

THE JOHN L. MURPHY PUB. CO., Printers, Trenton, N. J.

New Jersey Court of Errors and Appeals

THE SPERRY & HUTCHINSON CO.,
Complainant and Appellant,

and

HARRY VINE AND LOUIS VINE,
Partners, &c.,
Defendants and Respondents.

} On Bill, &c.
} On Appeal from
} Final Decree.

BRIEF OF EDWIN ROBERT WALKER, OF COUNSEL
FOR COMPLAINANT AND APPELLANT.



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The complainant's scheme or method of business is set out in the bill of complaint (*Case, pages 1, 2*); by Mr. Sperry, the company's manager, in his testimony (*Case, page 13, et seq.*); and is accurately and succinctly stated by the Vice Chancellor in his conclusions in the court below. (*Case, addenda.*)

On the trial the issue was narrowed to the single question whether the provisions contained in the words written upon the printed contract, viz.: "*No dry goods, shoes or gents' furnishing store within two blocks either way to have S. & H. stamps without consent of Vine Brothers.*" (*Case, page 27, line 31, et seq.*)

When the case closed the defense did not rest upon the theory of the answer. The answer avers (*Case, page 9*):

“That said complainant has, since the making of said agreement, set out in said bill of complaint, advertised and promoted the business of certain persons, firms or corporations engaged in the dry goods, shoe and gentlemen’s furnishing goods business, having their stores or places of business within two blocks either way of the store of these defendants, without the consent of these defendants, and that the said complainant has given or sold or issued its trading stamps to such certain persons, firms or corporations within two blocks either way of the place of business of these defendants, in violation of its agreement with these defendants.”

True it is, that the defendants, in their answer, after the above-quoted averment of a specific breach of the contract by the complainant, go on and further say that the complainant has allowed and permitted other persons, firms or corporations having his, her or their place of business within two blocks either way of their place of business to have the trading stamps of the complainant company without the consent of the defendants; but that averment is only formal, and is equivalent only to the general reasons assigned for new trials, or as causes of demurrer, &c.

The facts pleaded by the defendants which amounted to a distinct averment of a specific breach of the contract were affirmatively disproved by the evidence. See the testimony of Mr. Sperry (*Case, page 18, line 27, et seq.*), and of the defendants’ witness, Samuel Robinson (*Case, pages 37, 38, 39*), the only man with whom the defendants claimed in their testimony that the complainant dealt in violation of the contract.

The learned Vice Chancellor, in his conclusions, truly finds that the situation that arose could not have been in the minds of either of the parties to the contract when they made their agreement, and he pointedly says (*Case, page 2 of Conclusions, line 37, et seq.*):

“The manager of Sperry & Hutchinson’s, by this written part of the agreement with Vine Brothers, probably meant no more than that Sperry & Hutch-

inson would sell to no other persons than the Vine Brothers green stamps in the regular order of sales made by them.

“It probably was not then in the mind of the manager that green stamps might be otherwise obtained and used by Robinson or other dealers within the specified area of two blocks. Nor do I think such possibility occurred to the Vine Brothers.”

Now, it appears that Robinson, the merchant within the proscribed area, obtained just two green stamps that he gave out to customers (and of which the defendants complain), and he obtained them in the way of trade—that is, in the purchase of groceries by himself, and by customers of his giving him green stamps in exchange for the red star trading stamps in which he deals. (*Case, page 32, line 40; page 39, lines 1, 2, 3, 4.*)

The complainant did not undertake to *insure* the defendants against merchants within the proscribed area acquiring green trading stamps of third parties over whom the complainant had no control—that is to say, the complainant *did not*, by its contract, *undertake to perform an impossibility*.

It will be remembered that the scheme of the trading stamp business is that stamps are given out to all cash purchasers of goods by way of a premium, which amounts practically to the giving of a discount, and it necessarily follows that when the stamps are delivered by the merchants to customers they are at once put in free and untrammelled circulation, if their recipients choose to circulate them.

The complainant was powerless to have prevented one collector of stamps from giving to, or exchanging with, any other person certain stamps, and was equally powerless to prevent the use of the stamps by any person who thus obtained them.

Not only may it not have been in the mind of either of the parties that stamps might be obtained and used by any merchant within the proscribed area in the way they were obtained or used, but, had such a condition occurred to the parties, they never would have bethought them of attempting

to prevent such acquisition of the stamps by other merchants within the territory covered by their agreement, because they would have known the impossibility, and therefore utter futility, of any such attempt. The argument leads us back to the proposition that *the parties did not undertake to contract for the performance of an impossibility, nor was the complainant an insurer of the defendants against the use of stamps by merchants within their territory, who might acquire the stamps in the course of legitimate trading with third parties.*

The law upon the question is, I take, elementary.

“In determining the character and legal effect of an instrument, courts will ascertain, if they can, the intention of the parties, and give effect to that intention.”

Den v. Camp, 4 Harr. 148.

“Where the intention of the parties can be gathered from the whole instrument, that intention must govern the construction.”

Horner v. Leeds, 1 Dutch. 106.

“The conduct of the parties has gone far to settle the true interpretation of the contract.”

Burlew v. Hillman, 1 C. E. Gr. 23, 27.

The conduct of the parties in the case at bar speaks pointedly. With the possibility, nay probability, of that happening, which actually took place, the defendants bought green trading stamps of the complainant, and gave them out exclusively from April 3d, 1903, the date of the contract, to April 25th, 1903, when they ascertained that Robinson had green stamps (see the testimony of Harry Vine, *Case, page 32, line 30, et seq.*), and then, he said, the defendants gave out red trading stamps (*Case, page 33, line 14, et seq.*), and defended their action, as already stated, upon the assumption that the complainant was a party to Robinson's having the green stamps. See the answer. (*Case, page 9.*)

"The object of all canons of construction is to ascertain the meaning of the parties, and when that is plain, there is no room for construction, and the court has no duty but to give effect to it."

Wise v. Fuller, 2 *Stew. Eq.* 257, 267.

"A court of law should read a written contract according to the obvious intention of the parties."

Monmouth Park Association v. Wallis Iron Works, 26 *Vr.* 132.

"In cases where the language used by parties to a contract is indefinite or ambiguous, and hence of doubtful construction, the practical interpretation put upon the instrument by the parties themselves will frequently control the meaning which the court will accord to the agreement."

Helme v. Strater, 7 *Dick.* 592.

The agreement in the case in hand was given a practical construction by the parties the moment it was signed, because it was acted upon in good faith by both of them, with the impossibility of complainant's preventing the condition which was subsequently found to exist, staring each in the face.

The complainant contracted that certain other persons than the defendants should not "have" green stamps—that is, the company contracted that they should not have them *from it*, but did not guarantee that such persons could not have them by purchase or exchange from third parties over whom the complainant had, and could have, no control.

Parallel in principle is the measure of damages recoverable on the breach of a contract, which is, such damages as are reasonably in the contemplation of the parties at the time the contract is made.

Hadley v. Baxendale, 9 *Exch.* 341.

Skirm v. Hilliker, 37 *Vr.* 410.

As to construction from the intention of the parties, see *Dobbins v. Cragin*, 5 Dick. 640, 645.

Vickers v. Electrozone Commercial Co., 52 Atl. Rep. 467, was an action for damages for breach of a contract wherein the plaintiff, at fixed prices, sold certain quantities of a patented mixture, which the defendant was to order, accept and pay for within a year. Defence was made upon the ground that a clause in the agreement provided that if defendant should fail to order and purchase from the plaintiff, and pay for, during that period, the stipulated quantity, &c., the agreement thereupon should become void, and all rights and interests thereunder of the defendant should be immediately forfeited. The Court of Errors and Appeals held that the terms of the agreement were free from ambiguity, and that the right of the plaintiff to sue and recover from the defendant damages at law for the failure to order and purchase the designated merchandise was not defeated or affected by the conditional stipulation in question, and Judge Vredenburg, speaking for the court, said, on page 470:

“The effect of this contention of the plaintiffs in error, regarded from a practical standpoint, results in a *reductio ad absurdum*. Is it in the least degree probable that these vendors, who were owners of a valuable monopoly, and presumably men of affairs, after framing carefully an important sealed instrument (the principal inducement to which must have been the acquisition of substantial profits for themselves out of a business to be carried on in a large territory for an ensuing year of time), and after stripping themselves of that privilege, would designedly, by the same instrument, put it in the power of their vendees, during all that period, at will to defeat the whole object of the compact, and escape all liability therefor? If the plaintiffs in error are correct in their construction of the contract, the vendors have adopted a very ingenious method of strangling their patented novelty in its infancy. They have not only enabled others—probably their competitors in business—to consign the enterprise to business

oblivion for at least a year, but they have also most effectually estopped themselves, during the same period, from either earning any profits by their own exertions or from reaping any benefits through the labor of their vendees. Such business folly, not to say stupidity, will not readily be inferred to have been within the intention of the vendors."

It will be seen at a glance how the law of the case just cited, and the facts of the case at bar, dovetail into each other, and, reading the law of that case into the facts of this case, it may be put as follows:

It is in the least degree probable that the Sperry & Hutchinson Company, who were the owners of a valuable business, and presumably represented by men of affairs, after framing a more or less important agreement (the principal inducement to which must have been the acquisition of substantial profits out of the use of their stamps in the business of Vine Brothers, to be carried on in a certain territory for an ensuing year), and after stripping itself of the privilege of selling its stamps to any other merchant, in the same line of business, in the same territory, would designedly, by the same instrument, put it in the power of Vine Brothers, during all that period, at will to defeat the whole object of the compact, and escape all liability therefor, by putting a construction upon the contract which is reductio ad absurdum. If Vine Brothers are correct in their construction of the contract, the Sperry & Hutchinson Company has adopted a very ingenious method of strangling its business venture in its infancy. It has not only enabled others—notably the Red Star Trading Stamp people—to consign the enterprise to business oblivion for at least a year, but has also most effectually estopped itself, during the same period, from either earning any profits by selling its own product to merchants in the proscribed area, or from reaping any benefits through the business enterprise of Vine Brothers. Such business folly, not to say stupidity, will not readily be inferred to have been within the intention of the Sperry & Hutchinson Company.

It is submitted, therefore, that the decree of the court below should be reversed, and a decree made that an injunction issue pursuant to the prayer of the bill.

Respectfully,

E. R. WALKER,

Of Counsel with Complainant and Appellant.

Western Union Tel Co v Rogers
15 How 311, was cited in
 the court below as
 authority for issuing an
 injunction.

