuance.

Hence, we have an agreement, which, by its terms, was designed to absolutely bind all the parties to it for the period of one year from May 31, 1928 to May 31, 1929, and it is during that period that it is claimed—and, I take it, it is not disputed, I think it is admitted—that these defendants did deal with bob-tails, who were not served by them prior to the date of the agreement, and I think it is admitted, but you will recall what the stipulations and testimony were, these defendants did charge some prices other than those fixed in the agreement, and, I take it, prices that, perhaps, were interpreted—if they were not in fact—to be lower than those fixed as the minimum prices in the agreement. My recollection is wrong. It was not stipulated there was any violation as to price, but merely as to bob-tails. I withdraw the statement it was stipulated, then, that there was a violation except with respect to bob-tails. You will have to recall the testimony as to prices.

The defendants claim that there can be no recovery on this note, despite the admitted violation of one of its provisions relating to bob-tails, because, they assert, the agreement, being made by a very substantial proportion of all of those engaged in this trade, or industry, serving the community affected, the agreement was one which tended, and did, in fact, control prices, fixed prices, to the detriment of the public, and, therefore, being against public policy, is void, and not enforceable. That is the question, the real crux of this case, whether, or not,—the policy of the law being to promote

competition and free trade between parties serving a community, serving the public,—a freedom of action, free from those restraints which have a tendency to create a monopoly of an industry, or a trade, or a business, and by fixing prices, or fixing the methods of doing business the manner of doing business, a restraint upon trade is effected. It is not essential to such a finding that it shall appear that the price, then or at any time actually charged, shall appear to be an unreasonable charge. In other words, it is not essential that the public shall be paying a reasonable charge. The very essence of the objection is not necessarily that the charge is unreasonable, but does the practice, does the agreement, the engagement of the parties, tend to create the power to fix prices, which in turn, will be a detriment to the public.

The law has been stated as follows:—"The idea of monopoly as understood at the present time includes the suppression of competition by unification of interests or management, or through agreement and concert of action. It is the power to control prices which makes both the inducement to make such combinations and the concern of the law to prohibit them. A monopoly in the modern sense is created when, as a result of efforts to that end, previously competing businesses are so concentrated in the hands of a single person or corporation, or a few persons or corporations acting together, that they have power to practically control the prices of commodities, and thus to practically suppress competition. Contracts and combinations which tend to create a monopoly are against public policy, and therefore illegal, because they deprive the community of the benefits of competition, and thus place the power to con-

trol production and fix prices in the hands of a few persons. A monopoly exists where all, or nearly all, of an article of trade or commerce within a community or district, is brought within the hands of one man, or set of men, so as to practically bring the handling or production of the commodity or thing within such control, to the exclusion of competition or free traffic therein. The word 'monopoly' as now used and understood, embraces any combination the tendency of which is to prevent competition in the broad and general sense, or to control prices to the detriment of the public."

You will see, therefore, the question is whether this agreement, in its effect, tended to put in the hands of the signatories, the power to practically control prices and the trade, to the detriment of the public. If it did, it is illegal. If it did not, it is legal. If it was illegal, your verdict will be for the defendants. If it is legal, your verdict will be for the plaintiff in the sum of one thousand dollars.

Exhibit P-1.

Camden, New Jersey, May 31st, 1928.

$1,000.00 Not negotiable

On demand after date we promise to pay to the order of HAROLD C. BUCKELEW, Trustee, One Thousand Dollars.
at Broadway Trust Co., Camden, N. J.

Value received with Interest at N.S.% per annum.

No. Due WILLIAM M. J. BRIGHTLY.

KLEAN WAY DAMP LAUNDRY,
By HARRY E. MARTENS.

For partnerships or individuals doing business under a trade name and not incorporated.

Duly authorized to execute this note.

Check Protested Dec. 31, 1928.

Stamped Broadway Merchants Trust Co.
Collection No. 31497
Camden, N. J.

This note is subject to an agreement made , 1928, between Greater Family Laundry and others as parties of the first part and the maker hereof as party of the second part.

HAROLD C. BUCKELEW,
Trustee.

(Endorsed.)

Exhibit P-1

UNITED STATES OF AMERICA

1000.00

Camden, New Jersey, May 31st, 1928.

on demand after date we promise to pay to the order of HAROLD C. BUCKELEW, Trustee

One thousand.....00/100 Dollars

At BROADWAY TRUST CO. CAMDEN, NEW JERSEY

Value received with interest at per annum
For partnerships of individuals doing business under a trade name and not incorporated

WM. M. J. BRIGHTLY,
Klean Way Damp Laundry
By: HARRY E. MARTENS
Duly authorized to execute this note

BE IT KNOWN, That on the day of the date hereof, I, T. Yorke Smith, Notary Public for the State of New Jersey, by lawful authority duly commissioned and sworn, residing in the City of Camden, in the said State, at the request of the "Broadway-Merchants Trust Company," exhibited the original NOTE of which the above is a true copy, unto , a clerk of the Company where the same is made payable, and demanding payment, received for answer Not sufficient funds. I therefore duly notified the drawer and endorser of the non-payment thereof, to wit, by a notice of which the following is a true copy:

Exhibit P-1

Camden, N. J., December 31st, 1928

Payment of Klean Way Damp Laundry—

NOTE in favor of Harold C. Buckelew, Trustee and by you endorsed for $1000.00
being this day due, demanded and unpaid, it is delivered to me for Protest by the "Broadway-Merchants Trust Company," and you are looked to for payment, of which you hereby have notice.

T. YORKE SMITH,
Notary Public.

Notice served respectively as follows:

KLEAN WAY DAMP LAUNDRY
335 Senate Street, Camden, N. J.

HARRY E. MARTENS
335 Senate Street, Camden, N. J.

WILLIAM M. J. BRIGHTLY
335 Senate Street, Camden, N. J.

HAROLD C. BUCKELEW
C/O Klean Way Damp Laundry,
335 Senate St., Camden, N. J.

WHEREUPON, I, the said Notary, at the request aforesaid, do hereby solemnly protest against the drawer and endorser of the said NOTE and all others concerned, for all exchange, re-exchanged, cost, damages and interest suffered and to be suffered for want of payment thereof.

Thus done and protested, at Camden, aforesaid, the Thirty-first day of December 1928

Exhibit P-1

In Testimony Whereof, I have set my hand and affixed my Notarial Seal, the day and year above written.

T. Yorke Smith,
Notary Public for New Jersey,
Commission Expires October 17, 1932.

(Seal)

Protested Note

Maker

Klean Way Damp Laundry

Endorsed by

Harry E. Martens
William M. J. Brightly
Harold C. Bickeler

Amount of Note	$1000.
Fees,	$ 2.00
Notices,	$ .40
Postage,	$ .10
Total,	$1002.50

Dec. 31st, 1928

Exhibit P-2.

ARTICLES OF AGREEMENT entered into this 31st day of May, 1928, between GREATER CAMDEN FAMILY LAUNDRY, NEW SANITARY LAUNDRY, FAVORITE HOME LAUNDRY, MORGAN BROS. LAUNDRY, CRYSTAL WET WASH LAUNDRY, CRESCENT LAUNDRY, I. X. L. LAUNDRY, GARDEN STATE LAUNDRY, UNITED LAUNDRIES, EAST END LAUNDRY, MOORESTOWN STEAM LAUNDRY, INC., BOND LAUNDRY (constituting partnerships and individuals doing business under trade names and corporations), hereinafter referred to as parties of the first part and HARRY E. MARTENS and WILLIAM M. J. BRIGHTLY, parties trading as KLEAN WAY DAMP LAUNDRY CO., hereinafter designated as party of second part.

WHEREAS, the parties hereto are engaged in the laundry business and industry in and about the City of Camden, New Jersey, and desire to improve and stabilize conditions in that industry for the benefit of each one of the parties hereto and for the advantage and general welfare of the industry and of the communities which it serves:

AND it appearing that the parties hereto are engaged in providing for their customers a wet wash service, and that in the past such persons, firms or corporations have charged prices for said wet wash service which were detrimental to the profitable conduct of their businesses and resulted in their suffering losses in the providing of said service,

And it being conceded by the parties hereto that the continuation of such practices will be detrimental to the industry and generally lower the class of the service to their customers and the said parties having concluded after due consideration of the

subject that it would be to the advantage of all and each of them, if each one agreed to charge for wet wash service rendered by them a minimum price as hereinafter set forth, which price is agreed to be a reasonable charge allowing for a fair margin of profit.

AND WHEREAS the parties hereto have concluded that it is impractical and difficult to ascertain minutely and definitely the damage that would result from a breach of the within contract by any of the parties hereto, and the difficulty of proving such damage as required by the rules of evidence and all of said parties having given due consideration to the question of damage that will be sustained by them as a whole in the event of such a breach.

NOW THEREFORE, in order to carry out the plan as hereinbefore generally outlined and in consideration of the terms, promises, covenants and conditions herein contained and the mutual advantage each to the other passing and the sum of One ($1.00) dollar in hand duly paid by one to the other, receipt whereof is hereby acknowledged, the parties hereto do agree as follows:

That from and after the 11th day of June, 1928, and during the term of this agreement as hereinafter set forth, the party of the second part will charge, his, their or its customers, for wet wash service, as generally known to the industry at the signing hereof, a minimum price of sixty (60c) cents for 12 pounds of wet wash and four (04c) cents a pound for all wet wash thereover (12 lbs.) and upward, which said minimum rate shall be effective on Monday and Tuesday of each week during the term hereof.

Exhibit P-2.

And for wet wash to be delivered Wednesday or thereafter for the remaining days of the week, during said term, will charge, his, their or its customers, for wet wash service as aforesaid, a minimum price of sixty (60c) cents for 12 pounds of wet wash and four (04c) cents a pound for all wet wash thereover except when the charge to any one customer at the rate are aforesaid amounts to one ($1.) dollar then the price to remain at One ($1.) dollar for wet wash up to 30 pounds.

Said party of the second part agrees to strictly adhere to said minimum rates and to base charges on actual weights.

AND WHEREAS, the parties hereto have voluntarily and after due consideration fixed the amount hereinafter set forth as liquidated damages and not as a penalty, or by the signing of these presents agree that the sum of One thousand ($1000) dollars has been computed to represent liquidated and ascertained damages for each breach of the terms hereof, and that said sum is not a penalty and the party of the second part does hereby agree that simultaneously with the signing of these presents, he, they or it will execute a note to the order of Harold C. Buckelew, who is hereby designated as the agent of the parties of the first part, and who shall hold the note and the proceeds realized thereon for the benefit and in trust for all of the parties of the first part to be divided in such manner as may be agreed upon by them, after payment of all costs incurred in the collection thereof. Said note shall be in the amount of One thousand ($1000) dollars and shall bear the date hereof, to be due and payable at Broadway Trust Company, Camden, N. J., on demand. Said note also shall not be negotiable in form and shall

contain a clause that it is subject to the provisions of this agreement, and the said party of the second part does hereby agree that in the event of a breach of the terms of the within contract by him, them or it, that said note shall become immediately due and payable.

