# NEW TRIAL GIVEN TO STANDARD OIL

## Appeal Court Annuls Big Fine, but Government Will Try Again.

## THREE POINTS INVOLVED

**Standard Ignorant of Legal Rate, Landis Wrong in Making Separate Offense for Each Carload and Fine Excessive.**

(Continued from First Page.)

took their seats. Judge Grosscup did not read the document, merely referring to it by number and stating that the case had been reversed and remanded. There was jubilation among the Standard Oil lawyers, who declared that the decision had been expected, while the Government attorneys went quietly to Mr. Sims' office to study the document.

"It is a strange doctrine," says the opinion, "by which a million-dollar corporation, such as the defendant, the Standard Oil Company of Indiana, may be fined 29 times the amount of its capital stock in order to punish a defendant not even under indictment."

By this latter is meant the parent company, the Standard Oil Company of New Jersey.

The opinion begins with a brief statement of the manner in which the case was brought from the District Court to the Court of Appeals. Section six of the Interstate Commerce act relating to the publishing and filing of rates is quoted and the opinion continues:

**Three Reversible Errors.**

"There are 169 assignments of error, taking up 67 pages of printed record. In view of the conclusion, however, to which we have come, it is unnecessary to review many of these assignments—the ones reviewed covering all the propositions of law that we deem essential to the guidance of the District Court in the event of a second trial. Comprehensively stated, the assignments of error which we shall review, relate:

"First, to the view adopted by the trial court carried out in its rulings on the admission and exclusion of evidence, and embodied in its charge to the jury that a shipper can be convicted of accepting a concession from the lawful published rate even though it is not shown, as bearing on the matter of intent, that the shipper at the time of accepting such concession, knew what the lawful published rate actually was;

"Second, to the view adopted by the trial court that the number of the offenses is the number of carloads of property transported, irrespective of whether each carload was the whole or the part only of a single transaction resulting in a shipment; and,

"Third, whether in the imposition of the fine named, the trial court abused the discretion vested in the court.

**Discusses Plea of Ignorance.**

"We shall take up these subjects in the order stated, the first being whether the shipper can, without error, be convicted of accepting a concession from the lawful published rate, even though it is not shown, as bearing on the matter of intent, that the shipper at the time of accepting such concession, knew what the lawful published rate actually was—in view of the law that is embodied in the charge and carried out in the ruling excluding certain proffered testimony including that of one Edward Bogardus, who, being in absolute control of the traffic affairs of the plaintiff in error during the period covered by the transactions, offered to testify that during that period he did not know anything about an 18-cent rate over the Alton Railroad; that his attention had not been called to any such rate by any person or by the examination of any document; and that it was his understanding and belief, based on what he was told by one Holland, tariff clerk of the Alton Railroad, that the rate over the Alton road was 6 cents and that such rates had been filed with the Interstate Commerce Commission.

**Testimony of Holland.**

"Holland, who was called by the Government, had previously testified that he had no recollection of telling Bogardus that the 6-cent rate (a commodity rate) had been filed with the Interstate Commerce Commission. But answering on his voir dire, the jury being excused, Holland further stated that he regarded 6 cents per 100 pounds as the oil rate between Whiting and East St. Louis; that he regarded a certain application sheet which covered Whiting at Chicago rates and the sheet for Chicago taken together as showing a 6-cent commodity rate; that whenever he spoke of the rate on this commodity between Whiting and East St. Louis he had in mind those papers, and that if he had been asked by Bogardus or anybody else whether there was a rate between Whiting and East St. Louis, he would have answered that there was, and that it was filed, and such a rate was 6 cents; which evidence thus proffered was excluded by the court for the sole reason that as a matter of fact, as the court (not the jury) found the fact to be, the application sheet containing this 6-cent commodity rate had not been filed with the Interstate Commerce Commission. Had the court found as a fact that the sheet had been so filed, or submitting that question to the jury, had the jury found that that sheet had been so filed, the 6-cent rate given to Bogardus admittedly would have been the lawful published rate.

**Excludes Important Proof.**

"The court relates that Bogardus was offered as a witness to prove that a tariff describing a rate of 6¼ cents from Whiting to East St. Louis was issued by the Chicago & Eastern Illinois Railroad Company, a competing line, October 9, 1895, and filed with the Interstate Commerce Commission two days later; that such tariff sheet was among the traffic files in possession of the plaintiff in error; and that the latter during the period named shipped thereunder a large number of cars of petroleum and products at said rate; and that such rate was equivalent to the shipper to the rate of 6 cents over the Alton, owing to a quarter of a cent terminal charges, all of which evidence was excluded as was also the offer of the tariff sheet itself, produced from the files of the Interstate Commerce Commission and an amendment thereto filed in April, 1903."

The opinion here includes Judge Landis' charge to the jury in which the District Judge declares that to show that the defendant accepted a concession knowingly, it was not necessary to establish that the defendant had actual knowledge of the lawful rate.