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New Jersey Court of Errors and Appeals

THE SPERRY & HUTCHINSON COM-
PANY (a corporation),

Complainant and Appellant,

and

HARRY VINE AND LOUIS VINE, Part-
ners, &c.,

Defendants and Respondents.

} On Bill,
&c.

BRIEF FOR RESPONDENTS.

The bill in this case is filed to enjoin an alleged breach of contract or agreement made between the complainant company and the defendants. By this contract, dated April 3d, 1903 (Case, pages 5, 6, 7), the complainant, a trading stamp company, bound itself, among other things, to furnish its stamps or coupons to the defendants at a certain price, to publish the defendants' names in a subscription directory and to circulate the same among the people in the vicinity of the defendants' store; and the defendants, in their turn, among other things, agreed not to use any other coupons or trading stamps than those furnished by the complainant company during the existence of the contract, which was made for one year. In addition to the above stipulations, there was written in, and incorporated upon, the agreement the following words: "*No dry goods, shoe or gents' furnishing store within two blocks either way to*

have Sperry & Hutchinson's stamps without consent of Vine Brothers." Case, page 5.

The following facts are supported by the evidence:

1. The defendants, Vine Brothers, conduct a dry goods store (Case, page 15, line 32) at No. 518 South Clinton avenue, in the city of Trenton. Case, page 14, line 25.

2. One Robinson conducts a dry goods store within two blocks of the store of Vine Brothers. Case, page 18, line 33, *et seq.*

3. On April 15th and on May 5th, 1903, said Robinson had in his possession trading stamps of the complainant company, and on those dates gave one or more of said stamps to purchasers of his goods (Case, page 30, line 23, *et seq.*) without the consent of Vine Brothers. Case, page 41, line 37, *et seq.*

4. Defendants, since April 25th, 1903, have given out some red star trading stamps to purchasers of their goods.

The question then to be determined in this suit is:

Can the complainant company, under this agreement, invoke the aid of the Court of Chancery to enjoin the defendants from using any trading stamps or coupons other than those of the complainant company during the existence of the contract in question, as provided by its terms, when the complainant company itself has failed to perform that part of its agreement which provides that no other dry goods store within two blocks either way of the defendants' store shall have complainant's stamps without the consent of defendants.

I.

THE INJUNCTION PRAYED FOR IN THIS CAUSE WOULD, IF GRANTED, AMOUNT TO A DECREE OF SPECIFIC PERFORMANCE OF THE CONTRACT SET OUT IN THE BILL.

The principles, therefore, upon which a court of equity will compel specific performance of a contract should be applied in this case. The doctrine is fundamental that either of the parties seeking a specific performance against

the other must show, as a condition precedent to his obtaining the remedy, that he has performed all the essential and material acts required of him by the agreement at the time of commencing his suit.

3 Pom. Eq. Jur., § 1407.

The evidence shows that the complainant has not performed its part of the contract, in that it has permitted dealers in dry goods having their place of business within two blocks of the store of the defendants to have in their possession and to distribute to their customers stamps of its company.

II.

THE PARTIES TO THE CONTRACT ARE BOUND BY THE TERMS WHICH THEY HAVE VOLUNTARILY EMPLOYED.

It appears from the testimony that the complainant company has not issued, directly or indirectly, to any merchant within two blocks of the defendants' store its trading stamps since the date of the agreement in question (Case, page 18, line 38, *et seq.*) ; but that, if any of the complainant's stamps have been in the possession of merchants having stores within two blocks of the defendants' store since the date of the agreement, such merchants have acquired them indirectly from other merchants dealing in the stamps of the complainant company.

It may be a contention of the complainant that it is not a violation of the contract on their part if merchants prohibited from using their stamps by the agreement have stamps in their possession which they have acquired indirectly, and which have not been sold to them directly by the complainant company; but we submit that such a construction is not warranted by the express terms of the agreement.

Again, it may be urged by the complainant that such a construction of the contract would, from its very nature, impose upon it conditions which are impossible of perform-

ance; the answer to which is, however, that the complainant might have provided against such a contingency in the contract.

In the case of *School Trustees of Trenton v. Bennett*, 3 *Dutch*. 513, 517, it is said: "No rule of law is more firmly established by a long train of decisions than this, that where a party, by his own contract, creates a duty or charge upon himself, he is bound to make it good if he may, notwithstanding any accident of inevitable necessity, because he might have provided against it by his contract," citing the leading case of *Paradine v. Jeyne*, *Alcyn* 26.

And further, in the same case, on page 519, the court said: "No matter how harsh and apparently unjust in its operation the rule may occasionally be, it cannot be denied that it has its foundation in good sense and inflexible honesty. He that agrees to do an act should do it, unless absolutely impossible. He should provide against contingencies in his contract."

A distinction is drawn between such duties as the law charges upon a party and those which he voluntarily assumes, the difference being that it is only in the former class of cases that non-performance will be excused when it arises from inevitable necessity.

Hillyard v. Mutual Benefit Life Insurance Co., 6 *Vr.* 415, 420.

III.

A STRICT AND LITERAL CONSTRUCTION OF THE LANGUAGE OF THE AGREEMENT IS NECESSARY TO SUPPORT THE MAIN CONSIDERATION FOR THE DEFENDANTS ENTERING INTO THE CONTRACT.

In the agreement in question the complainant company has, by express terms, obligated itself to prevent any merchants within two blocks of the defendants' store having its stamps. It does not state that the complainant will not be liable if said merchants obtain their stamps indirectly from other merchants, nor is such a construction a natural

one in view of the circumstances under which the contract was made. The very consideration for the defendants entering into the contract was that no rivals in business within a certain territory should have any of the benefits to be derived from dealing in the stamps of the complainant company. If such merchants could obtain the stamps and use them in their business without purchasing them from the complainant directly, of what benefit to the defendants was this written clause in the agreement? One of the complainant's witnesses testified (Case, page 24, line 25, *et seq.*) that there were three parties in the defendants' neighborhood whom the defendants wished to exclude from the benefit derived from using these stamps, and that that was the reason for inserting this special clause in the agreement.

IV.

AN INJUNCTION IN AID OF SPECIFIC PERFORMANCE SHOULD NOT BE GRANTED WHEN THE CONTRACT SOUGHT TO BE ENFORCED IS UNCERTAIN.

The terms used in the contract in question are, at the best, uncertain. What the defendants wished to secure by the written clause therein was the exclusive right to the use of these stamps, and they wished a guarantee that no one should interfere with their monopoly of the trade in these stamps within the defined district. It is possible that, at the time of the signing of the contract, it was not in the mind of the complainant that their stamps might be otherwise obtained and used by Robinson and other dealers within the restricted area than by a sale directly by the complainant company to such dealers. Where such doubt as to the terms of the contract exists, an injunction should not be granted.

1 Beach Inj., § 445.

An agreement, to be entitled to specific performance, ought to be certain, fair and just in all its parts.

Story Eq. Jur., § 769.

V.

THE CASE MADE BY THE COMPLAINANT'S BILL IS LACKING
IN EQUITY.

He who seeks the aid of equity to enjoin the violation of an agreement, or for the protection of his contract rights, must himself come into court with clean hands, and to entitle himself to relief he must have carried out, as far as possible, his own part of the contract.

2 High Inj., § 1119.

The conduct of the party who seeks the aid of the court will be taken into consideration upon the application for an injunction. The man who comes to the court to restrain the breach of a covenant or contract must be able to show that he comes with clean hands. He cannot have relief unless it appears that he has actually carried out, so far as in him lies, his own part of the agreement.

Kerr Inj. *496.

The ground relied upon for relief by injunction against the violation of a contract must, as in other cases where a remedy is sought, come within the rules according to which the court usually exercises jurisdiction; and the party must show himself free from all just imputations of wrongdoing in connection with the contract forming the subject of his application.

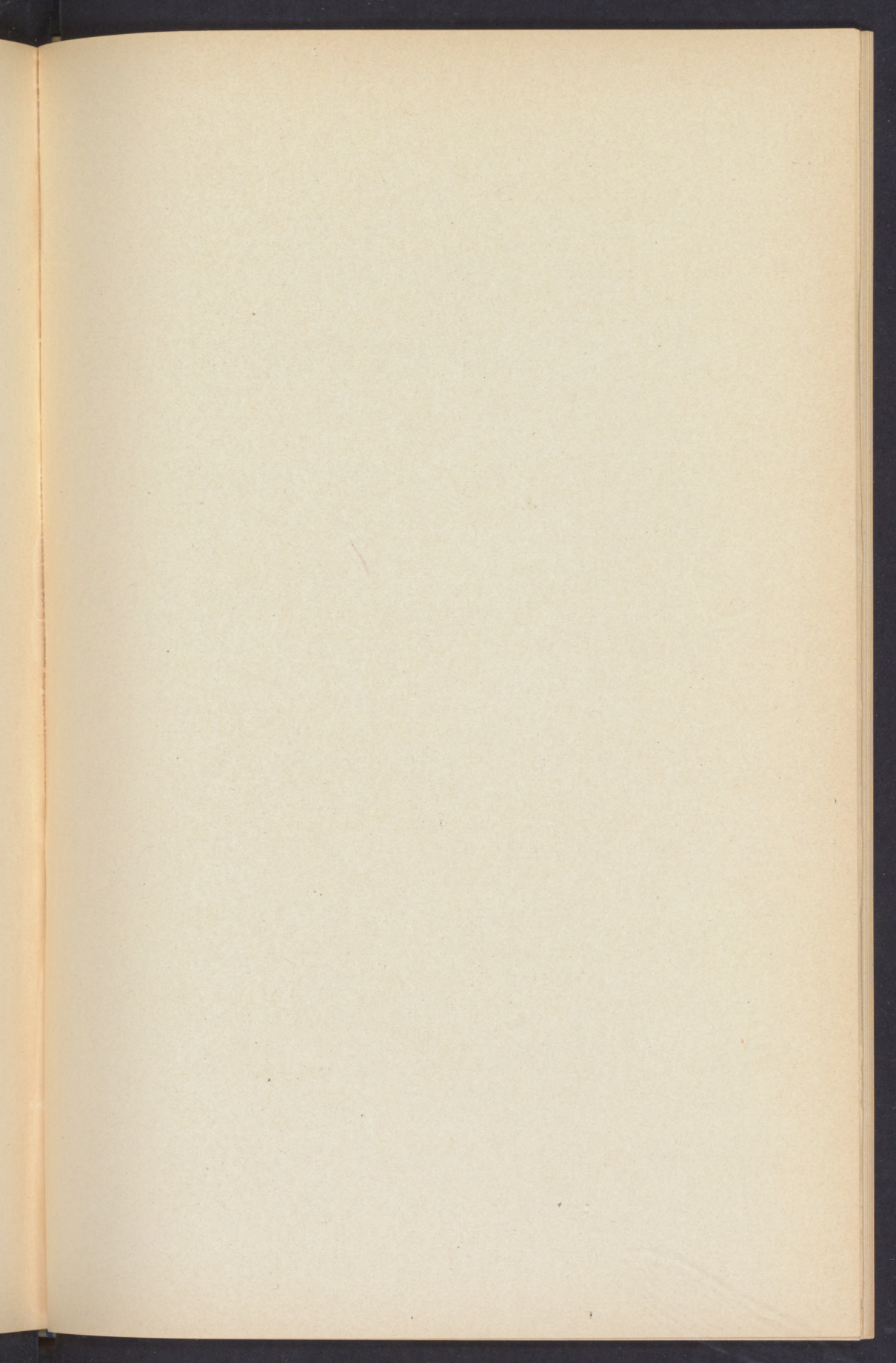
Spell. Extr. Rel., § 479.