And he, they or it, the said party of the second part, does further agree that upon a breach of the within agreement and a judgment is entered on said note, that he, they or it, the said party of the second part, will execute another additional and similar note for One thousand ($1000) dollars in form as aforesaid, payable on demand, and upon a breach of the within contract as aforesaid, and if he, they or it fails to deliver to said agent of the parties of the first part within twenty-four (24) hours after written demand therefore, a note in the aforesaid amount and containing the same terms as the one originally deposited by the said party of the second part with the said agent, that he, they or it does in that event appoint C. H. Van Doren as his, their or its Attorney in fact for him, them or it, in his, their or its name to make draw and sign a promissory note in the amount and in the tenor as hereinbefore set forth, and as often as a breach of the terms of the within agreement shall again occur after the making of said note by the party of the second part, or said attorney and a judgment is entered thereon, then the said Attorney is also authorized in the name of the party of the second part, to draw and execute a note or notes in the amount and containing the same terms as hereinbefore set forth, it being expressly understood that said power of attorney is coupled with an interest and irrevocable during the term of the within contract.

It is expressly understood and agreed by and between the parties of the first part that if any legal

proceedings are taken in connection with the enforcement of the provisions of this contract and are lost that all costs and liabilities in connection therewith will be met equally by said parties of the first part.

It is expressly understood and agreed that all of the parties of the first part have appointed Harold C. Buckelew as their agent for the purpose of executing this agreement on their behalf and that upon the signing of these presents by said agent as their representative, they shall be bound to the same effect as if each one of the parties of the first part had executed the within agreement, either by personal signature; personal signatures of persons under trade name or the proper corporate signature.

It is expressly understood and agreed that upon the death, removal or resignation of either of the agents referred to herein that the parties of the first part may appoint another person to take the place and act in the stead of the agent or agents as designated hereunder, and said substituted agent or agents shall have the same power and authority as given to the original agent or agents as designated herein.

The parties hereto realizing that an award of damage for the amount of the note, representing liquidated damage, and the collection thereof, will not put them in a situation as beneficial to them collectively and individually as if the agreement were specifically performed, do agree that the provision for liquidated damages shall not be construed as an exclusive remedy or a waiver of the right in the parties of the first part to specifically enforce the contract by an action in any court of competent jurisdiction for injunctive relief or otherwise, and that an award of damage for the

Exhibit P-2.

amount of the note or notes, and the collection thereof shall not be a bar to the securing of specific performance of the terms of this contract and a temporary or permanent injunction compelling the performance or prohibiting the breach thereof. It is expressly understood and agreed that the provision for liquidated damages and the remedy afforded by application to any Court of competent jurisdiction for specific performance of this contract and relief by way of injunction shall be independent remedies and if either is denied upon application therefor, it shall not affect the other remedy.

This agreement shall be binding upon the respective parties hereto, their heirs, executors, administrators, successors and assigns and shall be in full force and effect for a period of one year and shall be renewed for further periods of one year, if none of the parties hereto, on or before each successive May 11th hereafter, give written notice of intention not to renew. Any notice required to be given hereunder shall be in writing and mailed by registered mail to Harold C. Buckelew, at 31 Central Avenue, Newark, New Jersey.

It is expressly agreed that this instrument is one of a series identical in terms, and such instruments shall be deemed one contract for the purpose of binding the parties hereto, to the same extent as if all of the parties had signed one such contract, and the parties hereto agree that there are no oral or other conditions, terms, covenants, representations or inducements in addition to or in variance with any terms hereof, and that this agreement represents the voluntary and clear understanding of all of the parties hereto.

Exhibit P-2.

It is expressly understood and agreed that if any portion of this contract is declared invalid or unenforceable by any Court of competent jurisdiction it shall not affect the validity and effect of the remainder of the contract.

HAROLD C. BUCKELEW (L.S.)

As agent duly authorized for and one behalf of the parties of the first part.

.....INC.

By: .....
President.

Attest:

.....
Secretary.

For use by party of the second part, if a corporation.

KLEAN WAY DAMP LAUNDRY,
WILLIAM M. J. BRIGHTLY,
By: HARRY E. MARTENS:

A co-partner duly authorized to and obligate the said co-partnership.

(For use by party of the second part if business is done under a trade name and as a partnership.)

.....(L.S.)

For use by party of the second part, if an individual.

Exhibit P-2.

STATE OF NEW JERSEY }
COUNTY OF CAMDEN } ss.:

BE IT REMEMBERED, That on this 31st day of May, in the year of our Lord One Thousand Nine Hundred and twenty eight before me, the subscriber, a Master in Chancery of N. J., personally appeared Harry E. Martens, who, I am satisfied, is the party of the second part mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

JOHN H. YAUCH, JR.,
Master in Chancery of N. J.

Notary Public signs here

(If an individual use this form or if a partnership doing business under trade name use this form and fill in the name of the party that signed on behalf of the partnership.)

Exhibit P-2.

STATE OF NEW JERSEY }
COUNTY OF CAMDEN } ss.:

BE IT REMEMBERED, That on this day of in the year One Thousand Nine Hundred and Twenty eight before me, the subscriber, a (Secretary's name) personally appeared known to me to be the Secretary of the a Corporation, the parties of the first part within named, who being by me duly sworn on his oath said and made proof to my satisfaction that he is such Secretary, and that he well knows the Common Seal of said Corporation, and that the Seal affixed to the within Agreement is such Common Seal and was thereto affixed by (President's name) the President of said Corporation, and that the said Agreement was by the said President also signed and delivered as and for the voluntary act and deed of said corporation in the presence of said Deponent, who thereupon subscribed his name thereto as attesting witness.

Secretary signs here.

Sworn and subscribed before me this }
day of A. D. 1928. }
Notary Public signs here.

(If a corporation use this form.)

Fill in name of President and Secretary at designated points in this form.

Exhibit P-2.

Addenda to contract made May 31, 1928 between: Greater Camden Laundry; New Sanitary Laundry; Favorite Home Laundry; Morgan Bros. Laundry; Crystal Wet Wash Laundry; Klean Way Damp Laundry; Crescent Laundry; I. X. L. Laundry; Garden State Laundry; United Laundries Inc.; Bond Laundry; East End Laundry; Moorestown Steam Laundry designated therein and hereinafter as parties of the first part and Harry E. Martens and William M. J. Brightly, partners, trading as Klean Way Damp Laundry, hereinafter referred to as party of second part.

Whereas upon the signing of the aforesaid contract by the parties thereto, it was agreed that there be included and added, an agreement whereby the said parties agree not to do business from and after June 11, 1928 with any persons, firms or corporations other than those that said parties were doing business with upon the date of the signing of said contract, who are now and have been generally known, in the language of the industry as a "bob-tail". Said persons, firms or corporations being referred to hereinafter as a "bob-tail". A bob-tail is known to the parties hereto as a person, firm or corporation who solicits laundry business from the owners of laundry and contracts with a laundry Company to have the laundry service performed thereon, and does not maintain a plant in which laundry service can be performed.

It appearing to the parties hereto that the method and manner of doing business adopted by said "bob-tails" has been such as to prejudice the good will enjoyed by the laundry industry in general, in that the carelessness and irresponsibility of the "bob-tail" frequently cause the public to lose confidence in the laundry industry.

Exhibit P-2.

And the parties hereto having also agreed that each one doing business with "bob-tails" will contract in writing with said "bob-tails", requiring them to charge for wet wash service, the prices as set forth in said contract of May 31, 1928 and the parties hereto having further agreed that upon it being satisfactorily established that any bob-tail fails to charge his, their or its customers the prices as aforesaid, that the party hereto will then immediately cease to do further business with said "bob-tail."

Now therefore, in order to carry out the plan as hereinbefore generally outlined, the parties hereto, in consideration of the consideration set forth in contract of May 31, 1928, do agree as follows:

That from and after June 11, 1928 and during the term of said contract, the party of the second part will not either directly or indirectly employ, engage, contract, with or in any other manner have any business relations with any peson, firm or corporation known and described herein as a "bob-tail", other than those "bob-tails", that said party of second part is doing business with at the date of this agreement.

And further that from and after June 11, 1928 the said party of second part agrees that, he, they or it will contract in writing with said "bob-tails" requiring them to charge for wet wash service, the prices as set forth in said contract of May 31, 1928 and that if it is satisfactorily established that any bob-tail fails to charge his, their or its customers the prices as aforesaid, that the party of the second part hereto, will then immediately cease doing business with said "bob-tails."

And the parties hereto and particularly the party of the second part, do agree that the terms of this

supplemental agreement be incorporated and become part of the said contract of May 31, 1928, and have the same effect as if they, the said terms hereby, directly preceding paragraph two of page three of said agreement of May 31, 1928.

HAROLD C. BUCKELEW (L. S.)

As agent duly authorized for and on behalf of the parties of the first part.

.....

(Corp. Seal)

..... Inc.

By: .....

President.

Attest:

.....

Secretary.

For use by party of second party if a Corporation.

KLEAN WAY DAMP LAUNDRY
(Trade Name)
By: WILLIAM M. J. BRIGHTLY (L. S.)

A co-partner duly authorized to bind and obligate said co-partnership.

For use by party of second part if business is done under a trade name and as partnership.

.....

..... (L. S.)

For use by party of second part, if an individual.

Exhibit D-1.

CONSTITUTION AND BY-LAWS.

ARTICLE 1.

Section 1. The name of this organization shall be South Jersey Laundry Association.

Section 2. The objects and purposes of this Association are

A. To promote friendly relations and agreements among laundry owners.

B. To assist the trade and interests of its members.

C. To correct unfair trade practices, either among members or existing in or affecting the industry generally.

D. To give aid, insofar as possible to any member who may be forced to shut down, owing to accident, fire, strikes or other causes.

E. To, from time to time, discuss ways and means to better employees' working conditions, best methods, formulas, and supplies resulting in better quality of work. And any other subjects of mutual benefit, also cooperative buying.

ARTICLE 2.

OFFICERS.

A. The officers shall be President, Vice President, Secretary and Treasurer.

Exhibit D-1.

B. If any office shall become vacant from any cause, an election will be held for the unexpired term of that office.

C. The term of any office shall be for one year.

D. The association secretary shall be exempt from dues during his term of office.

ARTICLE 3.

Places of Meetings.

The places and dates of meetings shall be as determined by majority of members, except special meetings, which shall be called by the President.

ARTICLE 4.

Membership.

A. Membership in this Association shall consist of Laundry-owners only.

B. A membership will be one person from each laundry holding membership, which person shall be named by member laundry.

C. No more than one membership from any laundry shall be permitted to cast a vote on any question.

D. On questions under discussion, two or more members or partners of any membership may take part.

Exhibit D-1.

E. Each member agrees to maintain an "Open Shop". That on and after June 11th, 1928 no member laundry shall do the words of any "Bobtail" other than those they may have prior to that date.

