

# COURT UPHOLDS PATENT SALE

## U. S. Suit Against Chemical Foundation Dismissed by Judge Morris.

### CONSPIRACY CHARGE FAILS

Conduct of Chemical Foundation Praised in Use of Former German Patents for Benefit of American People.

Wilmington, Del.—In a sixty-two page decision which swept away every one of the Government's major contentions as being without basis in fact or law, Federal Judge Hugh M. Morris dismissed its suit to set aside the sale of seized chemical and dye patents by the Alien Property Custodian to the Chemical Foundation, Inc.

The decision rebuked the Government for including in the bill of complaint a series of conspiracy charges unsupported by evidence at the trial and refuted by the defense as well as by documents filed by the Government.

In declining to compel the Foundation to restore the disputed patents, numbering some 4,700 and bought for \$271,000, from the Government, Judge Morris held there was no evidence bearing out allegation of a conspiracy by American manufacturers to effect a monopoly through the Foundation. The court ruled that there was no evidence of fraud or deceit practiced on President Wilson, Mr. Polk, Under Secretary of State, Attorney General Palmer and other high officials of that Administration.

**Garvan's Course Upheld**

The opinion praised Francis P. Garvan, president of the Foundation, and his trustees, as having met the most severe of tests in their conduct of the Foundation—"the test of actual trial." They were declared by the court to afford, through their high integrity and unquestioned patriotism, a thorough assurance of loyalty to their trust. "It has kept the faith," said the court of the Foundation's work.

Judge Morris found without merit the Government's contention that the criminal laws were violated in that Mr. Garvan, as Alien Property Custodian and thereby a public trustee, sold to himself as president of the Foundation the patents in question. He had acted by direction of President Wilson and his acts, supervised by the President under the latter's wide war powers granted by Congress, could not be brought to court. Congress had not delegated legislative powers to President Wilson, as maintained by the plaintiff, and the courts could not pass judgment on the wisdom or lack of wisdom of Presidential war acts.

Judge Morris recited that although Colonel Thomas R. Miller, present Custodian, who had approved two of the sales involved, verified the complaint, in his testimony he admitted that he could not enumerate any of the facts alleged to have been withheld and suppressed from him.

"In view of this testimony and the obvious fact that the power to charge persons with fraud and conspiracy is a weapon with which serious irreparable injury may be done to innocent persons if such charges are lightly made, it is difficult to understand why the specific charges to which the foregoing testimony relates were made," wrote the court. "Yet the remaining like charges were equally lacking in evidential support. In fact, at the argument, the plaintiff seemed no longer to press these charges against the persons alleged to be conspirators, but it sought to have the charges sustained as against the officers of the Government who formulated and carried out in the public interest the plan of sale. . . . While I know of no case where by implication of law the duty of clearing itself from imputed fraud rests upon the defendant, yet the defendant has met even this burden."

**Holds Wilson Had Full Power**

While the Trading With the Enemy Act at first merely authorized custodianship of German properties in this country, it was later amended, recalled the Court, to give power of sale under such conditions as the President, in the public interest, should determine upon. In effect, this made the President, as agent of the nation, possessed of powers as broad as though he were absolute owner of the seized properties. Under the provisions of the act, the President was empowered to make any conditions of sale he considered necessary in the circumstances.

The sales in dispute were not made by the Custodian in his capacity as a common-law trustee, but under the extraordinary powers devolving upon him as the President's representative under the additional sections of the act, because a trustee with only the usual powers may not ordinarily sell trust property at private sale for less than its fair monetary value. It by no means follows that the Custodian acting under supervision and direction of the President, may not do so," held the Court. "Obviously, the primary purpose of the act was the protection of the nation, not the benefit of the enemy. The trust was for the benefit of the nation—a public trust—not a private trust. The sale of it

quires the President to consider the public interest. Public interest is not a synonym for money."

In this relation Judge Morris quoted from President Coolidge's message to Congress on the Muesel Shoals problem that "while the price is an important element, there is another consideration even more compelling. . . . If this main object (low price) is attained for farmers in peace and the Government in war is accomplished, the amount of money received for the property is not a primary or major consideration."