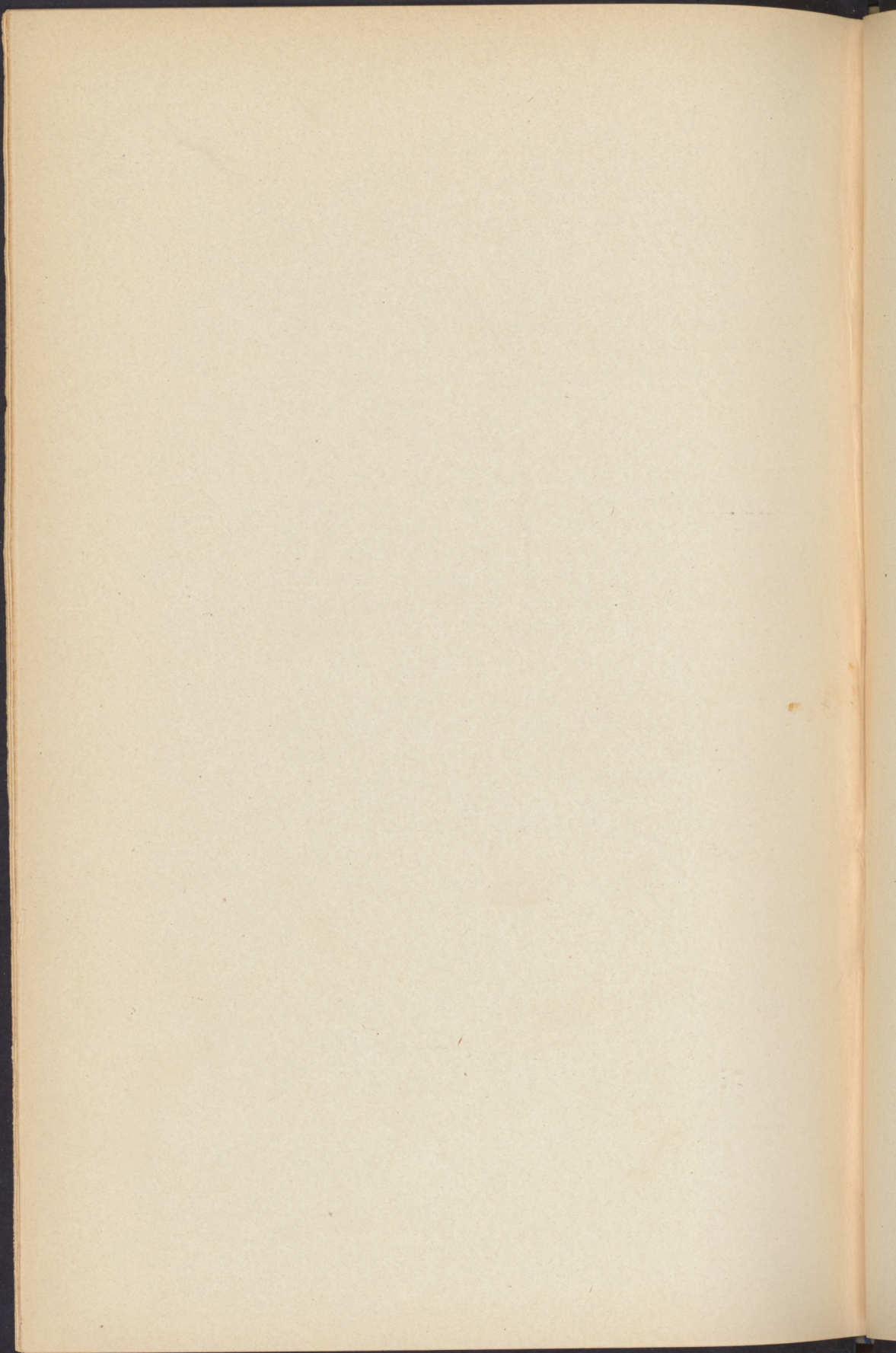
VI.

THE DECREE OF THE COURT BELOW SHOULD BE AFFIRMED,
WITH COSTS.

Respectfully submitted,

JOHN M. DICKINSON,
Of Counsel with Respondents.





New Jersey Court of Errors and Appeals

THE SPERRY & HUTCHINSON
COMPANY (a Corporation),
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and
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BILL FOR INJUNCTION.

*To his Honor William J. Magie, Chancellor of the State
of New Jersey:*

Complaining shows unto your honor your orator, the Sperry & Hutchinson Company, a corporation duly organized under and by virtue of the laws of the State of New Jersey, and having one of its principal places of business in the city of Trenton, Mercer county and State aforesaid; that it is engaged in an advertising business commonly known and called the "trading stamp" business, whereby your orator undertakes to, and does, specially promote and advertise the business of merchants engaging it, by printing in the directory of its subscribers' books the name, business and address of the merchants engaging it, and distributing free the said books in large

numbers to the people in the vicinity of the store or place of business of the merchant engaging your orator, and by employing persons to explain to those to whom said books are delivered how they may be used, and in divers other ways; and by delivering unto the merchant engaging your orator, for a fixed sum and price, certain green trading stamps for free distribution by said merchants to such cash purchasers of the wares and merchandise of said merchant asking for or demanding the same; 10 and further, by your orator maintaining a store in the city or town where such merchant may be located solely for the purpose of redeeming said green trading stamps so as aforesaid given by the said merchant to cash purchasers of his wares and merchandise, and by keeping on exhibition in said store, so maintained by your orator, a valuable stock of goods and merchandise with which to redeem said green trading stamps so distributed free by said merchant, your orator receiving said green trading stamps as cash for its goods and merchandise; and further, 20 that your orator agrees to and with the merchant so engaging it not to deliver its trading stamps to or engage to advertise or promote the business of any merchant other than the one so engaging it, who may be in the same line of business and whose place of business is within a certain agreed upon radius of the store or place of business of said merchant.

And your orator further shows unto your honor that on or about the third day of April, nineteen hundred and three, Harry Vine and Louis Vine, partners, trading as 30 Vine Brothers, who conduct a gents' furnishing and dry goods business at Nos. 518 and 520 South Clinton avenue, in the city of Trenton, county and State aforesaid, entered into a written contract with your orator, the Sperry & Hutchinson Company, whereby your orator agreed to and with the said Vine Brothers, among other things, that for the consideration hereinafter set forth, to print in the directory of their subscribers' book (a copy of which subscribers' book is annexed hereto and made a part hereof) the name, business and address of

the said Vine Brothers; to deliver to the people of the vicinity of their store, and in the city of Trenton, said books, and explain to them how to use the same; to open and maintain a store in Trenton for the purpose of redeeming such stamps as are issued in the regular way by said Vine Brothers; to keep on exhibition in said store goods and merchandise with which to redeem said stamps when presented in the above-mentioned books; to use their best endeavors to promote in every way the business interests and trade of the said Vine Brothers; that by said agreement the said Vine Brothers, in consideration of the undertaking and promises of your orator, agreed to and with your orator to receive of your orator a sufficient number of trading stamps, to be supplied as a discount for cash trade, to all persons who may call for them, and to give out said stamps as follows, viz.: One (1) stamp to be given for each and every ten cents represented in a purchase, ten stamps for one dollar, &c.; also not to dispose of said stamps in any other way; to pay your orator fifty cents per hundred for the use of all stamps disposed of, and to make weekly settlements with the authorized collector of your orator; to display signs, furnished by your orator, which read: "We give trading stamps," in the windows of the place of business of the said Vine Brothers; the party of the second part (Vine Brothers) *"also agrees not to use any other coupons, trading stamps or similar device during the existence of this contract,"* which said contract, by its terms, is continued in force for a period of one year from the third day of April, nineteen hundred and three, and by which said contract your orator further bound itself and agreed to and with the said Vine Brothers not to advertise, promote the business of or give its trading stamps to any person or persons, firm or corporation, engaged in the "dry goods, shoe or gents' furnishing goods business" within two blocks either way "of the store of the said Vine Brothers, without the consent of Vine Brothers," a copy of which contract is annexed hereto and made a part hereof.

And your orator further shows unto your honor that all the matters and things by said agreement were by your orator to be done and performed have by your orator been done and performed.

And your orator further shows and charges that the defendants, Vine Brothers, in disregard and in violation of their said written contract "*not to use any other coupons, trading stamps, or similar device during the existence of this contract,*" are using and are giving out
10 other trading stamps to cash purchasers in lieu of the trading stamp of your orator, to wit, the red star trading stamp, a device similar to that of your orator, and also divers other coupons similar to the trading stamp of your orator, without the consent of your orator, and despite the fact that by the beforementioned agreement with the defendants, your orator is prohibited from entering into a contract for advertising or promoting the business interest of any other person, persons, firm or corporation dealing in dry goods, shoes or gents' furnishings within a radius
20 of two city blocks from the store of said Vine Brothers, at Nos. 518 and 520 South Clinton avenue, Trenton, aforesaid.

All of which actings, doings and pretenses of the said defendants are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises.

In tender consideration whereof, and forasmuch as your orator is without adequate remedy in the premises, at and by the strict rules of the common law, and can
30 only obtain relief in this honorable court, where matters of this nature are properly cognizable and relievable, and to the end therefore that the said defendants may upon oath or affirmation full, true and perfect answer make to all and every the matters aforesaid, as fully as if the same were here again repeated and they thereunto interrogated, paragraph by paragraph, and that the said defendants, Harry Vine and Louis Vine, partners, trading as Vine Brothers, may be restrained from giving out, distributing, advertising for free distribution or otherwise, the afore-

said red star trading stamp or any other coupon similar to the green trading stamps of your orator, during the continuance of the contract aforesaid, entered into by the said Vine Brothers on the third day of April, nineteen hundred and three.