F. Members shall instruct each of their driver salesmen and solicitors, to use no arguments detrimental to another member laundry, either orally or printed nor to deliberately take a bundle without permission of the owner of said bundle.

G. Each new membership shall be required to sign the Association agreement of June 11th, 1928.

ARTICLE 5.

Dues and Fees.

A. Dues shall be One Dollar ($1.00) per regular meeting for each laundry having membership.

B. Each new membership shall be required to pay an entrance fee of Ten Dollars ($10.00).

ARTICLE 6.

Grievance Committee.

A. The president shall appoint a committee to be known as "The Grievance Committee", said committee to serve for three months, when it will be discharged and a new committee appointed. It will be composed of three (3) members.

B. The duty of The Grievance Committee will be to make disposition of any disagreement between any two or more members.

Exhibit D-1.

C. Any member having a grievance shall call or notify the secretary, who in turn will notify the committee, and they will at once consider the difficulty between the contending members.

D. The decision of the committee will be final, and shall be so accepted by those concerned, as for the best interest of the industry.

E. If one of the contending members shall be a member of the grievance committee his place on the committee shall be filled by the President.

ARTICLE 7.

Auditing Committee.

The president shall appoint a committee of three (3) for the purpose of auditing the books of the association once a year.

ARTICLE 8.

Signing the By-Laws.

Each Laundry, upon becoming a member of this association, shall cause its designated person holding membership to carefully read these by-laws and then sign them, which signing it is understood will signify their Agreement to abide thereby.

Exhibit D-1.

ARTICLE 9.

Discharged Employees.

A. Each member laundry will notify the Secretary and he will keep on file, the names of all discharged employees and the cause thereof.

B. It will be the duty of any member laundry receiving application of an exemployee of another member laundry to call the exemployee and ascertain if employee has given satisfactory notice.

ARTICLE 10.

Amendments to By-Laws.

These by-laws may be amended by a vote of two thirds of the members present at any meeting of the Association, provided notice in writing of the proposed amendment is given all members at least forty eight hours prior to the meeting.

ARTICLE 11.

Voting on Routine Business.

Voting upon routine business of this Association, a majority will bind a minority.

NEW JERSEY COURT OF ERRORS AND APPEALS.

HAROLD C. BUCKELEW, trustee,
Plaintiff-Appellant,

v.

HARRY E. MARTENS and WILLIAM M. J. BRIGHTLY,
trading as KLEAN WAY DAMP LAUNDRY,
Defendants-Appellees.

ACTION AT LAW.

ON APPEAL FROM NEW JERSEY SUPREME COURT,
CAMDEN CIRCUIT.

BRIEF FOR DEFENDANTS-APPELLEES.

FACTS.

In addition to the facts set forth in the brief filed for the plaintiff, there are a few matters as to which particular attention is directed.

The agreement (Ex. P2) is quoted in part in the brief. We wish also to call special attention to the provisions thereof appearing at pages 136 and 137, which read as follows:

> "And it being conceded by the parties hereto that the continuation of such practices will be detrimental to the industry and generally lower the class of the service to their customers, and the said parties having concluded after due consideration of the subject that it would be to the advantage of all and each of them, if each one agreed to charge for wet wash service rendered by them a minimum price as hereinafter set forth, which price is agreed to be a reasonable charge allowing for a fair margin of profit."

also to the following provisions appearing on pages 137 and 138:

> "That from and after the 11th day of June, 1928, and during the term of this agreement as hereinafter set forth, the party of the second part will charge his, their or its customers, for wet wash service, as generally known to the industry at the signing hereof, a minimum price of sixty (60¢) cents for 12 pounds of wet wash and four (04¢) cents a pound for all wet wash thereover (12 lbs.) and upward, which said minimum rate shall be effective on Monday and Tuesday of each week during the term hereof.
>
> And for wet wash to be delivered Wednesday or thereafter for the remaining days of the week, during said term, will charge his, their or its customers, for wet wash service as afore-

said, a minimum price of sixty (60¢) cents for 12 pounds of wet wash and four (04¢) cents a pound for all wet wash thereover, except when the charge to any one customer at the rate aforesaid amounts to one ($1.) dollar, then the price to remain at one ($1.) dollar for wet wash up to 30 pounds.

Said party of the second part agrees to strictly adhere to said minimum rates and to base charges on actual weights."

Also, the addenda contains provisions not given in the plaintiff's brief, to which we wish to call special attention. This addenda provides (C., p. 146) as follows:

"And the parties hereto having also agreed that each one doing business with 'bob-tails' will contract in writing with said 'bob-tails,' requiring them to charge for wet wash service, the prices as set forth in said contract of May 31, 1928, and the parties hereto having further agreed that upon it being satisfactorily established that any bob-tail fails to charge his, their or its customers the prices as aforesaid, that the party hereto will then immediately cease to do further business with said 'bob-tail.'

Now, therefore, in order to carry out the plan as hereinbefore generally outlined, the parties hereto, in consideration of the consideration set forth in contract of May 31, 1928, do agree as follows:

That from and after June 11, 1928, and during the term of said contract, the party of the second part will not either directly or indirectly

employ, engage, contract with or in any other manner have any business relations with any person, firm or corporation known and described herein as a 'bob-tail,' other than those 'bob-tails' that said party of second part is doing business with at the date of this agreement.

And further, that from and after June 11, 1928, the said party of second part agrees that he, they or it will contract in writing with said 'bob-tails,' requiring them to charge for wet wash service, the prices as set forth in said contract of May 31, 1928, and that if it is satisfactorily established that any bob-tail fails to charge his, their or its customers the prices as aforesaid, that the party of the second part hereto will then immediately cease doing business with said 'bob-tails.'

And the parties hereto, and particularly the party of the second part, do agree that the terms of this supplemental agreement be incorporated and become part of the said contract of May 31, 1928, and have the same effect as if they, the said terms hereby, directly preceding paragraph two of page three of said agreement of May 31, 1928."

The action was brought upon a promissory note for $1,000, delivered under the agreement (Exhibit P2), and there were three defenses filed to this note (C., p. 5), which were to the following effect:

1. That the defendants were not liable on the note because no consideration was given therefor, plain-

tiff having given no value therefor, and not being a holder in due course.

2. That the consideration for the note was illegal and that the note arose out of an illegal and invalid transaction.

3. That the defendants were not liable because the note arose out of an illegal attempt to prevent competition, to raise prices and to create a monopoly.

The case was submitted to the jury by the learned trial Judge upon the theory that it was for the jury to determine whether the agreement was one tending to create a monopoly, or to restrain trade, it being left to the jury to determine the question from the facts. The jury returned a verdict for the defendants. The charge of the Court appears in the case at pages 127 to 131, inclusive.

The plaintiff's evidence was to the effect that the laundries which were parties to the agreement had a total capacity of 19,250 washes per week and that these laundries were actually doing 13,850 washes per week. There was also evidence that there were seven laundries in the territory which were not parties to the agreement. Proof showed that the laundries which were not parties to the agreement had a total capacity of 3,680 washes per week, but the number of washes actually done by these laundries was not given in every case.

The following is a statement of the laundries party to the agreement, their capacity per week, the number of washes done per week, and the page of Record referring thereto:

Name	Capacity	No. of Washes per week	Page
Klean Way Laundry	1400	750	33
Favorite Home Laundry (Walker)	700	500	45
New Sanitary Laundry (Baker)	1500	1100	47
Greater Camden Family Laundry (Rhodes)	2500	1400	62
Morgan Brothers Laundry	6000	5000	50
Crystal Wet Wash Laundry (Lucas)	2000	1500	53 & 54
I. X. L. Laundry (Cheever)	1200	800	57
Garden State Laundry (Walther)	1000	550	72
Crescent Laundry (Schade)	600	250	85
United Laundry (Reintre)	500	250	86
Bond Laundry (Biemer)	1000	1000	92
Moorestown Steam Laundry (Engle)	400	300	89
East End Laundry (Goeltz)	450	450	90

The evidence as to the laundries which were not parties to the agreement is given at pages 32 and 33 by the witness for the plaintiff and at pages 78 to 79 of the State of the Case by the witness for the defendants. The following is a tabulation of the capacity of the non-members and, where given, the number of washes done by these laundries:

Name	Capacity	No. of Washes per week	Page
Young	600		79
Twin Cities	500		79

Nemec	600	300	82
Riverton	700	525	109
Riverside	80	80	110
Fairview	700		
Munter	500	285	

The purpose of the agreement, including the addenda, was to fix the price for wet wash laundry in the Camden territory, both by the direct agreement of the parties to the contract and also by virtue of the provisions of the contract whereby the parties agreed that they in turn would require so-called "bob-tails" doing business with them to charge the same price to their customers. The other purpose of the agreement was to prevent any signatory from washing laundry for any bob-tail other than the bob-tail for whom work was then being done, the effect of which was that no new bob-tails could go into business, and if any existing laundry went out of business none of the parties to the agreement could do work for the bob-tails who had theretofore been served by such discontinued laundry. The result of this was that when a laundry, the Broadway Laundry, went out of business, the defendant undertook to take over the work of these bob-tails, and that brought about the law suit (Case, pages 15 to 17).

There was a contention on the part of the plaintiff that the defendants had violated the agreement with respect to price. That, however, was disputed (C., p. 15). The defendants' proof was that the price scale was actually not maintained by the other parties to the contract (C., pp. 17-18-20). The purpose of the agreement and the inception of the whole

matter appears from the testimony of Walther (C., p. 65), and the manner of the operation of the business was shown by the testimony of the same witness (C., pp. 97 to 108, inclusive). Mr. Walther was an officer of the Damp Wash Association, which fathered the agreement sued upon, and the principal purpose of which association seems to have been the enforcement of the agreement by means of preventing price changes and the doing of work for bobtails.

The jury had before it the testimony of Walther and of the defendants, Martens and Brightly, as to the purposes of the combination and the manner in which it operated.

ARGUMENT.

The motion to direct the verdict for the plaintiff was properly denied and the case was properly submitted to the jury upon the question of whether or not the tendency of this contract was to restrain trade and create monopoly.

The plaintiff's ground of appeal is that the trial Court erroneously refused to direct a verdict for the plaintiff. This motion was based upon the argument that the defendants were required to show that the prices fixed in the contract were unreasonable and that as there was no proof to that effect there should have been a direction. The Court was of the opinion that the real question was as to whether or not this agreement was in fact a combination to fix prices and to control competition to the detriment of

the public; that no question of the unreasonableness of the prices was involved and that the question of whether there was such a combination as stated was a jury question (C., pp. 112 to 115; 127 to 131). The view of the trial Court is stated in the charge at the bottom of page 129 and top of 130 of the State of the Case.