Referring to German-owned property, the court said:

"Much of this property was not innocently held or held solely for trade and commerce. Information acquired by German-owned companies had been transmitted to Berlin, and there indexed and made available to German competitors and the German Government. The files of one company were filed not with business papers, but with pan-German literature. It was a distribution centre for propaganda in this country."

### Upholds Confiscation of Patents

Judge Morris pointed out that when America entered the war she adhered to the international convention forbidding poison gas, "but it soon became apparent that America would be fighting on disastrously unequal terms unless she should make use of all the dread weapons being used against her by the foe. When Germany persisted in her attempts to destroy her opponents with poison gas in contravention of all international agreements, she made it manifest that America's future safety lay in America's chemical independence. The amendment to the act was passed in the darkest days of the war (following the sale of seized properties). It was thought Paris was about to fall and the 'channel ports' be taken. These were the circumstances said the opinion, "which impelled Congress to grant the President the broad powers of almost absolute ownership. It was the intent of Congress to subordinate mere property rights to the welfare of the nation."

Of the value of the patents sold, Judge Morris held, in accordance with the testimony that while Dr. Carl Holderman, a German, asserted the Haber patents were worth \$17,000,000 to the Germans, "the evidence is overwhelming that they were and are without substantial affirmative value to American citizens. Had these patents been sold to Americans at public rather than private sale and only the net proceeds paid to their former enemy owners these owners would have suffered an almost total loss in the value of their property."

### Praises Work of Foundation

As to allegations that the sale was not to obtain a fair value, but to promote the interests of the chemical and dye industries and that the transaction was in legal effect granting a subsidy to private industry, the Court commented, "this challenge to the motives of the officers making the sale is supported, I think, neither by the facts nor the law. Mr. Polk determined the public interest would be best served by a wide use of the inventions covered by the patents. If the property was sold under terms and conditions that assured its being devoted to the public use it matters not what benefits or detriments may have flowed as incidents therefrom."

"The property is in the keeping of men who have in its management no selfish interest to serve and whose devotion to the public interest has been established," continued the opinion. "No better plan for devoting the property to public use has been suggested. The plan has stood the most severe of all tests—actual trial. The defendant has kept the faith. This it has done, not only by granting licenses in furtherance of the purposes for which it was chartered, but also at its great expense, by distribution of books and pamphlets showing the national necessity for practical development of chemical science in America. . . . It is perhaps these heretofore engaged in the industries have derived an incidental advantage from the plan, that incidental result cannot invalidate a transaction lawfully consummated in the public interest. The same charge would lie against the validity of every tariff act. . . . The sale was in effect to America and its citizens, not to those then engaged in chemical and allied industries."

Judge Morris ruled that if the executives entrusted by Congress with power of sale acted within the scope of that power "their acts are not subject to judicial nullification or review. Invasion by the courts to determine whether the public interest required the property be sold otherwise than under the statutory conditions prescribed and to set aside the sale should the judgment of the court be different from that of the President would be a judicial nullification not only of the President's act but also of the act of Congress conferring on the President the power to determine what the public interests required. What the public interest requires depends upon the conditions existing in the nation. Courts do not understand the 'state of the Union' and, as I apprehend, are not equipped to ascertain it. . . . The statement of the reasons actuating the President does not make his act any the less an act of discretion. It is conceded the President cannot be brought into court to substantiate his reasons. The statute does not require him to disclose to the purchaser the evidence upon which his reasons were based. The statute does not limit the Executive in the assignment of reasons to such as may be supported by legal evidence as by facts available to the public."

## Wehutty

The singing school taught at the Pack school house by Rev. John Decker closed Friday. A large number of visitors were present Friday



Stop the children's coughs at once!

DON'T let them run on until dangerous complications set in. . . . Dr. Bell's Pine-Tar Honey. It combines just the medicines your doctor prescribes with the old-time remedy, pine-tar honey. Hard packed phlegm loosens and clears away—the inflammation is reduced—normal breathing is restored. Excellent for young and old, alike! It tastes good, too. Keep Dr. Bell's on hand for all the family.