May it please your honor, the premises considered, to grant unto your orator, not only the State's writ of injunction issuing out of and under the seal of this honorable court, to be directed to the said Harry Vine and Louis Vine, partners, &c., their employes and servants acting under them, or acting by their direction, strictly enjoining and commanding them and each of them, to refrain from giving out, distributing, advertising for free distribution, or otherwise, the red star trading stamps or any other coupon similar to the green trading stamp of your orator, during the continuance of the contract so entered into by the said Harry Vine and Louis Vine, partners, trading as Vine Brothers, on the third day of April, nineteen hundred and three, but also the State's writ of subpoena, to be directed to the said Harry Vine and Louis Vine, commanding them, at a certain day and under a certain penalty therein to be expressed, to be and appear before your honor, in this honorable court, then and there to answer the premises and to stand to and abide and perform such decree therein as to your honor shall seem meet.

And your orator will ever pray, &c.

HARRY C. VALENTINE,
Solicitor of Complainant.

FRANCIS B. LEE,
Of Counsel, &c.

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MEMORANDUM OF AGREEMENT.

No dry goods, shoes or gents' furnishing store within two blocks either way to have S. & H. stamp without consent of Vine Brothers.

April 3d, 1903.

This agreement, by and between the Sperry & Hutchinson Company, a corporation of the State of New Jersey, party of the first part, and Vine Brothers, of Trenton, N. J., party of the second part, witnesseth:

That the said party of the first part, for the consideration hereinafter mentioned, agrees with the party of the second part to perform in a faithful manner the following, viz.: To print in the directory of their subscribers' 10 book the name, business and address of the party of the second part; to deliver to the people of this vicinity said books and explain to them how to use the same; to open and maintain a store in the above-named town for the purpose of redeeming such stamps as are issued in the regular way by merchants duly authorized by the first party to handle the same; to keep on exhibition in said store goods and merchandise with which to redeem said stamps when presented in the above-mentioned books and in lots of nine hundred and ninety (990) stamps 20 collected in the regular way; to use their best endeavors to promote in every way the business interests and trade of the party of the second part.

That the party of the second part, in consideration of the foregoing, agrees with the party of the first part, to perform in a faithful manner the following, viz.: To receive of the party of the first part a sufficient number of trading stamps, to be supplied as a discount for CASH trade, to all persons who may call for them; and the party of the second part also agrees to give out said stamps 30 as follows, viz.: One (1) stamp to be given for each and every ten cents represented in a purchase, ten stamps for one dollar, &c. Said party of the second part also agrees not to dispose of said stamps in any other way; to pay the party of the first part fifty cents per hundred for the use of all stamps disposed of, and to make weekly settlements with the authorized collector of the party of the first part; to display signs, furnished by said party of the first part, which read: "We give trading stamps," in the windows of the place of business of the party of the

second part; the party of the second part also agrees not to use any other coupons, trading stamps or similar device during the existence of this contract.

Parties of the first and second parts mutually agree that this AGREEMENT shall be and remain in force for one year from the date first above written.

It is hereby mutually agreed between the party of the first part and the party of the second part that the property in and title to said stamps remains with the party of the first part. It is also agreed that at the expiration 10 of one year from the date hereof this contract is renewed for a period of one year, unless written notice to the contrary be given by either party hereto to the other party within thirty days of the expiration of one year from the date hereof.

In witness whereof the said parties of the first and second parts have hereunto set their hands at the said city of Trenton, N. J., this 3d day of April, 1903.

THE SPERRY HUTCHINSON COMPANY,
By W. E. L. SPERRY. 20
VINE BROTHERS.

Discount cash in advance, 10% 1,000, 20% 5,000,
20 & 12½ 15,000.

This agreement is good for store 518 and 520 S. Clinton avenue only.

N. B.—Our agents are not allowed to alter the reading of this agreement in any way. Stipulations not appearing on this AGREEMENT will not be recognized by either party.

ANSWER.

The joint and several answer of Harry Vine and Louis Vine, partners, trading as Vine Brothers, to the bill of complaint of the Sperry & Hutchinson Company, complainant.

These defendants, severally answering, say that they do not know and are not informed, save as set out in complainant's bill, whether the Sperry & Hutchinson Company is a corporation duly organized under and by virtue
10 of the laws of the State of New Jersey, but leave the said complainant to make such proof thereof as it may be advised, but these defendants admit that the said complainant is engaged in the business commonly known as and called the trading stamp business, and that it is engaged in the undertakings which are set forth in complainant's bill of complaint.

And these defendants, further answering, admit that they are partners, trading under the firm name and style of Vine Brothers, and that they conduct a *dry goods, shoe*
20 *and gentlemen's furnishing goods business at Nos. 518 and 520 South Clinton avenue*, in the city of Trenton, and that they did, on the third day of April, nineteen hundred and three, enter into a written agreement or contract with the complainant of the purport and effect as set out in complainant's bill of complaint, by which agreement, among other things, the said complainant did bind itself and agree to and with the said defendants, not to advertise or promote the business of, or give or sell its trading
30 stamps to any person or persons, firm or corporation engaged in the dry goods, shoe or gentlemen's furnishing goods business within two blocks either way of the store of the said defendants, or allow or permit any such person or persons to have its said stamps, without the consent of these defendants.

And these defendants, further answering, admit that they are using and giving out other trading stamps to cash purchasers of their goods in lieu of the trading stamp

dealt in by the complainant, but deny that they are so using and giving out such other trading stamps in violation of their agreement with the said complainant in the bill of complaint mentioned and set out.

And these defendants, further answering, deny that all matters and things which by said agreement were to have been performed by said complainant, have been done and performed by it in pursuance thereof, but on the contrary these defendants allege and aver the fact to be that said complainant has, since the making of said agreement, set out in said bill of complaint, advertised and promoted the business of certain persons, firms or corporations engaged in the dry goods, shoe and gentlemen's furnishing goods business, having their stores or places of business within two blocks either way of the store of these defendants, without the consent of these defendants, and that the said complainant has given or sold or issued its trading stamps to such certain persons, firms or corporations within two blocks either way of the place of business of these defendants, in violation of its agreement with these defendants, and that said complainant has allowed and permitted other persons, firms or corporations having his, her or their place of business within two blocks, either way of the place of business of these defendants, to have in his, her or their possession the trading stamps of said complainant company without the consent of these defendants and in violation of said agreement.

And these defendants humbly pray to be hence dismissed, with their reasonable costs in this behalf most wrongfully sustained.

BENJAMIN A. FREEMAN,
Solicitor of Defendants.
J. M. DICKINSON,
Of Counsel.

FINAL DECREE.

[Filed September 15, 1903.]

This cause coming on to be heard in the presence of Edwin Robert Walker, esquire, of counsel with the complainant, and John M. Dickinson, esquire, of counsel with the defendants, and the pleadings having been read and the arguments of counsel heard and considered, and the court being of the opinion that an injunction should be denied and the bill of complaint filed herein dismissed:

10 It is thereupon, on this fifteenth day of September, nineteen hundred and three, ordered, adjudged and decreed that an injunction as prayed for in complainant's bill of complaint be and the same is hereby denied, and that the complainant's bill of complaint be and the same hereby is dismissed as to each of the said defendants, with costs to be taxed.

W. J. MAGIE, C.

Respectfully advised,
ALFRED REED, V. C.

NOTICE OF APPEAL.

[Filed September 26, 1903.]

20 The complainant hereby appeals from the final decree made in this court in the above-stated cause on September fifteenth, nineteen hundred and three, and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes.

Dated September 25th, 1903.

H. C. VALENTINE,
Solicitor of Complainant.

30

E. R. WALKER,
Of Counsel.

I conceive there is good cause for appeal in the above-stated cause.

E. R. WALKER,
Of Counsel with Complainant.

PETITION OF APPEAL.

[Filed September 26, 1903.]

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The petition of the Sperry & Hutchinson Company (incorporated) respectfully shows that your petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor William J. Magie, Chancellor of New Jersey, bearing date September fifteenth, nineteen hundred and three, in the cause therein depending, wherein your petitioner was complainant and Harry Vine and Louis Vine, partners, trading as Vine Brothers, were defendants, in this respect, to wit: That the said decree adjudges that an injunction as prayed for in complainant's bill of complaint be and the same is thereby denied, and that the complainant's bill of complaint be and the same thereby is dismissed as to each of the said defendants, with costs to be taxed. 10

And your petitioner humbly appeals from the said decree, and from the whole and every part thereof, upon the ground that the same is erroneous, for that the said decree should have adjudged that a writ of injunction issue out of and under the seal of said Court of Chancery against the said defendants according to the prayer of your petitioner's said bill of complaint. 20

Your petitioner therefore prays that the said decree of the Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden; and that your petitioner may have such relief in the premises as to this honorable court shall seem meet. 30

H. C. VALENTINE,
Solicitor of Appellant.
E. R. WALKER,
Of Counsel.

ANSWER TO PETITION OF APPEAL.

[Filed October 21, 1903.]

The answer of the above-named respondents to the petition of appeal of the above-named appellant.

These respondents, not acknowledging any or all of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit that a decree was on the fifteenth day of September last past, made and entered in the Court of
10 Chancery of New Jersey in the cause for that purpose mentioned in said petition, as is therein stated; but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe that the said decree is agreeable to equity and they pray that the same may be affirmed with costs to be adjudged to these respondents.

BENJAMIN A. FREEMAN,
Solicitor of Respondents.

20

J. M. DICKINSON,
Of Counsel.

Dated October 16th, 1903.

TESTIMONY.

Transcript of stenographer's notes of evidence, taken in the above-entitled cause, before his Honor Alfred Reed, Vice-Chancellor, at the Chancery Chambers, Trenton, New Jersey, June 22d, 1903, at 10:15 A. M.

Appearances—

Mr. E. R. Walker and *Mr. H. C. Valentine*, for the complainant.

Mr. John M. Dickinson and *Mr. B. A. Freeman*, for the defendants. 10

Washington E. L. Sperry, a witness produced in behalf of the complainant, being duly sworn according to law on his oath saith:

Examined by Mr. Walker.

Q. What connection have you with the Sperry & Hutchinson trading stamp concern, in this city?

A. I am the manager.

Q. You are the manager?

A. Yes, sir.

Mr. Walker—I have the certificate of incorporation here which I offer in evidence. It is the Sperry & Hutchinson Company, and was received in the Hudson county clerk's office October 22d, 1900, and there recorded, and filed in the office of the Secretary of State October 25th, 1900.