Under the evidence the jury could have found that a large majority of parties engaged in the wet wash business were parties to the agreement; that the express purpose of the agreement was to restrain and prevent competition, first as to price, which was sought to be accomplished by an agreement fixing the price to the customer and by an agreement fixing the price to the so-called bob-tail; and second as to persons by an agreement not to perform laundry services for any bob-tails not then customers and as to those who were then customers by requiring them to pay as much as individual customers, the natural tendency and effect of which was to put out of business all so-called bob-tails, so that the agreement was both a price-raising agreement and a boycott; and that the parties to the agreement through these defendants as individuals and also through the Damp Wash Association had used coercive measures in an endeavor to accomplish the purposes of the agreement with respect to prices and also with respect to bob-tails. It was also open to the jury to find that the contract served no other purpose, so that the note given thereunder was necessarily based upon an illegal transaction. These issues were resolved by the jury in favor of the defendants.

The case is one arising under the common law, as

is said in 19 R. C. L., page 26 "Monopolies and Combinations":

> "At common law, any combination or agreement that in its operation has or may have a tendency to restrain trade, to stifle competition in trade, to create or maintain a monopoly, or unnaturally to control the production or supply of or to increase the price of, or to curtail the opportunity of obtaining, useful commodities, to the injury of the public or any considerable portion of the population of any locality, is regarded as contrary to just governmental principles, and inimical to the public welfare, and therefore against public policy and is denied enforcement at law or in equity."

Corpus Juris, Vol. 41, "Monopolies," Sec. 48, says:

> "All contracts, combinations, or agreements which create or tend to create a monopoly are unlawful at common law as being in restraint of trade and against public policy. The considerations on which this doctrine is based and which apply with equal force whether the monopoly is created by governmental grant or by the concerted acts of private persons or corporations are elsewhere stated. The fact that the parties to the combination or contract are thereby enabled to transact their business with less labor and expense does not save the agreement from the condemnation of the law where it tends to prejudice the public."

Corpus Juris, Vol. 41, "Monopolies," Sec 12:

"It is not necessary to be shown that there is in fact a monopoly, or that the public has, in fact, been injured. It is sufficient if the tendency and effect of the agreement or combination is to restrain trade, or the natural rivalry or competition of the parties."

R. C. L., Vol. 19, page 26, Sec. 17, says:

"It is not essential that these results be actually produced, but it is sufficient if the agreement or combination directly tends toward preventing competition, raising prices or creating a monopoly."

R. C. L., Vol. 19, page 43, Sec. 22, says:

"For the purpose of this determination, not only is the language of the contract or combination to be considered, but also its subject-matter, the situation, conduct and probable motives of the parties, and all the circumstances surrounding the transaction. It is not to be tested by what has been done under it, but by what may be done under it; not by its performance, but by its powers of performance when fully exercised. Hence if the direct and necessary or natural effect of a contract or combination is to restrain competition and control prices to the injury of the public when all the powers of the contract or combination shall have been exercised, the contract or combination is in unreasonable restraint of trade and against public policy. The particular contract must be considered in connection with others of which it is a part, and if found to be only one of a number of like char-

acter, the purpose of the whole scheme being to monopolize or restrain trade, it is unlawful."

Corpus Juris 41, "Monopolies," Secs. 49 and 50, says:

"To render a combination unlawful at common law it is not necessary that the monopoly should be complete. Its tendency rather than its ultimate effect, constitutes the vitiating element. However, some degree of monopolization is requisite.

At common law in order to render a combination illegal as constituting a monopoly, it is not necessary to show actual injury to the public, but is sufficient that the inevitable tendency of the combination is to inflict injury on the public. Accordingly it has been held unnecessary that prices should actually have been raised or competition suppressed, but it is sufficient that the power exists to do so at the will of the combination. So if the combination has the power to raise prices at any time it sees fit, it is of no consequence that it may, in fact, reduce prices, since the reduction may be made for the express purpose of crushing competition."

Williston on Contracts, Sec. 1653, Vol. 3, page 2913;

Trenton Potteries Co. v. Oliphant, 58 N. J. E. 507;

Paterson Chronicle v. Paterson, 66 L. 129.

This common law rule has been modified to some degree. Thus Justice Collins in *Rosenbaum v. U. S. Credit System Co.,* 65 L. 255, speaking for the Court of Errors, said:

> "How far the ancient doctrine that contracts in general restraint of trade are void has been modified need not be discussed. The modern doctrine seems to be that the restraint may properly be made as extensive as the reasonable need of protection."

This modern modification has been well expressed in Ruling Case Law "Monopolies and Combinations," Vol. 19, p. 33, Sec. 19; *Williston on Contracts,* Vol. 3, p. 2873, Sec. 1635; 41 *C. J.,* p. 101, Sec. 53; 13 *C. J.,* p. 473, Sec. 418.

Probably the leading case dealing with the validity of agreements in restraint of trade from the common law standpoint is *United States v. Addyston Pipe & Steel Co.,* 85 Fed. 271 (C. C. A. 6 Circuit), in which Justice Taft, speaking for himself and for Justice Harlan and Judge Lurton, examined the question of what restraints were valid at common law. This opinion is the foundation of much of the law since that date (1898) and is recognized by Professor Williston (Contracts, Sec. 1637), as the leading case on the subject.

After reviewing the common law rule in its strictness, Justice Taft classified the usual classes of cases in which contracts in partial restraint of trade were upheld as reasonable, and said:

> "It would certainly seem to follow from the texts laid down for determining the validity of such an agreement that no conventional restraint of trade can be enforced unless the covenant embodying it is merely ancillary to the main purpose of a lawful contract and necessary to protect the covenantee in the enjoyment

> of the legitimate fruits of the contract, or to protect him from the dangers of an unjust use of those fruits by the other party."

He then quotes from Chief Justice Tindal, who said in the case of *Horner v. Graves,* 7 Bing. 735:

> "Whatever restraint is larger than the necessary protection of the party requires can be of no benefit to either. It can only be oppressive. It is, in the eye of the law, unreasonable. Whatever is injurious to the interests of the public is void on the ground of public policy."

We find no New Jersey case laying down in so many words, the doctrine that the restraint to be reasonable must be ancillary. But the rule as stated by Chief Justice Tindal has been adopted by our New Jersey Courts in many cases. In addition to *Rosenbaum v. U. S. Credit System Co.,* cited above, reference can be made to the cases of *Scherman v. Stern,* 93 E. 626 (Court of Errors, per Justice Trenchard).

Wyder v. Milhomme, 96 L. 500 (Court of Errors, per Justice Parker);

East Jersey Water Co., v. Newark, 96 E. 231 (V. C. Church);

Taylor Iron & Steel Co. v. Nichols, 73 E. 684 (Court of Errors, per Justice Swayze);

Mandeville v. Harman, 42 N. J. E. 185, V. C. Van Fleet, quoting directly from *Horner v. Graves*;

Brewer v. Marshall, 19 E. 537, Ch. J. Beasley;

Lehigh v. Atlantic, 92 E. 131, V. C. Backes.

The New Jersey rule is expressed in *Taylor v. Nichols,* as follows:

> "The rule of this State is that a contract in restraint of trade will not be enforced unless the restraint is no more extensive than is reasonably required to protect the interests of the party in favor of whom it is given, and not so large as to interfere with the interests of the public."

There are a great many cases expressing what I shall call the "ancillary" rule, collected in 13 *C. J.,* "Contracts," p. 476, Sec. 420.

We have here a contract with no interests of the parties to protect, at least, none, except their interest to prevent competition or to raise prices. The reasons why such an object will not support the contract are stated by Justice Taft in reasoning which we cannot improve upon. He said in the Addyston case (pp. 282 and 283):

> "This very statement of the rule implies that the contract must be one in which there is a main purpose, to which the covenant in restraint of trade is merely ancillary. The covenant is inserted only to protect one of the parties from the injury which, in the execution of the contract or enjoyment of its fruits, he may suffer from the unrestrained competition of the other. The main purpose of the contract suggests the measure of protection needed, and furnishes a sufficiently uniform standard by which the validity of such restraints may be judicially determined. In such a case, if the restraint exceeds the necessity presented by the main purpose of

> the contract, it is void for two reasons: First because it oppresses the covenantor, without any corresponding benefit to the covenantee; and, second, because it tends to a monopoly. But where the sole object of both parties in making the contract as expressed therein is merely to restrain competition, and enhance or maintain prices, it would seem that there was nothing to justify or excuse the restraint, that it would necessarily have a tendency to monopoly, and, therefore, would be void. In such a case there is no measure of what is necessary to the protections of either party except the vague and varying opinion of Judges as to how much, on principles of political economy, men ought to be allowed to restrain competition. There is in such contracts no main lawful purpose, to subserve which partial restraint is permitted, and by which its reasonableness is measured, but the sole object is to restrain trade in order to avoid the competition which it has always been the policy of the common law to foster."

As to the particular form of agreement here involved, Professor Williston in Sec. 1648 (Vol. 3, Contracts, p. 2904) supports with voluminous citations his text to the effect that:

> "Numerous agreements have been made, especially prior to 1900, by competing firms or corporations having for their object fixing prices, pooling profits, limiting output, controlling supply, or dividing territory, for the purpose either of limiting competition for business or of precluding the lowering of prices by

means of competition. Such agreements have been almost universally held invalid because of their tendency to injure the public. Under the English law it is not clear that a contract not unreasonable in view of the interests of the parties and intended for their own advantage, not for the injury of others, is ever invalid because in restraint of trade. Certainly the mere fact that the purpose of an agreement is to maintain prices or to suppress competition does not invalidate it. And agreements for the division of business, or of territory with a view of lessening competition, or for the maintenance of prices, have there been upheld. In the United States, however, such agreements are illegal whether they are proved in fact to be detrimental to the public or not. It is enough to render the agreement invalid if it is not ancillary to some permitted transaction and if it 'in its necessary or contemplated operation upon the actions of the parties to it, tends to restrain their natural rivalry and competition.' The invalidity of such attempts to obtain by contract the advantages of monopoly having been clearly established, an attempt was next made to make consolidations first in the form of a trust, and later by creating a corporation which should control or purchase the business of various competitors. This final method whether it might have been effective at common law or not, falls within the ban of the Sherman law and other enactments if the purpose and effect of the combination is to produce a condition approaching a monopoly. It is clear that wherever such

a combination is illegal, a contract to form it is equally illegal."

See also upon this general subject, R. C. L., Vol. 19, "Monopolies," Secs. 21 and 22, and *Corpus Juris,* Vol. 13, "Contracts," Sec. 423.

In the *Reed v. Sarloff case,* 76 L. 158, there was an agreement to pay a certain sum to the Atlantic City Hospital if the party failed to maintain a fixed schedule of rates for the hire of roller chairs in Atlantic City. It appeared that the rates in question were the same as the maximum rates fixed by ordinance of the city. The right of the city to fix these rates was not challenged. There was also a finding of fact by the trial Court that the rates were reasonable.

The Court seemed to consider the question one of rates of a common carrier, quoted and applied the case of *Raritan River Railroad Co. v. Traction Co.,* 70 L. 732, and stated, "We think the decision of that case (a rate case) and the reasoning by which it is supported, decisive of the case at bar." Having disposed of the Reed case therefore, upon the view that it involved the rates of common carrier, the Court added a paragraph upon the question of monopoly. It was said: "The contention of the defendant that the effect of the agreement in question is to create a monopoly, and that it thus contravenes public policy is not supported either by the terms of the agreement itself nor by the evidence." In the case at bar, the evidence did show that the effect of the agreement was to create monopoly and it was upon this theory that the case was

left to the jury so that this case is within the language of the Reed case.