All druggists. Be sure to get the genuine.

DR. BELL'S Pine-Tar Honey

afternoon and seemed to enjoy the singing.

Mrs. W. M. White, of this place, is seriously ill after having undergone a operation.

J. R. Verner is slowly improving from a severe attack of pneumonia. A large number of young people reported a nice time at a singing given Sunday night by Mr. and Mrs. D. O. Bigham.

Rev. C. L. Sentelle, of Farner, Tenn., preached an interesting sermon for us after Sunday school Sunday, his text being "Run, speak to this young man."

The people of this vicinity are fortunate enough to get a three months summer school taught at the Pack school house, No. 3-A, beginning February 18th.

Mrs. Stewart is reported as being on the sick list this week.

Albert Pack, who has been working at Tellico Plains, Tenn., spent the week-end with home folks.

Claude Crowder, Edgar Torrence and Fred Hill, who have been going to school at Farner, Tenn., spent the week-end with home folks.

Rev. C. L. Sentelle visited our singing school Friday and also paid short visits to a few of our neighbors in the afternoon.

J. N. Suit, of Chattanooga, Tenn., with O. L. Torrence, Horace Burger are listed on the sick list this week.

J. M. Verner made a business trip to Turtletown, Tenn., Saturday.

## Tobacco Seed Available

Several farmers of this and adjoining sections have raised crops of the white burley tobacco and some of them received excellent returns from the last years crop and are planning to grow larger crops this year. It is announced that now is the time to sow seed beds, and it has been made possible for the tested seed to be handled in Murphy at Greens Grocery, and other places. The seed will be limited and those desiring to sow beds should call at Mr. Greens, or the store handling them in their community, and secure these seeds at once.

## MADE THE SAME AS THIRTY YEARS AGO

FOR 30 years physicians have prescribed Gude's Pepto-Mangan because it contains a form of iron which is readily absorbed, does not upset the stomach or affect the teeth, and is a splendid tonic and blood enricher. At your druggist's, in both liquid and tablet form.


**Free Trial Tablets** To see for yourself the health-building value of Gude's Pepto-Mangan, write today for generous Trial Package of Tablets. Send no money—just name and address to M. J. Drexlerbach Co., 14 Warren St., N. Y.

**Gude's Pepto-Mangan**  
Tonic and Blood Enricher

**"AA Quality" FERTILIZERS**

Built up to a standard—Not down to a price

Sold under the following brands

BRADLEY'S		FISH BRAND
DETRICK'S		PATAPSCO
BOWKER'S		ZELL'S

RED ROOSTER

For sale by  
**HARRY M. ROBERTS**  
REPRESENTATIVE WESTERN NORTH CAROLINA  
Address:  
Fletcher, N. C.  
Manufactured by  
**THE AMERICAN AGRICULTURAL CHEMICAL CO.**  
Farmers Fertilizer Works  
Spartanburg, South Carolina

**Grass Seed**

We have a big shipment of the following Grass Seeds to reach us in a few days:

CLOVER	RED TOP
BLUE GRASS	TIMOTHY
ORCHARD	LAWN GRASS

All of these seeds are the very best and will give entire satisfaction. Call or write for prices

**Cherokee Hardware Co. Inc.**  
Murphy, N. C.

Save the surface and you save all. Paint & Varnish

**Announcement**

**TOWNSON & ANDERSON**  
NOW DISTRIBUTE  
**Pee Gee Paints, Varnishes**  
**Stains and Enamels**  
in Murphy

It is with great pleasure that we announce the appointment of Townson & Anderson as distributors of the Pee Gee line in Murphy.

Since 1867, more than fifty years ago, the Pee Gee trademark has been symbolic of quality. Today it is entrenched in the minds of hundreds of thousands of users who are accustomed to specifying Pee Gee when the task of "Saving the Surface" is at hand.

Townson & Anderson are in a position to render quick and efficient service and will give prompt attention to those who make their wants known.



**PEASLEE - GAULBERT CO.**  
INCORPORATED  
ATLANTA      LOUISVILLE      DALLAS