[Incorporation admitted without further proof.]

Q. The concern is a corporation?

A. Yes, sir.

Q. And you as manager are the head of the concern?

A. Yes, sir; I am the head of the concern. 30

Q. And how long has that concern maintained a store in Trenton?

A. Why, I think it was somewhere in 1899.

Q. How long have you been concerned with it?

A. The store was established in 1898, and I came here in February, 1899.

Q. In what capacity did you represent the company when you came here first?

A. As manager.

Q. The same position as you have continued since that time to hold?

A. Yes, sir.

Q. I show you a paper purporting to be an agreement between Sperry & Hutchinson Co. and Vine Brothers, and ask you if you ever saw it before?

10 A. Yes, sir; I signed it.

Q. Under the printed name "Sperry & Hutchinson Company" by W. E. L. Sperry—that is your signature?

A. Yes, sir.

Q. What is the other signature?

A. Vine Brothers.

Q. Did you see that signed?

A. Yes, sir.

Q. By whom was it signed?

A. By Mr. Vine over there.

20 Q. This gentleman sitting here [indicating]?

A. Yes, sir.

Q. Who is this firm of Vine Brothers?

A. Well, I know this man and I have seen his brother.

Q. Where is their store?

A. 518 South Clinton avenue.

Q. Did you print, in the shape of a directory of your subscribers, books, the name and business address of Vine Brothers?

A. I caused it to be printed; yes, sir.

30 Q. Were those books delivered to people in the vicinity of their store?

A. Yes, sir.

Q. By persons employed by you to explain to these people how to use the books?

A. Yes, sir.

Q. Has your store been opened and maintained in this city at all times since entering into that contract with Vine Brothers?

A. Yes, sir; and for years before.

Q. Have you kept on exhibition in that store goods and merchandise with which to redeem trading stamps when presented in the books?

A. I have.

Q. In lots—how is it required that they should be presented?

A. We usually get them in lots of 990, but we have sometimes taken them in less lots than that.

Q. What have you done by way of endeavoring to promote the business interests and trade of Vine Brothers?

A. Well, we have been, and as a usual thing, or our method is simply to put their name in the book—advertise their name or print their name in the book, and the advertising of the trading stamp, which is so well known, and is so desirous that the people go to the merchants who have the green stamps, consequently we don't stipulate to do anything more; but as an actual fact, I have sent canvassers round there to distribute books in that neighborhood, and I have also put in coupons, and we have also a red-letter day that we advertise broadcast throughout the city—all persons who apply to our store on that day will receive ten stamps gratis; that is a stimulant to stimulate the interest in the collecting of stamps when people get their books started, consequently they look up the merchants whose names are on our lists and go there to do their trading. 20

Mr. Walker—I offer this agreement in evidence.
[*Marked Exhibit C 1.*]

Q. What is the business of Vine Brothers, do you know?

A. Dry goods.

Q. Upon this agreement, *C 1*, are these words, "No dry goods, shoe or gents' furnishing store, within two blocks either way, to have S. & H. stamps, without consent of Vine Brothers;" since the making of that agreement have you sold or given to any dry goods, shoe or gents' furnishing merchants or vendors, within two blocks

either way of Vine Brothers' store, any Sperry & Hutchinson Co. stamps, known as green trading stamps?

A. No, sir; we have not.

Q. I show you a small book which bears these words: "Trading Stamp Book;" in it appears the names of merchants in this city and under the head of "dry goods" appears the name of "Vine Brothers, 518 South Clinton avenue;" I ask you if that is one of the books referred to in the agreement?

10 A. That is one of the books referred to in the agreement.

Q. And was that printed and published by your house?

A. Yes, sir.

Q. Is that one of the books that was canvassed in that locality, as you have said?

A. Yes, sir.

[Book offered in evidence and marked *Exhibit C 2.*]

Q. I show you a card, being a calendar for some of the months of 1902 and 1903, and ask you what that is?

20 A. That is our red-letter day calendar.

Q. Explain it?

A. We distribute these to the people who go to the store, and sometimes we distribute them by canvassers; that is, if we happen to be canvassing at the time we receive a new lot, the canvasser takes out a few of them and explains them to the people, that if they come to the store on the day marked with a red mark, we give them ten stamps free to each person presenting that card to our store.

30 Q. What red-letter day occurred during the running of this agreement with Vine Brothers?

A. April 29th.

Q. Had you any canvassers or customers on that day in your store to whom you made that gratuitous present of stamps?

A. About 2,100 or 2,160, to be correct.

[Card offered in evidence and marked *Exhibit C 3.*]

Q. I show you a paper labeled "Green trading stamps

free," underneath that is a certificate number blank, and I ask you what that is?

A. It is a certificate that is distributed by the canvassers, who go around from house to house calling on people and delivering a small book, and this certificate, after the people have a small book—that is, they don't leave the small book, but they leave the certificate, and this certificate entitles the holder to twenty green trading stamps presented to any merchant who is giving green stamps.

10

Q. (By the Court.) Who is the certificate given to?

A. The certificate is given to the people by the canvasser.

Q. (By Mr. Walker.) In the neighborhood of the stores?

A. Yes, sir; in the neighborhood of the stores, and we take up the certificate and give the merchant back the twenty stamps.

Q. Did you get any certificates from customers of Vine Brothers?

20

A. Yes, sir.

Q. How many?

A. I cannot remember how many, but there is a bunch of them down at the store now, and I have burned up a good many that I received from Vine Brothers' store.

Q. And that tends to keep them prominently before the public?

A. Yes, sir.

[Paper offered in evidence and marked *Exhibit C 4*.]

Q. Take the trading stamp book marked *Exhibit C 2* and explain to the court how that is used?

30

A. This stamp book is given to the people who call for them, and they place these stamps in this book as they receive them; when the book is full of stamps they bring it to our store and exchange it for premiums of their own selection, such as clocks, lamps, rugs, chinaware, silverware, umbrellas or anything they wish; of course, wherever they get their money, they get their money's worth—in actual fact it is a discount for trading, and its in-

tion is to stimulate the buying of goods for cash—when people purchase their goods, to pay cash for their goods; the system of credit is one which all merchants are all trying to get away from—that is, giving large credits and getting their capital involved, and by the customers paying cash they can pay for their goods and consequently they can get their profits quickly.

10 Q. (By the Court.) This is purely a philanthropic effort on your part to secure business to the merchants of the city?

A. Just as any other business is philanthropic; I may say that we are in it for the money there is in it, but we don't get any returns until the merchant gets the value received, and if he does not get the value received, then we don't get anything out of it.

Q. You fix the price of these premiums yourselves?

A. Yes, sir.

Q. And you can fix it at one-quarter or one-half or two-thirds the value of the goods, just as you like?

20 A. That is entirely with us, but yet it is not so in another sense, because any business will fail to succeed unless you can give value for it—

Q. I understand that you are in competition with other trading stamp concerns?

A. No, sir; we are not in competition; we are in competition with the moral law of right—

Q. (By Mr. Walker.) Did you ever have any complaints from Vine Brothers of any character concerning your connection with them under this contract?

30 A. Yes, sir, I did; they complained to me that one Mr. Robinson near them had green trading stamps.

Q. Who is Mr. Robinson?

A. Why, he is a merchant about the middle of the block below them on the opposite side of the street.

Q. What business is he in?

A. So far as I know he is in the dry goods business, same as they are.

Q. Did you give him directly or indirectly, or did you

issue to him in any way, any green trading stamps since the date of this agreement with Vine Brothers?

A. No, sir; I have not.

Q. Do you know how he may have become possessed of any green trading stamps?

A. No, sir; I do not know.

Mr. Dickinson—I object to that as immaterial and irrelevant.

The Court—He says he does not know.

Q. (By Mr. Walker.) Do you know a concern known 10 as the Red Star Trading Stamp Company?

A. Yes, sir.

Q. Do you know what is the character of their business?

A. Very similar to ours; they copy after us in all respects they can.

Q. Do they distribute books too?

A. Yes, sir.

Q. And offer premiums for stamps?

A. Yes, sir; and make special offers to solicit our 20 customers.

Q. Have you ascertained in any way whether or not Vine Brothers have used any other trading stamps except yours since the date of this agreement?

A. Yes, sir; I have.

Q. In what way?

A. I went there personally myself and saw them; that they had someone in the store giving out special red stamps, and then I sent and bought goods by Mr. Bell and one Joe something—I forget his name—his affidavit 30 is attached to our bill of complaint.

Q. When was this?

A. The exact date I cannot say, but I judge it was some time in April.

Q. You said since the making of the agreement?

A. Yes, sir; I said since the making of the agreement, after the 17th, because Vine Brothers positively promised me on the 17th that he would not use red stamps and then this was just a few days after that.

Q. At the time this agreement was entered into, were or were not Vine Brothers giving out red stamps?

A. At the time this agreement was entered into Mr. Vine told me that he had some red stamps, but that he would discontinue the use of the red stamps provided I would let him have the green stamps; to make further sure that he would keep his agreement, and he said he had a part of a pad of red stamps left, and I told him that I would give him green stamps in exchange for those red
10 stamps.

Q. Was that done?

A. It was done as a proof positive that he would discontinue the use of the red stamps.

Q. What is paid on the stamps?

A. We have them in 100 on a sheet and we have them bound together in pads of ten pages or fifty pages, making 1,000 and 5,000 in a pad.

Q. I show you a book labeled Sperry & Hutchinson Company Trading Stamps; what is that book?

20 A. One of the catalogues of the premiums given away for the stamps.

Q. Is anything done by this book by way of distribution?

A. Generally a canvasser has one to show to people when she goes around, and if any one applies for one, we give them one.

Q. Have you kept on hand, during the continuance of this agreement, such articles as are shown here to be prizes?

30 A. Yes, sir; they are premiums.

[Book offered in evidence and marked *Exhibit C 5*.]

Cross-examination by Mr. Dickinson.

Q. Have you been manager for this Sperry & Hutchinson Co. all the time they have conducted business in Trenton?

A. No, sir; I came here in February, 1899.

Q. Were you manager at the time this agreement was entered into?

A. I was.

Q. How do you get your authority to sign this agreement?

A. By being an employe of the company.

Q. Did you have any written authority to sign any such agreement?

A. I have no written paper or agreement setting forth to that effect; I simply got a telegram for me to come to Trenton and take charge of the business.

