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Monopolies—A Combination of Wholesalers and Retailers Prevents Plaintiff from Obtaining Usual Trade Discounts on Phonographs—When Wholesalers' Refusal Illegal—Measure of Damages

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REVIEW OF RECENT DECISIONS

HABEAS CORPUS—EFFECT OF OTHER REMEDY IN REGULAR COURSE—STIPULATION AS TO CONSTRUCTION OF INDICTMENT—PERMITTING TIME FOR REVIEW BY WRIT OF ERROR TO ELAPSE.

Goto v. Lane, U. S. Adv. Ops., 1923-24, page 651.

This case comes to the Supreme Court on appeal from a judgment of the District Court of Hawaii, refusing a writ of habeas corpus. Defendant was convicted under an indictment which used a disjunctive where a conjunctive should have been used. Counsel for defendant stated to the Court that they understood the indictment and that the presence of the word "or" did not mislead them or in any way embarrass their defense. The Court held that the judgment of the lower court should be affirmed, as a writ of habeas corpus is not granted when the law has provided another remedy. As the defendants allowed the time to elapse for a review by a writ of error, that gave them no right to resort to habeas corpus as a substitute.

MONOPOLIES—A COMBINATION OF WHOLESALERS AND RETAILERS PREVENTS PLAINTIFF FROM OBTAINING USUAL TRADE DISCOUNTS ON PHONOGRAPHS—WHEN WHOLESALERS' REFUSAL ILLEGAL—MEASURE OF DAMAGES.

Straus et al. v. Victor Talking Machine Co., et al., 297 Fed. 791.

The plaintiffs in this action engaged in a cut price competition against other retailers and as a result were by act of the defendant prevented from purchasing defendant's goods at the usual trade discount. This action is brought under the Sherman Act, Sec. 7, and under the Clayton Act, Sec. 4, to recover threefold damages to plaintiffs' business.

It was shown that an ample supply of the defendants' products could have been obtained to supply plaintiffs' business requirements if the market had been open.

The plaintiffs' damage resulted directly from their being compelled to pay to retailers and the price the plaintiffs were compelled to pay because of the illegal combination of manufacturers and distributors of phonographs. The measure of damages is the difference between the established reasonable price to retailers and the prices the plaintiffs were compelled to pay because of the restricted market, if they acted reasonably in making such payments. While exact damages are difficult of ascertainment, such difficulty does not prevent recovery.

An individual manufacturer or wholesaler may refuse to sell to a retailer, but this refusal is not legally exercised if it is, as here, a part of an illegal conspiracy or combination.