There is no suggestion in any of the New Jersey cases cited above that in addition to proving that the contractual restraints in question were broader than required for the protection of the party, it was necessary to go on and prove that the contract *created* a monopoly. If too broad in its scope the restraint was held bad because of its monopolistic *tendency,* and this has always been treated as a question of law for the Court depending upon the language of the contract.

The Court in the Reed case further said, "It does not appear that the parties to this contract are in control, or anything like control, of the rolling chair business in Atlantic City. * * * It does appear that others are engaged in the business there." Has it ever been suggested in any other of our cases that before a contract in restraint of trade or competition could be held bad for unreasonableness that the party would have to show that the covenantee was in control of the particular industry or occupation involved? It is believed no such cases can be found. In fact every case where the restraint is ancillary to a proper purpose is, *prima facie,* a stronger case for the covenant, than a case of this sort, where there is no pretense of a purpose to be served other than the improper one of stifling competition.

This contract is in its nature, indivisible, the penalty or damages are indivisible, and if any features of the contract be found illegal the complaint must be dismissed.

Williston, Sec. 1781 and 1782.

It is respectfully submitted that the judgment should be affirmed.

JOSEPH H. CARR,
Attorney for Defendants-Appellees.
and of Counsel

New Jersey Court of Errors and Appeals

HAROLD C. BUCKELEW, Trustee, Plaintiff-Appellant, vs. HARRY E. MARTENS and WILLIAM M. J. BRIGHTLY, trading as KLEAN WAY DAMP LAUNDRY, Defendants-Appellees.	Action at Law. On Appeal from New Jersey Supreme Court, Camden Circuit.

BRIEF OF PLAINTIFF-APPELLANT.

Facts.

On May 31st, 1928 the defendants herein, together with twelve other parties entered into the written agreement marked Exhibit P-2 and appearing at page 136 of the State of the Case. The parties to the contract were all engaged in the laundry business in and about the City of Camden.

The contract provided that all of the parties to it would after June 11th, 1928 maintain a minimum price for their laundry service. The object of the main contract was to do away with ruinous and destructive competition and to stabilize conditions in the industry. The contract in the second paragraph thereof provided:

> "WHEREAS, the parties hereto are engaged in the laundry business and industry in and about the City of Camden, New Jersey and desire to improve and stabilize conditions in that industry for the benefit of each one of the parties hereto and for the advantage and general welfare of the industry and of the communities which it serves:

> And it appearing that the parties hereto are engaged in providing for their customers a wet wash service, and that in the past such persons, firms or corporations have charged prices for said wet wash service which were detrimental to the profitable conduct of their businesses and resulted in their suffering losses in the providing of said service.
>
> And it being conceded by the parties hereto that the continuation of such practices will be detrimental to the industry and generally lower the class of the service to their customers and the said parties having concluded after due consideration of the subject that it would be to the advantage of all and each of them, if each one agreed to charge for wet wash service rendered by them a minimum price as hereinafter set forth, which price is agreed to be a reasonable charge allowing for a fair margin of profit."

The parties to the contract realized the difficulty of measuring the damage in the event of a breach thereof and in the contract itself stated that consideration was given to the question of damage that would be sustained in the event of breach (fifth paragraph page 137). It was therefore provided that each one of the parties to the contract would execute a note in the sum of $1000.00 which should represent liquidated damages in the event of a breach of the contract, and which sum the contract states was computed to represent liquidated and ascertained damages for each breach of the terms thereof (tenth paragraph page 138). The notes were made payable to the plaintiff-appellant as Trustee and agent of the parties to the contract to be held for the benefit of all of the parties to the contract with the exception of the one that violated the terms thereof.

In the last paragraph of the contract (142) it was provided that if any portion thereof was declared invalid or unenforceable by any court of competent jurisdiction that it should not affect the validity and effect of the remainder of the contract.

At or about the same time that the contract hereinbefore referred to was executed an addenda thereto was entered into (Exhibit P-2, 145) which provided that from and after June 11th, 1928 that the parties thereto would not do business with any persons, firms or corporations other than those that they were doing business with upon the date of the signing of the contract, which parties were known generally, in the language of the industry as a "bob-tail". A "bob-tail" being described in the contract as a person, firm or corporation who solicits laundry business and contracts with a laundry company to have the laundry service performed thereon, and does not maintain a plant in which laundry service can be performed.

The object of the addenda appears in the third paragraph thereof (145) wherein it is provided:

> "It appearing to the parties hereto that the method and manner of doing business adopted by said "bob-tails" has been such as to prejudice the good will enjoyed by the laundry industry in general, in that carelessness and irresponsibility of the "bob-tail" frequently cause the public to lose confidence in the laundry industry."

It was further provided by said addenda that the parties to the contract who were doing business with "bob-tails", after May 31st, 1928, enter into contracts with the "bob-tails" requiring them to make a minimum charge for laundry service as provided for in the main contract.

The last paragraph of the addenda provided,

that the terms thereof be considered incorporated in the main contract and have the same effect as if the terms thereof directly preceded paragraph 2 on page 3 of the main contract. Paragraph 2 of page 3 of the contract provided for liquidated damages in the event of breach of contract. It is evident therefore that the provision in the main contract providing for liquidated damages in the event of a breach was intended by the parties to refer to a breach of the terms of either the agreement of the parties to maintain minimum prices for laundry service, and also the agreement of the parties as contained in the addenda to the contract namely not to do business with "bob-tails" and to require all such "bob-tails" as they were doing business with at the date of the contract to sign agreements to maintain a minimum price for laundry service as set forth in the main contract.

At the beginning of the trial before the lower court there was no question as to the breach of the contract insofar as the provisions thereof which are contained in the addenda thereto (page 12 State of Case). It was admitted by the Attorney for the defendant-appellees that the terms of the addenda were breached by the relationship with "bob-tails" and the Attorney stated as follows:

> "In other words, I admit, for the purpose of the record in this case, we did employ, or have business relations with "bob-tails", contrary to that provision" (P. 12, lines 10 to 15).

And then followed Mr. Harding:

> "The agreement is breached?"
> Mr. Carr: "Yes."
> The Court: "That becomes part of the record."
> Mr. Harding: "With that we rest, if your Honor please." (P. 12, lines 16 to 20).

Thereafter the defendants went on with their case and it would appear therefore that the agreement among the parties was breached, both as to the provision thereof providing for a minimum price for laundry service and also the agreement not to do business with "bob-tails".

There is no question between the parties on this appeal that that portion of the contract wherein the parties agreed not to do business with "bob-tails" was breached.

Insofar as the provisions of the main contract dealing with the question of maintaining a minimum price we submit that the record will show that the contract was violated in that particular also and we believe that it was the understanding of the trial court that it was admitted by the defendants that the contract was violated in both particulars, because in the conversation between the Attorneys for the parties and the court (page 12, lines 10 to 20) the Attorney for the defendants admits the breach of the "bob-tail" feature of the contract appearing in the addenda and then the question was asked of him as to whether the agreement was breached. Evidently referring to the main agreement and not to the addenda and the Attorney for the defendant thereupon stated that it was admitted that the agreement was breached.

The defendant W. M. J. Brightley, admitted that he was maintaining the minimum price provided for in the contract, *only in some cases* (page 15, lines 27-30). It is evident that the agreement was violated in the particular that required maintaining a minimum price for laundry service by a reference to the State of Case at page 17, lines 27 to 40, wherein the following is set forth:

> Q. After—I am not sure that I covered this, but I will ask the question—up to this time you employed Steelman Brothers, you

had maintained prices according to this schedule?

A. We had maintained prices, yes.

Q. When did you first cut that price?

A. *We cut our prices, in fact,* we had the Steelman Brothers ready to take on at the same price, but Morgans, they hired one of our drivers, and they sent him down over our routes to every customer on the route that I was driving on at that time. He gave away free washes, anything to knock Klean Way or De Luxe.

Q. Who were De Luxe?

A. They were Steelman Brothers, so we found that in that competition *we would have to reduce prices* back to, approximately, our old scale.

Q. The scale that existed before the contract, do you mean?

A. Yes, on those routes. Otherwise we maintained the prices.

Q. You maintained the prices where you could?

A. Yes.

We therefore submit that there is no question as to the fact that both provisions of the contract were violated by the defendants.

At the close of the case a motion for direction of a verdict in favor of the plaintiff was made at page 127 of the State of Case (line 13) and the motion was denied by the Court, and an exception was taken.

POINT ONE.

It being admitted that that part of the contract set up in the addenda dealing with the question of "bob tails" was breached the Court erred in denying the motion for a directed verdict in favor of plaintiff-appellant.

As is set up in the summary of the facts hereinbefore recited both parties to this proceeding admit that the agreement between them, dealing with the question of "bob-tails", was breached, and therefore there was no question of fact left for the jury to decide and the court therefore should have directed a verdict in favor of plaintiff-appellant.

The provision of the contract dealing with "bob-tails" is set up in Exhibit P-2, page 145 and the parties to the contract in the agreement itself define the word "bob-tail" as follows:

"A 'bob-tail' is known to the parties hereto as a person, firm or corporation who solicits laundry business from the owners of laundry and contracts with a laundry company to have the laundry service performed thereon, and does not maintain a plant in which laundry service can be performed." In other words "bob-tails" are independent contractors who bring in the laundry that they solicit from persons to a laundry company to be washed.

It appears that "bob-tails" in the laundry business in and about Camden were a plague in the industry. The parties recognized that condition by the recital contained in the addenda to the contract (145, lines 33 to 40), wherein it was agreed that the method and manner of doing business by "bob-tails" was such as to prejudice the good will enjoyed by the laundry industry in general in that

the carelessness and irresponsibility of the "bob-tail", frequently caused the public to lose confidence in the laundry industry.

The purpose of the agreement among the parties set up in the addenda was to do away with the conditions brought about in the laundry business at the hands of "bob-tails" and the parties to the agreement voluntarily contracted that they would not do business with "bob-tails" after June 11th, 1928.

We submit that the parties to the contract in combining as they did for their general welfare had a right to agree not to employ or to contract with certain persons, and an agreement with the provisions such as contained in this case is a legal and enforceable contract.