Q. Have you signed other agreements of this character?

A. Yes, sir; a great many.

Q. You mentioned one Mr. Robinson, a dry goods merchant?

A. Yes, sir.

Q. Having a store in this city?

A. Yes, sir.

Q. How near is his store to that of Vine Brothers?

A. It is in the middle of the next block or near the end of the next block.

20

Q. It is within two blocks of Vine Brothers?

A. Yes, sir; it is within two blocks of Vine Brothers.

Q. Since entering into this agreement have you had any conversation with either of the Vine Brothers?

A. Yes, sir.

Q. What was the nature of this conversation?

A. Why I don't know; several times I have had several different conversations with them; I cannot state as to any particular one unless you tell me what one you want.

30

Q. Did Mr. Vine ever mention to you that Mr. Robinson had stamps of your company in his possession?

A. He did, and I sent down immediately to investigate it.

Q. What was the result of your investigation?

A. I found that he had Vine Brothers' stamps in one instance, and he had a stamp that I had sold to Vine Brothers.

Q. How do you recognize it as a stamp you had sold to Vine Brothers?

A. Because they are all kept a record of.

Q. Did he have any other stamps of your company?

A. Yes, sir; he had one from Mr. Thatcher, a druggist, over on Hudson street.

Q. Why did Mr. Vine call on you in reference to these stamps?

A. He thought I was selling them to him direct.

10 Q. Did he say anything about your selling them direct?

A. He asked me if I had been selling them to him direct and I said no, I didn't, and I wouldn't.

Q. Did he state that others having your stamps was a violation of the agreement with him?

A. No, sir.

Q. Did he ask you to see that other merchants within two blocks didn't have your stamps?

A. No, he asked me if I would not use my influence to keep other merchants from selling stamps to Mr. Rob-
20 inson?

Q. As a result of that interview what did you do?

A. I went and saw the merchants and asked them or told them that if they sold stamps to them—there isn't any other merchants within two blocks of them that had the stamps—

Q. You went to Mr. Robinson, did you?

A. No, sir; I sent to Mr. Robinson.

Q. What was the result?

A. I sent to Mr. Robinson and got these two stamps
30 as I told you, on two different occasions.

Q. You say you knew Mr. Robinson had other green stamps of your company?

A. No, sir; I didn't know of any except those two I got; that is all I know of.

Q. Since the making of this agreement have any green stamps been presented to you for redemption, which came from Mr. Robinson's store?

A. I am sure I don't know.

Q. You say you have a record of all the stamps?

A. I have a record of all the stamps, but I cannot tell from where they got them; they might get them from you right here in the court room.

Q. How many conversations have you had with Mr. Vine since entering into this agreement?

A. Oh I don't know; I cannot say; I went down to see him in accordance to using the red stamps and he came in—he has been in twice to buy stamps since that time from me.

Q. Didn't Mr. Vine call on you several times in reference to other people having green trading stamps, whose stores were within two blocks of his? 10

A. There are no other merchants or stores within two blocks of his who have green trading stamps.

Q. Well, in reference to Mr. Robinson's having green trading stamps?

A. He called on me once in reference to Mr. Robinson's having green trading stamps, and he said they had the stamps and he asked me where they got them and I told him I didn't know, but I would send down and find out, which I did. 20

Q. At the time of entering into this agreement, did you know Mr. Robinson had the stamps of your company?

A. No, sir; I didn't know it, and I don't know it yet; that is, I don't know that he had any more than those which I sent for.

Q. Was not Mr. Robinson a customer of your company before this agreement was entered into?

A. No, sir; and never has been.

Q. Don't you know, as a matter of fact, that Mr. Robinson gave stamps of your company for three or four years previous? 30

A. I do not, as a matter of fact; I know he applied for the stamps and we refused to give them to him.

Q. When was that?

A. That was some time in February; I think January or February; not only that, but we told him—I told him he could have stamps on one condition; he wanted to buy in lots of 15,000 and get the discount; I told him

I didn't believe he was honest; that I thought he was trying to get the stamps for someone else.

Q. This was your conversation with Mr. Robinson?

A. Through my assistant; and I told him—and that was through an interpreter because he claimed he could not talk English.

Q. (Mr. Walker.) This was prior to April?

A. Yes, sir.

Mr. Walker—Then I would not make any more record
10 on that point, as it is expensive if written out and it is not material to the cause.

Q. (Mr. Dickinson.) At the time of entering into this agreement, did Mr. Vine tell you that Robinson had green stamps?

A. I don't think he did.

Q. There is a clause written into this agreement at the top?

A. Yes, sir.

Q. Is that clause usually written into these agree-
20 ments?

Mr. Walker—I object to that as irrelevant.

The Court—I will take it.

A. Why sometimes it is.

Q. What induced you to write it into this agreement?

A. That is, he wanted—there was three parties in the neighborhood he wanted excluded; that we would not sell the stamps to Robinson Brothers, or Robinson something, whatever the concern is called; I don't remember their names—and one up on the corner and a gents' fur-
30 nishing store down below.

Q. You knew that Robinson Brothers had green stamps, didn't you?

A. No, sir; I did not.

Q. You say Vine Brothers wanted them excluded?

A. Yes, sir.

Q. Do you mean from the past or future use?

A. From future use.

Q. Did you offer any special inducement for Vine Brothers to enter into this agreement?

Mr. Walker—I object to that as immaterial and irrelevant.

[Question withdrawn.]

Witness—I would like to answer that question if counsel will permit me.

Mr. Walker—Go ahead then.

A. I tried to keep them out of it.

Q. (Mr. Dickinson.) Out of what?

A. Out of the green stamps.

Q. (Mr. Walker.) Tried to keep who? 10

A. I tried to keep from making this agreement; I didn't want them in the organization.

Q. (By the Court.) That is one of the special inducements you offered to them, is it?

A. Yes, sir.

Q. (Mr. Dickinson.) Do you have any fixed price for these stamps?

A. Yes, sir.

Q. What is the price?

A. Fifty cents per hundred. 20

Q. Has that always been the price of your stamps since you were manager of the company?

A. Yes, sir.

Q. What did you charge Vine Brothers for them?

A. Fifty cents per hundred, but they have a cash discount.

Q. What is that?

A. Ten per cent. on 1,000, twenty per cent. on 5,000 and twenty per cent. and twelve and one-half on 15,000.

Q. Does that discount apply to all the stamps you sell? 30

A. Yes, sir.

Q. To all your customers?

A. Yes, sir.

Q. What other special inducement did you offer Vine Brothers for entering into this contract besides trying to persuade them not to enter in it?

A. Nothing, except when they asked me if I would not exclude these merchants, I told them I would exclude any

merchants within a certain radius of them; that I would not sell them the stamps.

Q. During the period of this contract?

A. Yes, sir.

Q. Did you or did you not at any time since this agreement was made, tell Vine Brothers or either of them that you would stop Mr. Robinson from using the green trading stamps?

10 A. I could not tell him that I would stop him from using the green trading stamps, but I told him if I found out any of our merchants were selling him green trading stamps, I would stop them from selling them to Robinson.

Redirect by Mr. Walker.

Q. You say that you could tell the green trading stamp that you procured from Mr. Robinson as being the one issued by your concern to Vine Brothers; how do you tell that?

A. It has a letter and a number on it.

Q. That is the way you find it out?

20 A. Yes, sir.

Q. Does each book have a particular letter and number?

A. Yes, sir; each book has a letter and number—well, it may have the same letter, but it has a different number—it goes by the thousands and then it changes the letter.

Q. You keep a record of all the stamps you sell?

A. Yes, sir.

30 Q. I show you a receipt and ask you what it is; it is dated 4th month, 3d day, 1903; what is that?

A. This is a receipt made on the day of their contract when he got this first lot of stamps.

Q. It is a receipt by Vine Brothers?

A. It is a receipt by Vine Brothers for the stamps.

Q. For how many stamps?

A. For 15,000.

Q. I show you another receipt dated April 17th, 1903, what is that?

A. That is for 15,000 stamps, same as the other.

Q. By Vine Brothers?

A. Yes, sir.

Mr. Walker—I offer these receipts in evidence.

[Marked respectively *Exhibit C 6* and *Exhibit C 7*.]

Mr. Dickinson—I subpoenaed Mr. Sperry to bring the records and books here, and while he is on the stand I may as well ask him a few questions instead of recalling him later.

Mr. Walker—I have no objection. 10

The Court—That is all right, you may go on.

Direct examination by Mr. Dickinson.

Q. I show you two stamps of your company?

A. Yes, sir.

Q. No. 327 and the letters HQ; are these stamps part of a lot that you ever issued to Vine Brothers?

A. No, sir.

Q. Do you know to whom they were issued?

A. Yes, sir.

Q. To whom? 20

A. To Levine and Rosenblatt.

Q. Do you know when they were issued?

A. On April 13th.

Q. Of this year?

A. Yes, sir; of this year.

Cross-examination by Mr. Walker.

Q. Where is the store of Levine and Rosenblatt?

A. At the corner of Ferry and Union streets.

Q. How far away from the store of Vine Brothers?

A. About a mile and a half. 30

Mr. Walker—The answer filed in the case admits that Vine Brothers are using other stamps than the green trading stamps of this Sperry & Hutchinson Company, therefore it is not necessary to call witnesses to prove that.

[Counsel for the defendants assert that the answer narrows the issue to the question as to whether or not the written words upon the agreement, namely, "No dry

goods, shoe or gents' furnishing store within two blocks either way to have S. & H. stamps, without consent of Vine Brothers;" that being the issue, the complainant will not take the time of the court to call numerous witnesses who are here present, to prove the distribution of books and others matters in the contract.]

Complainant rests.

Harry Vine, a witness produced in behalf of the defendants, being duly sworn according to law, on his oath
10 saith:

Examined by Mr. Dickinson.

Q. You are a member of the firm of Vine Brothers?

A. Yes, sir.

Q. What is the nature of that firms' business?

A. Dry goods, gents' furnishings, shoes and so forth.

Q. Where is your place of business located?

A. 518 and 520 South Clinton avenue.

Q. How long have you been engaged in business there?

A. In the last four years.

20 Q. Did you, as a member of that firm, enter into an agreement with Sperry & Hutchinson Trading Stamp Company?

A. Yes, sir.

Q. To furnish you with green trading stamps?

A. Yes, sir.

Q. Had you used green trading stamps before that?

A. Yes, sir.

Q. How long before?

A. Ever since we have been in business.

30 Q. How long was that?

A. For the last four years.

Q. Did you use any other trading stamps?

A. Yes, sir.

Q. What?

A. The red star trading stamp.

Q. How long have you used those stamps?

A. For the last four years.

Mr. Walker—I object to this evidence as irrelevant and as being anterior to the agreement.

[Question withdrawn.]