Forstmann and Huffmann Co. vs. United Front Committee of Textile Workers of Passaic and vicinity, et al, 99 New Jersey Equity, 230; 133 Atl. Rep. 202 at page 204. Court of Chancery of New Jersey, 1926, Bentley, *V. C.* "The defendants also feel aggrieved by a combination of all the mill owners of the region into an Association to which all applicants for employment were referred. It is said that there was kept by that Association a record of all employees, and that, when it was found from such records that the employment of a man would be unsatisfactory from the standpoint of the employers, he was effectually blacklisted by giving to him a card which he would be obligated to exhibit before any of the associates would employ him, and upon which card there would appear a code number, indicative of undesirability. It is also charged that from this central body spies were sent out among the employees even in time of peace, to secretly bring back confidential reports about the various individuals. From this it is argued that the complainant does not come into court

with clean hands. It does not seem to me that this offends the maxim. Certainly the employers have exactly the right to organize and protect their interests that the law affords to the employees. In the minds of the defendants this appears to have been aggravated by the fact that the complainant had organized among its employees a sort of a governing and welfare body, at the same time retaining in its hands control of the affairs thereof, and that this was done for the purpose of forestalling any combination or affiliation with organized labor upon the part of the employees. I do not understand that it is illegal or in any way offensive for an employer of labor to attempt to operate a shop with workmen who are not members of a trade union, and any such action on the part of this complainant, could have no bearing upon a determination of its right to be free from illegal actions upon the part of its employees who have refused to continue at their work."

Coppage vs. State of Kansas, 236 United States Reports 1 (1915). It was held that a Kansas statute declaring it to be a misdemeanor punishable by fine or imprisonment for an employer to require an employee to agree not to become or remain a member of any labor organization during the time of employment, and where an employee at will, a man of full age and understanding, was merely required to freely choose whether he would give up his position of employment or would agree to refrain from association with the union while so employed, the case being free from any element of coercion or undue influence, was repugnant to the "due process" clause of the 14th amendment.

See also Adair vs. United States, 208 U. S. 161 and cases cited in Coppage vs. Kansas.

Androff vs. Building Trades Employers Associa-

tion, 148 Northeastern 203 (Indiana) the plaintiff corporation was a local association of building trades employers. The defendant on joining the Association contracted to observe the by-laws, and gave a bond conditioned on his doing so. The Association passed a by-law that craftsmen's pay should be One dollar an hour. It sued the defendant on his bond, alleging that he had been paying journeymen plumbers One dollar and a quarter an hour. From a verdict and judgment for the plaintiff, the defendant appealed. Held, that a contract between members of an employer's association not to pay more than a fixed wage is valid, and that the association may maintain an action upon the members' bond.

We submit that if it is legal for employers of labor to combine and agree not to employ certain individuals that it must also be legal and proper for business men to combine for the interest and welfare of the industry in which they participate and to determine not to do business with certain individuals or corporations.

We therefore submit that inasmuch as there was no question of fact as to the violation of the contract in the particular as referred to under this point of our argument and inasmuch as the parties to the contract were within their legal rights in contracting as they did, and inasmuch as the provisions of the contract were not against public policy, but were within the rights of the parties thereto, that there was nothing left for the jury to determine on that question and the court should have granted the motion of plaintiff-appellant for a directed verdict.

POINT TWO.

The contract is severable and divisible, and if any portion thereof is legal such portion is enforceable.

This point becomes important only in the event that it should be determined that the subject matter dealt with in the main contract, namely the attempt to fix a minimum price is held to constitute a restraint of trade and therefore illegal and unenforceable.

Reference to the contract will show that in the last paragraph thereof (Exhibit P-2, page 142) it was provided as follows:

> "It is expressly understood and agreed that if any portion of this contract is declared invalid or unenforceable by any court of competent jurisdiction it shall not affect the validity and effect of the remainder of the contract."

Therefore if this court decides that the parties to the contract in question had the right to contract as they did in the particular set forth in the addenda (Exhibit P-2, page 145) namely that they would not do business with "bob-tails" then we submit that it was error for the lower court to deny the motion of plaintiff for a directed verdict.

There appear to be many cases in this State on the question of whether an illegal part of a contract will invalidate the whole or make the whole unenforceable, and one of the best that we have found is the Erie Railroad Company vs. The Union Locomotive and Express Company, 35 N. J. L. 240 wherein Chief Justice Beasley speaking for the Supreme Court said at pages 245 and 246:

"Admitting then for the purpose of the argument the illegality insisted on, the legal problem plainly is this: Whether, when a defendant has agreed to do two things which are entirely distinct and one of them is prohibited by law and the other is legal and unobjectionable, such illegality of the one stipulation can be set up as a bar to a suit for a breach of the latter and valid one. This point was but slightly noticed on the argument, nevertheless, an examination of the authorities, will show that the rule of law upon the subject has from the earliest times been at rest. It was unanimously agreed in the case reported in the year books, 14 Henry VIII 25, 26, that if some of the covenants of an indenture, or of the conditions endorsed upon a bond, are against law, and some good and lawful, that in such case the covenants or conditions, which are against law are void *ab initio* and the others stand good. And from that day to this, I do not know that this doctrine, to the extent of its applicability to this case has anywhere been disallowed. It was the ground of the judgment in Chesman vs. Nainby 2 Lord Raymond, 1456, that being a suit on an apprentice's bond * * *. This judgment was afterwards affirmed by the 12 judges, on an appeal to parliament, 3, Bro. Parl. C. 349."

"This rule of law was treated and settled and was similarly applied in the modern case of Mallon vs. May 11 M. W 653, and Price vs. Green 16 M & W 346. This same legal principle will be found to be discussed and illustrated by different applications in the following decisions:

Gaskill vs. King 11 East 165; 15 IB 440; Nichols vs. Stretton 10 Adol. and El; N. S. 346.

These and other authorities which might be referred to settle the rule, that the fact that one promise is illegal will not render another disconnected promise void."

In the case of Fleckenstein Bros. Co. vs. Fleckenstein, 76 N. J. L. 613, 71 Atl. 265 at page 267, Chief Justice Gummere speaking for this court said:

> "Ordinarily it is a reasonable presumption that parties intend to make a valid contract, that in the case like the present they designed to provide a restraint which will be reasonable in their judgment, for the protection of the purchaser in the enjoyment of the subject of the purchase. (Trenton Potteries case 58 N. J. Eq. 517) and I see nothing in the language used by these parties which requires the conclusion that their intention was that, unless the full measure of protection afforded to the plaintiff by the contract was capable of enforcement against the defendant, there should be no protection at all against competition by the latter."

In the case of Trenton Potteries vs. Oliphant, 58 N. J. Eq. 514, 43 Atl. 723 at page 727 Chief Justice Magie speaking for this court said:

> "The contracts are to be construed so as to give them validity, if such construction does no violence to their language; and the subject matter of the contracts is to be considered, and their terms are to be construed, in reference thereto."

The provision of the parties, in the contract in question by which they sought to fix a minimum price and the provision by which said parties agreed not to do business with "bob-tails" are separate and distinct undertakings and are divisible and each of said undertakings is independent.

We therefore submit that assuming for the purpose of this argument that the provision of the contract in question by which the parties sought to fix a minimum price for their laundry service was

illegal as being in restraint of trade that nevertheless under the reasoning as set forth under Point One hereof, the provision of the contract whereby the parties agreed not to do business with "bobtails" is legal and enforceable, and is a separate and distinct undertaking and inasmuch as it was admitted that there was a breach of that portion of the contract the lower court erred in denying plaintiff's motion for a directed verdict.

POINT THREE.

That portion of the contract by which the parties agreed to maintain a minimum price for their service was legal and enforceable.

The contract which is the subject matter of this case (Exhibit P-2) was drafted following the law contained in the case of Reed vs. Saslaff, Supreme Court of New Jersey, 1909, 78 New Jersey Law 158, 73 Atl. 1044, *where Justice Trenchard held that an agreement between certain rolling chair proprietors in Atlantic City to maintain a fixed schedule of rates for service is not void as contrary to public policy, where it appears that such schedule of rates is exactly the same as the ordinance of the city and that such rates are reasonable, and where it does not appear that the parties to the agreement have a monopoly of the business in that community.*

In that case also the parties to the agreement covenanted to pay $250.00 to the plaintiff as Trustee in the event that either of the parties to the contract failed to faithfully observe and carry out the terms thereof. Suit was instituted in the District Court and the trial judge gave judgment for

the defendant upon the theory that the covenant in question was contrary to public policy and the Supreme Court found that the view of the trial judge was erroneous. The court stated:

> "It is too plain for argument that the policy of the law is not violated by an agreement whereby some (not all) of the owners of such vehicles in Atlantic City contracted to maintain rates which were permitted by the law making power and which are found to be reasonable as a matter of fact."

And the court further said towards the end of the opinion:

> "The contention of the defendant that the effect of the agreement in question is to create a monopoly, and that it thus contravenes public policy, is not supported either by the terms of the agreement itself nor by the evidence. It does not appear that the parties to this contract are in control, or anything like control, of the rolling chair business in Atlantic City. There is nothing to show that they comprise more than an insignificant part or fraction of those engaged in the business in that community. It does appear that others are engaged in the business there. *We are not at liberty to indulge in inferences which would restrict rights under a contract. Parties are to be given the widest latitude to make contracts with reference to their private interests and the invalidity of such contracts is never to be inferred, but must be clearly made to appear.* What the effect would be on the agreement in question if proof tending to show control of the business in that community was offered, it is unnecessary now to decide because, as we have pointed out, there is no such proof."

The case of Reed vs. Saslaff was commented on favorably in the case of Robert H. Ingersoll and Bro. vs. Hahne & Co., 89 New Jersey Equity, 332, 108 Alt. Rep. 128, where it was held

> "That a contract between manufacturers of watches and retailers against price cutting, unless certain notices and names on watch are detached would be valid at common law."

The court (Lane, *V. C.*) goes into the question of restraints and the opinion is helpful in considering the point involved in this case. The court in the Ingersoll case referring to the case of Reed vs. Saslaff stated:

> "I think that the Supreme Court held generally that an agreement to maintain rates where the rates are reasonable, and it does not appear that the parties to the agreement have a monopoly is valid. And I think this also applies to the prices."

An examination of the record in this case will show that the parties to the contract in question (Exhibit P-2) were not all of the persons or firms engaged in the laundry business within the district in and about Camden. It does appear that others were engaged in the business there. We submit that there is no testimony which shows that the parties to the contract in question were in control of the laundry business within the district in which they operated.

The defendant Brightly (20, lines 1-10) stated that there were about eighteen active laundries in the district. There were only thirteen parties to the contract in question.

The defendant Martens (32, lines 32-34) admitted that there were six other laundries in addition to those that signed the contract.

The court will take judicial notice of the fact that Camden is situated across the Delaware River from Philadelphia and that a vehicular bridge joins the cities of Camden and Philadelphia. The city of Philadelphia of course contains many laundries and it would be impossible even if every laundry owner in and about Camden combined for the combination to exercise a monopoly, because the laundries within Philadelphia would always be a source of competition. As a matter of fact laundries from Philadelphia did do business within the Camden District (32, lines 16 to 25); 80, lines 16-17) and therefore in considering the question of whether the parties to this contract could create a monopoly the prospective competition of laundries within Philadelphia should be considered.

There is no suggestion in the record in this case that any excluding purposes were practiced by the parties to the agreement. A monopoly could not be established unless excluding practices were engaged in. As long as the field was freely open to all others there was little danger that the public would suffer harm from lack of persons to engage in the laundry business if it were profitable. There was no special or exclusive privilege conferred by the execution of the within contract. *Any individual possessing a pair of strong arms and a tub was a potential competitor in the laundry business.* The nature of the business of itself makes it impossible to create a monopoly. Any customer of a laundry who might not be willing to pay the prices asked for laundry service by any parties to the contract could find a number of other persons or companies who would perform the laundry service. A person could defeat any monopolistic purpose by purchasing a washing machine or hiring a laundress. Even if all of the parties in the laundry business in and about Camden were parties to

the contract no monopoly could have been created.

In 17 Hartford Law Review, 476 the writer of the Article states:

> "Monopolizing a business is excluding outsiders from carrying on the business."

Bouvier's Law Dictionary (in Baldwin's Century Edition) at page 815 defines monopoly as "the abuse of free commerce by which one or more individuals have procured the advantage of selling alone all of a particular kind of merchandise to the detriment of the public."

The defendant Martens (35, lines 8 to 10) stated that there were at least twenty four laundries in and about Camden at the time that the contract in question was made. There were only thirteen parties to the contract. Surely that did not constitute a monopoly.

Furthermore the parties to the contract in question dealt only in wet wash business and there were many laundries that did finished work who could very readily have adapted their plant to perform wet wash work in the event that that line of business became very lucrative because of the creation of a monopoly therein (74, lines 20-30).

Harry A. Walther, a witness called by the defendant, testified that there were eight laundries in addition to those that signed the contract (78, lines 1 to 12) and the same witness later stated that there might be ten more (80, line 10) and also that there was competition in the laundry business from those engaged in that industry within Philadelphia (80, line 16.)

Another witness called by the defendant stated that he was subject to the same competition in the laundry business after the signing of the contract as he was before the execution thereof and that

there was not much change by reason of the contract. (93, lines 30-38).

The only facts as to the capacity of laundries who were not parties to the contract was in the case of three of such companies; the Riverton, Merchantville and Kramer Hill Laundries. The other testimony as to the capacity of the laundries not parties to the contract was just guesses by persons other than those interested in such laundries. Obviously no proper determination could be made as to whether the parties to the contract in question constituted a monopoly unless it was shown what business was done by persons in the laundry business not parties to the contract or what capacity for work such companies had.

We do not believe that there is any contention that the price fixed by the terms of the contract was other than reasonable. There certainly is no testimony in the record which would raise an issue on the question of the reasonableness of the price fixed. The testimony is that many of the concerns were receiving as much and more than was provided for by the terms of the contract (19, line 37) (50, lines 15 to 30) (71, lines 20 to 30) (86, line 1), and the plaintiffs offered the only testimony on the subject which showed that the prices fixed by the terms of the contract were reasonable (117 and 124). It is recited in the contract that the minimum price fixed was a reasonable charge (Ex. P-2, State of Case 137, lines 7-8).

Inasmuch as there was no evidence showing that the parties to the contract in question had control of the laundry industry; and further that the price fixed by the contract was reasonable and no higher than to allow a fair margin of profit, the court should have followed the law as established by the case of Reed vs. Saslaff, *supra,* and granted the motion of plaintiff for a directed verdict.

In the case of Wyder vs. Milhomme, 96 Law, 500, 115 Atl. 380 at page 381 Justice Parker speaking for this court held:

> "We conclude that the unreasonable character of the covenant was in this case a court question on both branches, viz. protection of the vendee, and protection of the public, and was correctly decided below."

Meredith vs. New Jersey Zinc and Iron Co., 55 New Jersey Equity 211, 37 Atl. 539, Court of Chancery, New Jersey, Pitney, *V. C.*:

> "It remains to consider the question of illegal combination, which would subject the new corporation to an attack by the attorney general. Upon such consideration as the four days allowed me for that purpose has permitted me to give the subject, I think that there is nothing in that ground. The circumstances show that it is not the object or purpose of the contract to create a monopoly. The affidavit of the President of the New Jersey Zinc and Iron Company shows that the zinc ores which will be controlled by it after these several purchases constitute but a small fraction of the world's supply, and that its product of zinc will also be but a small fraction of that produced throughout the country." At 543 "* * * * Now, I am unable to find any foundation, either in law or in morals, for the notion that the public have the right to have these private owners of this sort of property continue to do business in competition with each other. No doubt the public has reasonable ground to entertain the hope and expectation that its individual members will generally, in their several struggles to acquire the means of comfortable existence, compete with each other. But such expectation is based entirely upon the exercise of the free will and choice of the individual, and not up-

on any legal or moral duty to compete, and can never, from the nature of things, become a matter of right on the part of the public against the individual."

Oakdale Mfg. Co. et al vs. Garst, 28 Atl. Rep. 973 at 974 (R. I. 1894).

"Three of the four companies in New England in this line of manufacture agreed to unite; one inducement being to stop the sharp competition then existing between them. But even so not only is the field open to the other company, equal in strength to either of these, but it is also open to competition from companies in other parts of the country and to the formation of new companies. This is neither monopoly, nor such an approach to it as amounts to the same thing."

North Western Salt Co. Ltd. vs. Electrolytic Alkali Co. Ltd., Law Reports House of Lords 1914 page 461. (Appeal Cases) at 466:

"The plaintiff company was a combination of salt manufacturers formed for the purpose of regulating supply and keeping up prices, and it had practical control of the inland salt market.

"It cannot be contended that this contract is void as going beyond the reasonable protection of the plaintiffs. Therefore the only point is whether it is void as against public policy. The contract may be viewed (A) from its private and (B) from its public aspect, and if it is not void as regards the parties *the onus is on the defendants* to prove that the public interest is damaged. (Cases cited) *In all these cases the paramount consideration is* freedom of contract (case cited). The mere fact that the result of a trade combination is to advance prices is not necessarily opposed to public policy. A

combination to advance prices so as to give a proper remuneration to labour and capital is prima facie lawful. Mogul Steamship Co. vs. McGregory, Gow & Co. (1889) 23 Q. B. D. 598, Jones vs. North (1875) L R 19 Eq. 426; Elliman, Sons & Co. vs. Charrington & Son (1901) 2 Ch. 275; F. Cade & Sons vs. John Daly & Co. 1910 1 I. R. 306; Collins v. Locke 1879 4 App. Cas. 674.

Although cheapness may be a desideratum a ruinous competition between traders is not to the public advantage Have v. London & North Western Ry. (1861) 2 J & H 80 at p. 103. Nor is a combination illegal because for a limited period it restricts the output. There is nothing wrong in making a forward contract for a year or two years. Judicial views upon public policy have undergone great changes during the last century. Rex v. Waddington (1800) 1 East 143, and it is now recognized by the Courts that forestalling, which was formerly prohibited by statute, may be favourable to the development of trade rather than in restraint of trade; Standard Oil Co. vs. U. S. (1911) 221 U. S. 1, at p. 55.; U. S. v. Amer. Tobacco Co. (1911) 221 U. S. 106. In a question of public policy both the producer and the consumer are considered. The effect of a combination of this kind, so far from being injurious to the public, is beneficial to it, inasmuch as it standardizes the supply, ensures steadiness of the market and certainty of delivery, and minimized waste.

At 469: Unquestionably the combination in question was one the purpose of which was to regulate supply and keep up prices. But an ill-regulated supply and unremunerative price may, in point of fact, be disadvantageous to the public. Such a state of things may, if it is not controlled, drive manufacturers out of business or lower wages, and so cause unemployment and labour disturb-

ance. It must always be a question of circumstances whether a combination of manufacturers in a particular trade is an evil from a public point of view. The same thing is true of a supposed monopoly. In the present case there was no attempt to establish a real monopoly, for there might have been great competition from abroad or from other parts of these islands than the part which was the field of the agreement.

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I come back, therefore, to the contract on which the action is based. My Lords, the law as to contracts in restraint of trade is not doubtful. In order to be valid a clause imposing a restraint must be reasonable, and he who says that the restraint is so must make it out. But he will discharge this burden if he can point to other parts of the contract which shew the reasonableness of the restraining clause. If the contract read as a whole appears on the face of it not to be unreasonable in the interest either of the parties or of the public, that is enough, and the question is not one of evidence. Evidence may, indeed, be given as to the character of the business and the circumstances. But it cannot be given on the question of the reasonableness of what appears on the face of the document when construed in the light of the circumstances as to which evidence is admissable. *The question is one of law for the Court, and is not an issue of fact.*

My Lords, when the controversy is as to the validity of an agreement, say for service, by which some one who has little opportunity of choice has precluded himself from earning his living by the exercise of his calling after the period of service is over, the law looks jealously at the bargain; but when the question is one of validity of a commercial agreement for regulating their trade rela-

tions, entered into between two firms or companies, the law adopts a somewhat different attitude it still looks carefully to the interest of the public, *but it regards the parties as the best judges of what is reasonable as between themselves.* In the present case I see no reason for doubting that in entering into the contract on which this action was brought the respondents were probably acting in their own best interest. It may well be that such a contract was, in view of the powerful position of the appellants, the respondents best way of securing a market and adequate prices. And if this be once conceded I find nothing else in the detailed provisions of the contract excepting machinery for working out the bargain. If the general object was lawful, then these provisions were, in my opinion, free from objection on the score of illegality. Nor do I find that the public interest was necessarily or even probably injured."

Finding: Order of Court of Appeal Reversed: Declare that the contract of Nov. 9, 1907, has not been shown to be in unreasonable restraint of trade and that it is therefore enforceable by the appellants.

National Benefit Co. v. Union Hospital Co., 47 N. W. at 804, 45 Minn. 272.

"modern investigations have much modified the views of courts as well as political economists as to the effect of contracts tending to reduce the number of competitors in any particular line of business. Excessive competition is not now accepted as necessarily conducive to the public good. The fact is that the early common law doctrine in regard to contracts in restraint of trade largely grew out of a state of society and of business which has ceased to exist and hence the doctrine has been much modified, as will be seen by comparison of the early

English cases with modern decisions, both English and American. A contract may be illegal on grounds of public policy because in restraint of trade, but it is of paramount public policy not lightly to interfere with freedom of contract."

Gloucester Isinglass Co. v. Russia Cement Co., 27 N. E. 1005 (Mass.)

An agreement between two manufacturers of glue from fish skins under a supposed valid patent, the object of which is to avoid competition between themselves and secure to each a reasonable profit, is not against public policy, the article in question not being one of prime necessity, nor a staple commodity ordinarily bought and sold in the market.

Diamond Match Co. v. Roeber, 13 N. E. 419 at 422 Ct. Appeal N. Y.

"It is clear that public policy and the interests of society favor the utmost freedom of contract, within the law, and require that business transactions should not be trammeled by unnecessary restrictions. "If" said Sir Geo. Jessell in L. R. 19 E. 462" there is one thing more than any other which public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that contracts, when entered into freely and voluntarily, shall be held good, and shall be enforced by courts of justice. * * * *

But the business is open to all others and there is little danger that the public will suffer harm from lack of persons to engage in a profitable industry. Such contracts do not create monopolies. They confer no special or exclusive privilege.