Q. Did you enter into an agreement with Sperry & Hutchinson Company to furnish you with stamps on April 3d last?

A. Yes, sir.

Q. Have they since that time furnished you stamps of their company?

A. Yes, sir.

10

Q. And have you given them out, these stamps, to your customers?

A. Yes, sir.

Q. Do you know one S. Robinson, conducting a dry goods business on South Clinton avenue?

A. Yes, sir.

Q. How near is his place of business to your place of business?

A. The next block opposite.

Q. Do you know whether or not S. Robinson has in his possession stamps of the Sperry & Hutchinson Company?

20

A. Yes, sir.

Q. Do you know how long Mr. Robinson has had the stamps of that company?

A. Since he has been there in business.

Q. How long is that?

A. For the last two years, I think; I cannot say exactly how long he has been there.

Q. Do you know whether he has had the green trading stamps since April 3d last?

30

A. Yes, sir; he has had them right along.

Q. What means did you take to ascertain that fact?

A. That was the first offer that Mr. Sperry made, to stop everybody around there having the green trading stamps, and I had to sign the agreement with Sperry & Hutchinson Stamp Company.

Q. How was that clause of the agreement, the written

clause of the agreement; how did it happen to be inserted in the agreement?

Mr. Walker—I object to this as incompetent and irrelevant.

[Question withdrawn.]

Q. What steps have you taken to ascertain that Mr. Robinson had the green trading stamps since the 3d of April last?

A. The trade used to tell me——

10 Mr. Walker—I object to what the trade told him.

Witness—And then I went to work and sent a boy there on the 15th of April——

Q. (Mr. Dickinson.) Whom did you send?

A. A young man—I sent him around to the store there, he is a young man that helps us Saturday nights.

Q. What is his name?

A. The last name I cannot tell you; “George” they call him, is his name; he is a little fellow around there.

Q. Go on and state what you did?

20 A. Well, the trade used to tell me——

Q. Never mind that; what did you do with reference to sending this boy?

A. I went to work and sent this boy to find out if it is so—if Mr. Robinson has green trading stamps there because I never thought——

Q. State what you did, not what you think?

A. I sent and made a purchase there and he got——

Q. (By the Court.) Did he return to you with green trading stamps?

30 A. Yes, sir.

Q. (Mr. Dickinson.) I show you a green trading stamp; is that the one the boy returned to you?

A. Yes, sir.

Q. What other efforts, if any, did you make to ascertain whether Mr. Robinson had the green trading stamps or not?

A. I sent another man there.

Q. Who?

A. Mr. Lockwood.

Q. When was that?

A. That was the 5th of May.

Q. What did you tell Mr. Lockwood?

A. I told him to go there and make a purchase.

Q. Did Mr. Lockwood bring you a stamp of the Sperry & Hutchinson Company back?

A. Yes, sir.

Q. Are these the stamps that Mr. Lockwood brought you [handing witness two stamps]?

A. Yes, sir. 10

Q. When was this?

A. The 5th of May last.

Q. Did you ever have any conversation with W. E. L. Sperry since entering in this agreement?

A. Yes, sir.

Q. In reference to Mr. Robinson's having stamps?

A. Yes, sir.

Q. What was that conversation; when did it take place?

A. The first time I 'phoned up to him and told him 20 that Mr. Robinson has the green stamps; that he was using the green stamps just the same as ever, and then I went there again to see him——

Q. How did you know it was Mr. Sperry at the end of the telephone?

A. I can tell his voice; I knew him long enough for that.

Q. Go on; what did he say?

A. He said he would stop them right away; and I waited again, about a week it was, I think, and I then 30 sent that boy and made a purchase there and he gave him a stamp; and I went with this stamp to Mr. Sperry and I went to Mr. Sperry and said, "You have done nothing with that man, he has the stamps just the same as before," and I told him I sent a boy to the store and he got the stamp, and I handed the stamp to Mr. Sperry and he said, "Yes, that is one of our stamps; how did you get it?" and I told him and then he went to the book and he said, "This stamp comes from Urken & Cohen," and he

said, "I will stop him right away and I will stop anyone that gives stamps to him," he said; he said he cannot have any more.

Q. Was that interview over the telephone?

A. No, sir; this was not; I was to the store and spoke to Mr. Sperry myself.

Q. Did you have any conversation with Mr. Sperry after that in reference to this matter?

A. Yes, sir.

10 Q. When was that?

A. In a few days after I found out again that he never stopped this man about giving these stamps——

Mr. Walker—I object to that as stating a conclusion. The Court—That won't do.

Q. (By the Court.) A few days afterwards you did what?

A. I went to Mr. Sperry again and told him—I told Mr. Sperry, "If you ain't going to keep your agreement, I am going to take the red stamps again."

20 Q. (Mr. Dickinson.) What did Mr. Sperry say?

A. He said, "Oh we will stop this man from having green stamps," but he never done anything.

Q. After this agreement was made between you and the Sperry & Hutchinson Company did you stop giving the red stamps?

A. Yes, sir.

Q. And all other trading stamps except those of the Sperry & Hutchinson Company?

A. Yes, sir.

30 Q. How long did you continue to give only the stamps of the Sperry & Hutchinson Company?

A. From the time we made the agreement until the 25th.

Q. (Mr. Walker.) The 25th of April?

A. Yes, sir.

Q. (Mr. Dickinson.) April or May?

A. April.

Q. When the agreement was entered into, did Sperry & Hutchinson Company take any red stamps from you?

A. Yes, sir; we had near a pad or book full and he wanted to be sure that I would not give any red stamps, and he said, "I will take these red stamps from you and give you green stamps for it, so that you would not have any of them, and that will keep the agreement;" and I said, "It is all right; if you will keep the agreement, I will keep it."

Q. At the time of entering into this agreement state what conversation you had with Mr. Sperry?

Mr. Walker—I object to that as immaterial. 10

[Question withdrawn.]

Cross-examination by Mr. Walker.

Q. This agreement was entered into on the 3d of April last, and you immediately stopped giving out red star trading stamps to your cash customers?

A. Yes, sir.

Q. And gave nothing but Sperry & Hutchinson Company's green trading stamps?

A. Yes, sir.

Q. On the 17th of April you started giving out the red 20 trading stamps again?

A. No, sir; it was not the 17th, it was the 25th.

Q. What other trading stamps did you commence to give out besides the Sperry & Hutchinson Company's stamps and besides the red star trading stamps?

A. There are not any.

Q. Did you give any coupons?

A. We have all along what we called the cards with the \$10 worth on it, and if they make a purchase of \$10 then they get so much out of the store, and this we had 30 forever.

Q. That is your own scheme?

A. Yes, sir.

Q. And has nothing to do with any stamps or premiums from other stores or concerns?

A. No, sir.

Q. Did you have that scheme in vogue before the 3d of April?

- A. Yes, sir; ever since we have been in business.
- Q. Did you stop that too?
- A. He didn't want me to stop anything but the red star stamps?
- Q. Did you go on with your own scheme?
- A. Yes, sir.
- Q. You considered that outside of the agreement entirely?
- A. Yes, sir.
- 10 Q. That is right?
- A. Yes, sir.
- Q. Now, you are still giving out red stamps?
- A. Since the 25th of April.
- Q. Yes?
- A. Yes, sir.
- Q. And giving out some green stamps too?
- A. Yes, sir; same as ever.
- Q. Do you remember the date of this talk you had over the telephone with Mr. Sperry?
- 20 A. It was around the 10th of April.
- Q. You are sure it was he who answered you?
- A. Yes, sir.
- Q. When was it you went up to see Mr. Sperry first?
- A. On the 15th.
- Q. You are sure that is right?
- A. Yes, sir.
- Q. And then you took him one stamp?
- A. Yes, sir.
- Q. That is that little stamp which Mr. Dickinson
- 30 showed you?
- A. Yes, sir; that is the one.
- Q. And he told you that that was a stamp issued by his concern to Urken & Cohen?
- A. Yes, sir.
- Q. And Urken & Cohen's store is how far from yours?
- A. A good ways.
- Q. Six, eight or nine blocks, is it not?
- A. It must be.
- Q. When did you next go up to see him; that you say

was the 15th—now, when next did you go up to see him—you went up again and took him two stamps, didn't you?

A. That was on May 6th, I think.

Q. Are these the two stamps you took him [handing witness two stamps]?

A. Yes, sir.

Q. Did he say who they had issued them to?

A. Ycs, sir.

Q. Who? 10

A. That was not May—a young lady was sitting by the book and I asked her “if this is one of the stamp company's and who got this” and all like this, and she told me this comes from Levine & Rosenblatt.

Q. Where is their place of business?

A. On Bridge street.

Q. About a mile from your place?

A. It ain't a mile.

Q. How far is it?

A. Maybe half a mile. 20

Q. It is more than two blocks?

A. Yes, sir.

Q. More than six blocks, is it not?

A. Yes, sir.

Q. Did Mr. Sperry say to you, on the occasion of one or both of these visits, that he hadn't sold these stamps to Mr. Robinson, and that he would not sell him any, but that he could not help it if Mr. Robinson went and got them from other merchants?

A. No, sir; that was the main point. 30

Q. Didn't he say that?

A. He never said anything like it.

Joseph H. Lockwood, a witness produced in behalf of the defendants, being duly sworn according to law on his oath saith:

Examined by Mr. Freeman.

Q. Where do you live?

A. 143 Hamilton avenue.

Q. Is that in the vicinity of Vine Brothers' store?

A. Yes, sir; within one block.

Q. Do you know Harry Vine?

A. Yes, sir.

Q. And do you know S. Robinson?

A. Yes, sir.

Q. Did you call on Mr. Vine on the 7th of May last—do you recall the 7th of May last that you were in Vine Brothers' store?

10 A. Yes, sir.

Q. Pursuant to a conversation with Mr. Vine, did you go anywhere?

A. Yes, sir.

Q. Where?

A. To the store of S. Robinson.

Q. Where is S. Robinson's store?

A. 551 South Clinton avenue.

Q. Did you go in the store?

A. Yes, sir.

20 Q. Tell the court what you did?

A. I made a purchase.

Q. What did you purchase?

A. A pair of suspenders.

Q. How much did you pay for them?

A. Twenty-five cents.

Q. And of whom did you purchase the suspenders?

A. Mrs. Robinson.

Q. Is she, to your own knowledge, employed in the store?

30 A. She is the wife of Mr. Robinson.

Q. And you received the suspenders and what else in consideration of the twenty-five cents?

A. Two green Sperry & Hutchinson trading stamps.

Q. Do you know what the trading stamps are; did you ever see trading stamps before that day?

A. Yes, sir.

Q. Would you recognize the trading stamps if I showed them to you?

A. Yes, sir.

Q. I show you two stamps and ask you whether those are the stamps you received from Mrs. Robinson?

A. They are two trading stamps, but I cannot say positively that they are the two or not I received.

Q. Well, you received two stamps?

A. Yes, sir.

Q. (The Court.) What did you do with them?

A. I gave them to Mr. Vine.

Q. Did you ask for green trading stamps?

A. Yes, sir.

10

Q. (Mr. Freeman.) Is Robinson's store within two blocks of Vine Brothers, to your knowledge?

A. Yes, sir.

No cross-examination.