* * * We are not aware of any rule of law

which makes the motive of the convenantee the test of the validity of such a contract."

Leslie v. Lorillard, 18 N. E. 363 at 366 Ct. of Appeals N. Y. 1888.

Whether competition in this particular business would be a public benefaction, or its restraint a source of prejudice, we are unable, of course, to judge, I do not think that competition is invariably a public benefaction, for it may be carried on to such a degree as to become a general evil.

Dolph v. Troy Laundry Machinery Co., 28 Fed. Rep. 553 Cir. Ct. N. D. N. Y. 1886.

"*Washing machines, although articles of convenience, are not aritcles of necessity.* The scheme of the parties did not contemplate suppressing the manufacture or sale of machines by others. Those who might be unwilling to pay the prices asked by the parties could find plenty of mechanics to make such machines, and the law of demand and supply would effectually counteract any serious mischief likely to arise from the attempt of the parties to get exorbitant prices for their machines. It is quite legitimate for any trader to obtain the highest price he can for any commodity in which he deals. It is equally legitimate for two rival manufacturers or traders to agree upon a scale of selling prices for their goods, and a division of their profits."

U. S. Chemical Co. v. Provident Chem. Co., 64 Federal Reporter at 950.
U. S. Circuit Ct. E. D. Missouri 1894.

"Even if an article be of prime necessity, the public is not concerned with who makes, but only with the reasonableness of, the

price. But it is said that the defendants had, by its part in the transaction, such a purpose in view. This may be. The intent is only condemned as it is manifested in an unlawful act. If a person does a lawful act with a vicious intent, he is without the pale of legal punishment. * * * * Our attention has been called to many cases which condemn, in perhaps not too severe terms, combinations and trusts. It is a nervous and alarmed imagination which sees in every transaction involving large exchange of properties a monster threatening public interests.

Skrainka v. Scharringhausen, 8 Missouri Appeal Reports 522.

"On March 19, 1878, defendant with twenty-three other persons, owners and operators of stone quarries in that part of the city of St. Louis lying south of Market St. and Manchester Road, signed an agreement, in which they set forth that the great competition then existing had had the tendency of depressing the price of building rock in the city so as to make it impossible to work quarries at a profit in certain parts of the city; and that, it being desirable to agree on a plan which will secure a fair, proportionate sale of the produce of all quarries at uniform prices and living rates, they mutually bind themselves as follows:

1. That none of the subscribers will, for a period of six months from date, sell any rubble building stone, the produce of any quarry in St. Louis south of the line named above, except as set forth in the agreement.

2. An exclusive agent is appointed for the period named, to sell on account of the contracting parties all the stone of said quarries, giving to each its proportionate share, taking into consideration its location and

producing capacity; and the agent is instructed, until otherwise directed by the committee afterwards named to sell the rock at prices set out in the instrument for various qualities of stone.

3. An executive committee of five is appointed to see that the agent deals fairly with each quarry, to modify the scale of prices and hear and settle complaints.

4. The sum of $100. is fixed as liquidated damages for each violation of the agreement; and each sale of one hundred perches, or less, of rock is to be held as a separate offense. Skrainka, the plaintiff in this case is appointed trustee to sue for the damages, and to distribute the amount recovered amongst the parties to the agreement, excluding the offending member. * * * *

Defendant was sued before a justice for $100.00 damages for violation of the agreement. On trial anew in the Circuit Court, there was judgment for plaintiff.

There is no dispute as to the facts. Appellant contends that the agreement was against public policy, in restraint of trade and not enforceable at law. This agreement does not, upon its face, purport to be in restraint of trade, nor does it appear that such must necessarily be its operation. The recital is, rather, that it is to advance trade; because, if competition reaches such a point that goods cannot be sold at living prices, many manufactureres must be driven out of business. But not every agreement in restraint of trade is illegal. * * * * But restraints upon trade imposed by agreement, under limitations as to locality, time and persons, are not necessarily restraints of trade in the general sense, which is objectionable.

The old doctrine of the common law, that contracts in restraint of trade are void is no

longer to be rigorously insisted upon precisely as it was insisted upon in the earlier cases in which it was announced. It has been modified by the more recent decisions, as the laws of trade have become better understood during the development of our commercial system and the changes which have been introduced in the social system.

At 527: The agreement is amongst the quarrymen of one district of one city, and it does not appear that it embraces all of them. There is no evidence that it works any public mischief. * * *

We are of opinion that the agreement in the present case is not one which clearly, upon its face, is mischievous, and which ought to be declared void, with a view to protecting individuals or the general public.

The judgment is affirmed."

The contract in this case (Ex. P-2) was for a term of one year (Ex. P-2, p. 141, ll. 17-20).

We respectfully submit that a consideration of the law as referred to under this point and the facts as disclosed in the record in this case will show that there was no question of fact at the closing of the entire case in the lower court and that there was therefore nothing for the jury to consider and the court erred in denying the motion of plaintiff for a directed verdict.

POINT FOUR.

The contract in question is not in restraint of trade and against public policy and is therefore a legal and enforceable instrument entered into by competent parties of their own free will.

The reason in some cases the courts have refused to enforce contracts by the terms of which the parties thereto sought to fix prices is because it was considered that such a contract would be against public policy and that the parties to such a contract would take advantage of the public by reason of their position.

The question therefore as to whether the contract in question is enforceable is whether the execution of the terms of the contract would be detrimental to the public or in other words: Is the contract against public policy? Ordinarily the people look to the legislative branch of the government to fix public policy and an examination of the statutes of the State of New Jersey discloses that there is no prohibition against entering into a contract such as the one in question. There was in existence a statute declaring a contract such as the one in question unlawful, laws of 1913, chapter 13. However by the laws of 1920, chapter 143, the legislative ban and declaration that such contracts were in restraint of trade and unlawful was removed by the repealing of the act. That we submit, is an indication that as a matter of public policy contracts such as the one in question are not illegal and should be permitted.

Making a contract to fix prices is not an indictable offense at common law. State v. Black, 5 Misc. 639.

The trend has been of recent years to depart from the old rule which arbitrarily prohibited any combination which might tend in any way to limit competition. Recently we have observed that consideration is being given to modify the Sherman Act. President Hoover in a speech before the American Federation of Labor made on October 6, 1930 said: "One key to solution seems to me to lie in reduction of this destructive competition. It certainly is not the purpose of our competitive system that it should produce a competition which destroys stability in an industry and reduces to poverty all of those within it. Its purpose is rather to maintain that degree of competition which induces progress and protects the consumer. If our regulatory laws be at fault they should be revised."

We have also observed recently that the leading railways of our country have been permitted to merge and that the Federal Court has modified an injunction against the four principal packers of the country, which modification permits them to handle many articles outside of meats and provisions.

The Sherman anti-trust Act and cases decided under it do not apply to this case because there was no interstate commerce between the parties to the contract.

From 1880 to 1900 a great fear of combinations spread throughout the United States and it reflected itself upon the decisions of the courts dealing with restraints of trade. The power which came from combinations had been abused and unlawful excluding purposes and practices were practised by those occupying the predominating position. All such combinations, therefore received a bad name and a combination was in and of itself distrusted. We believe however that of recent years

it has become apparent that the evil side of combinations and monopoly is the excluding purposes and practices and that such excluding purposes and practices may be eliminated and the freedom of the market secured without prohibiting altogether the combination of merchants affected for their welfare and in some cases for the purpose of making possible their continuance in business. The parties to the contract had a commendable purpose in mind when the contract was drawn, if the language of the contract could be taken to show their purpose. (Exhibit P-2, State of Case 136, lines 30 to 40 and page 137, lines 1 to 10) and by their agreement not do business with "bob-tails" they were attempting to do away with a source of great trouble to the laundry industry. The "bob-tails" were in many cases irresponsible and persons giving their laundry to them would lose confidence in the laundry industry because of the actions of the "bob-tails" in not making good losses.

It is evident that in the district of Camden among those in the laundry industry that there was a terrific destructive competition in progress and that the continuance thereof would eventually mean that many of the concerns in the business would be ruined financially and as reasonable men it was concluded that they were entitled to a fair profit on their investment and a just compensation for their labors, and they determined that the business would be operated on a common sense basis which would result in the stability of the industry and give the owners a fair profit.

It is evident that the prices that were in force in the laundry industry about Camden were ruinous and that the competition was destructive, the plant of the defendant was sold out on Sheriff's Sale (12, line 38). It was agreed by all the re-

sponsible men in the industry that the condition could not continue (20, lines 20 to 30). An example of the failure on the part of some of the parties in the industry is given, page 33 of the State of Case where six different concerns failed and one failed as often as three times and in another case, foreclosure of chattel mortgage forced an owner out (State of Case 63, line 1)

We submit that it should be a question of circumstances as to whether a combination of business men for the purpose of fixing prices, is an evil, from a public point of view. It is true that if combinations deal in articles of prime necessities to the public and if they are permitted to control the market that they might take advantage of their position, but we submit that it would be time enough to protect the public when they attempt to take advantage of their predominent position and attempt excluding practices. If competition is permitted to reach such a point that products can not be sold at fair prices many business men must be driven out of business, and we submit that the old doctrine of the common law that contracts in restraint of trade are void should not be as rigorously enforced today. With the advent of modern transportation, the field of business has been considerably enlarged and it is difficult to imagine any combination that could maintain a monopoly and have the public at its mercy. It would not take long for others in the business to enter the field. There will always be present in a successful business normal competition.

We submit that the agreement in this case insofar as it attempts to fix a minimum price should not be declared void as a matter of public policy and business men should be permitted to enter into agreements of this kind for their mutual benefit,

and they should be permitted to carry out the terms thereof and to cooperate for the general good of all of them and that combination should be permitted as long as they do not practice excluding purposes with the intent to narrow down the field of competition.

It is submitted that the Court erred in submitting to the jury the question of whether the contract in question was unenforceable because in restraint of trade.

Conclusion.

We therefore respectfully submit that as to the portion of the contract by which the parties agreed not to do business with "bob-tails" that the parties had a perfect right in the exercise of their free will to agree not to do business with certain persons. The same as the "bob-tails" had the right to determine not to do business with certain laundries and that inasmuch as there was no question as to the violation of the contract in that particular the court should have directed a verdict in favor of the plaintiff.

There was no legal proof that by the terms of the agreement and the parties to it, a monopoly was created and that there was no proof that the price sought to be fixed by the contract was anything but fair and therefore the evidence showing that the defendants had violated the terms of the contract, the court should have under the law as established in this State directed a verdict in favor of the plaintiff.

That combinations among business men for the purpose of fixing prices should not of themselves be looked at with disfavor and held by the courts

to be illegal combinations, and that contracts among the parties to such combinations should not be held unenforceable until proof is submitted that advantage was sought to be taken of the predominant position of the parties to the contract.

Respectfully submitted,

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Prepared January 12, 1931.

(Italics thruout are ours.)