Joseph Altman, being sworn to justly and truly interpret the questions propounded and the answers given thereto by the following witness, who does not understand the English language:

Samuel Robinson, a witness produced in behalf of the defendants, being duly sworn according to law on his 20 oath saith:

Examined by Mr. Freeman.

Q. Where do you do business?

A. On Clinton street.

Q. What number?

A. 551.

Q. What is your business?

A. Dry goods.

Q. What else—just dry goods?

A. Nothing else.

30

Q. Do you use green trading stamps?

A. Yes, sir.

Q. How long have you used green trading stamps?

A. As long as I have been in the business.

Q. How long is that?

A. Six months.

Q. Have you used the green trading stamps since April 3d last past?

A. I cannot remember that; I don't know.

Q. Do you give the green trading stamps to customers now?

A. I don't know the meaning of trading stamps.

Q. Do you give green trading stamps in your store?

A. Yes, sir.

Q. Do you recognize this gentleman, Mr. Sperry [indicating]?

A. No, sir.

Q. Did Mr. Sperry ever call upon you in relation to green trading stamps?

Mr. Walker—I object to that as being indefinite in point of time.

The Court—Go on, I will take it.

A. I didn't use the stamps.

Q. (Mr. Freeman.) Did Mr. Sperry ever call upon you in relation to the green trading stamps?

A. He asked me whether I took the stamps.

Q. When was that?

A. This man never speak with me [indicating Mr. Sperry].

Q. (By the Court.) Did you ever have any conversation with Mr. Sperry; did he ever talk with you?

A. No, sir; I don't know him.

Q. (Mr. Freeman.) He never talked with you?

A. No, sir.

Q. Since April 3d, during a period of a month and a half, did you or did you not give green trading stamps to your customers?

Mr. Walker—I object to both the question and the answer, and I object also on the ground that it is unimportant whether he gave some stamps out or not, as it is already shown that he didn't get them through Mr. Sperry.

Q. (By the Court.) How did you get the green trading stamps?

A. I use red star stamps, and customers come to me

and exchange the stamps with me, and then I buy groceries a great deal.

Q. And get stamps from the grocers?

A. Yes, sir.

No cross-examination. Defendants rest.

Washington E. L. Sperry, being recalled in rebuttal saith:

Examined by Mr. Walker.

Q. Did you have a call on the telephone from Mr. Vine after this contract was entered into? 10

A. Why I have had several calls from him.

Q. Did you have a call on the telephone from him on the 7th or the 10th of April, I thinks it was, and have a talk with him, in which he complained that Mr. Robinson was using the green trading stamps?

A. Not on the telephone, he came into the store and told me.

Q. He said that he not only telephone to you, but came into the store; now did you have a telephone message from him? 20

A. No, sir.

Q. Did he come into the store and complain to you that Mr. Robinson was using green trading stamps?

A. He did.

Q. How many times?

A. I don't know whether it was once or twice; I cannot speak positively of more than once.

Q. On the occasion of that visit did Mr. Vine say to you "If you are not going to keep your agreement, I am going to take red star stamps again?" 30

A. No, sir; he didn't.

Q. Did you tell him that you would stop Mr. Robinson using your green stamps?

A. I told him if Mr. Robinson was using them he was getting them from someone of my customers and I would stop that customer; that is, selling stamps to Mr. Robinson.

Q. What else did you say?

A. I told him that I could not stop Mr. Robinson from buying his groceries and other goods from merchants who gave green stamps and using these green stamps that he got from grocers and other purchases made by him in the store.

Cross-examination by Mr. Freeman.

Q. Mr. Vine told you at the time he called at your place of business that Urken & Cohen were furnishing
10 S. Robinson green trading stamps, and didn't you say to him that you would stop Urken & Cohen from furnishing to S. Robinson green trading stamps?

Mr. Walker—I object to the question. Nothing in the contract which calls for any action or effort on the part of Sperry & Hutchinson Company to stop merchants acquiring stamps indirectly and not through them, and it is immaterial therefore.

[Question admitted.]

A. I told him if Urken & Cohen were selling stamps
20 to them, I would stop Urken & Cohen from selling stamps to Mr. Robinson, but I could not stop them if he bought his goods there and got the stamps as a discount for his goods.

Q. Did you call upon Urken & Cohen in relation to this matter?

A. I called on Urken & Cohen in relation to the matter; yes, sir.

Q. When?

A. He came into the store just a day or two after that.

Q. As a matter of fact, as the representative of Sperry
20 & Hutchinson Company, your business is to sell all the stamps you can sell?

A. No, sir.

Q. Is it not a fact that you get merchants to enter into this formal agreement and then try to dispose of stamps in contravention of the agreement; is not that the fact?

Mr. Walker—I object to the question as irrelevant.

[Objection sustained.]

Q. As a matter of fact, since April 3d, you did know that Mr. Robinson was distributing green trading stamps—you knew that, didn't you?

A. As a matter of fact I sent down there and got some green trading stamps, and the stamps are in evidence.

Q. You knew Mr. Robinson was distributing the green trading stamps?

A. I cannot say about that; I know he had given stamps out, but that, as he explained himself, was obtained by his buying his groceries and getting stamps for 10 them and exchanging for red star stamps, &c.

Q. Did you ever call on Mr. Robinson and tell him to desist in giving green trading stamps?

Mr. Walker—I object to the question; he didn't have to do it.

[Question withdrawn.]

Q. Did you ever call upon Mr. Robinson at all?

[Same objection. Question admitted.]

Q. Did you ever call upon Mr. Robinson at all, and tell him to stop giving green trading stamps? 20

A. No, sir; I never was in his store; I would not have any more right than——

The Court—Never mind that.

Q. Read the memorandum at the top in pencil?

A. "No dry goods, shoes or gents' furnishing store within two blocks either way, to have Sperry & Hutchinson Company stamps, without their consent."

Harry Vine, recalled in behalf of the defendants, saith:
Examined by Mr. Dickinson.

Q. Did you or any member of your firm consent to 30 any other merchant or dry goods dealer within two blocks of your store, that they should have the stamps of the Sperry & Hutchinson Company?

Mr. Walker—I object to that as immaterial and irrelevant.

[Question withdrawn.]

Q. Did you ever consent that any other dry goods merchant, within two blocks of your store, should have

the green trading stamps of the Sperry & Hutchinson Company, since you entered into this agreement?

A. No, sir.

No cross-examination.

Mr. Dickinson—I offer in evidence the two green trading stamps produced. [Marked *Exhibits D 1* and *D 2.*]

Case closed.

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XIII

THE HISTORY OF THE

(3)

New Jersey Court of Errors and Appeals

Between

THE SPERRY & HUTCHIN-
SON COMPANY,

Complainant and Appellant,

and

HARRY VINE AND LOUIS
VINE, Partners, Trading as
Vine Brothers,

Defendants and Respond-
ents.

Conclusions inad-
vertently omitted
from the Printed
Case.

[Filed September 11, 1903.]

Messrs. H. C. Valentine and E. R. Walker, for the com-
plainants.

Messrs. John M. Dickinson and B. A. Freeman, for the
defendants.

REED, V. C.

The complainants deal in green trading stamps. They
sell these stamps to retail dealers at the rate of fifty cents
for one hundred stamps, and discounts for larger quantities.
By the scheme developed by the complainants the retail 10
dealer gives one of these stamps to each cash purchaser of
goods of the value of ten cents, and an additional stamp for
each additional purchase of the same amount. The pur-

chaser preserves these stamps in a book, and, when the book is full, takes them to the store of the complainants to be exchanged for premiums, such as clocks, lamps, umbrellas, &c. The price of these premiums is fixed by the complainants, and the price is paid by delivering to the complainants an amount of stamps corresponding in face value with the price of the article selected.

The defendants are retail dealers, and, on April 3d, entered into an agreement with the complainants, in writing, 10 by which the complainants bound themselves to furnish their stamps to the defendants, and the defendants bound themselves not to buy or deal in stamps of any other person.

There was written in the agreement these words: "No dry goods, shoe or gents' furnishing store within two blocks either way to have Sperry & Hutchinson's stamps without consent of Vine Brothers."

The defendants gave out the green stamps of the complainants exclusively until July 25th, when they discovered that one Robinson, a dry goods dealer on the next block 20 opposite their store, was giving out the green stamps of the complainants. Thereafter the defendants began to give out red star stamps, exploited by another and competing stamp company, and since then have continued to do so.

This bill is filed to enjoin the defendants from continuing to deal in these red stamps. It appears that Robinson did not obtain the green stamps which he gave out directly from Sperry & Hutchinson. Robinson got his stamps by an arrangement with purchasers of goods at stores which gave out the green stamps.

30 Assuming that the agreement entered into by the Vine Brothers, by which they bound themselves to buy no other stamps than those of the complainants, was an enforceable contract at law, the question is whether a court of equity should enforce it in this instance. I have concluded that is should not.

The manager of Sperry & Hutchinson's, by this written part of the agreement with Vine Brothers, probably meant no more than that Sperry & Hutchinson would sell to no

other persons than the Vine Brothers green stamps in the regular order of sales made by them.

It probably was not then in the mind of the manager that green stamps might be otherwise obtained and used by Robinson or other dealers within the specified area of two blocks. Nor do I think such possibility occurred to the Vine Brothers. What they wished to secure was an exclusive right to the use of these stamps. They wished a guarantee that no one should interfere with their monopoly of the trade in these stamps within the defined district. They supposed they had such a guarantee, and upon that supposition agreed to deal in no other stamps. That supposition might well arise from the words employed in the addenda to the contract; for the condition was, not merely that Sperry & Hutchinson would not sell to any dry goods, shoe or gents' furnishing store within two blocks, but that no such store should have Sperry & Hutchinson's stamps without the consent of the defendants. Another dealer of the class mentioned does have these stamps. The situation thus arising is entirely different from that which Vine Brothers supposed they had secured by their agreement, and which the words of the agreement led them to think they had secured.

I have concluded that the injunction should be refused and the bill dismissed.