As to this phase of the case the opinion of the Court of Appeals declares:

"In this interpretation of the interstate commerce law, so far as it relates to shippers, we cannot concur. The cases cited by the Government, such as those requiring liquor-sellers at their peril to know whether the person to whom drink is sold is a minor or within the prohibition of the act or not, are not controlling, nor very persuasive. The interstate commerce act was intended to promote, not to restrain, trade and commerce, to secure fair dealing in commerce through uniformity, not to put obstructions in the way of commerce. Surely the farmer who brings his produce to town to be shipped to the city markets or the small merchant shipping to the country, or the householder who ships his furniture, were not meant by the interstate commerce law to be held guilty of having accepted a concession merely because they took the word of the carrier or his agent as to what the rate was. In this respect the shipper and the carrier stand on different ground. The carrier is required by a separate provision of the law to establish and publish rates and is forbidden to charge or collect from the shipper a rate greater or less than such established and published rate. But is the ordinary shipper, under any reasonable view of the situation, to which the law relates, thus bound—bound at his peril, under the law intended to promote commerce—to cipher out before he can safely put anything he has into commerce, all the confusing papers and figures that generally make up a tariff sheet? Plainly not, it seems to us."

**Examine for Themselves.**

In support of this contention the Court cites "First Bishop New Criminal Law, Section 386."

"Though it is true that large shippers like the plaintiff in error do not usually take the word of a carrier as to what

**John D. Rockefeller, Who Scores Heavily by Decision of Federal Circuit Court of Appeals in Standard Oil Rebate Case.**

the rate is, but examine for themselves the tariff sheet, and have all the knowledge that is necessary to an intelligent examination, from which it might easily follow that professions of ignorance on the part of such shippers would stand on a different plane from the ordinary spirit, it does not on that account follow that the ultimate question of intent is not the same, whether the shipper be a large one or a small one; for the law is the same for all shippers, and the duty devolving on the Government is the same, viz.: That before conviction, there must be proof of all the facts upon which the shipper's offense is predicated.

"This view of what is essential to constitute the offense makes it plain that the trial court was in error, as a matter of law in the application to the case of the shipper, and as a matter of the principle that the trial court applied in this case. And this error is made all the plainer, lifting it from otherwise what might be considered a mere technical error to the level of a real substantial error, when the exact nature of the so-called tariffs published and filed, relied upon by the Government as the lawful rate, are scrutinized; and when the rate that the trial court deciphered out of these papers is compared with admitted rates on other roads for the same product, and with the admitted rates on the same road for a like product.

**Process Much Complicated.**

"The tariff sheet relied upon as the lawful published rate filed with the Interstate Commerce Commission is tariff sheet No. 24 of the Chicago & St. Louis Traffic Association, and the first thing to be noted is that this tariff sheet makes no reference by name to petroleum or the products of petroleum. On the face of that tariff sheet No. 18 no rate for petroleum or products of petroleum appears. The 18-cent rate was only arrived at by a process of circumlocution; that is to say, on the face of these tariff sheets there was found a printed line, 'governed by Illinois classification, except as noted herein'; thereby turning to a classification adopted by the Railroad and Warehouse Commission of Illinois, September 7, 1899, it was found that petroleum and its products were set down in the fifth class; and then turning back to tariff sheet No. 24, it was found that the rate set down for the fifth class was 18 cents per 100 pounds. And so out of this process of reference and cross-reference the lawful published rate was evolved by the trial court to be 18 cents, not because it so appeared on the face of the tariff sheets, but because by reference to other sheets—sheets fixing, not rates, but classifications, and that not by the Interstate Commerce Commission or the carrier, but the Illinois Railway Commission—it could be so figured out."

**Nice Questions Raised.**

The court remarks the number of nice judicial questions raised and declares that the court is not prepared to say that tariff sheet No. 24 really fixes the rate on petroleum and its products at 18 cents.

"The most we can say," the opinion reads, "is that the question is one upon which judges, after full discussion, might very reasonably disagree. The error of the trial court in taking away from the plaintiff in error its right to submit to the grand jury the whole question of whether it had knowledge of the tariff sheet from which it is said to have accepted concessions and there was an intent to violate the law—whether the rate paid was not paid in the honest belief that it was the lawful rate—is an error that rises into one of solid substance."

Taking up the question as to whether each shipment constituted a separate offense, by which interpretation of the law Judge Landis imposed the largest fine in history on the Standard Oil Company, the court has this to say:

**Gist of Offense.**

"The gist of the offense is the acceptance of a concession irrespective of whether the property involved was carloads, trainloads or pounds. Has a shipper fully and finally accepted a concession when he has done nothing more than to agree with the carrier that less than the published and filed rate shall be paid for the transportation of his property? Is it not necessary that the transaction be closed by actual payment of the lower rate? In the rebate the shipper paid in the first instance the full rate to the carrier and afterward received back a part.

"Manifestly the offense of accepting a rebate has not been committed until the shipper has taken back a part of the first money whereby his property has been transported at less than the lawful rate. Proof that he agreed to accept a return of a part of the full rate—stopping there—would not support an indictment for accepting a rebate. Such an agreement is not binding and at any time before its completion the shipper may repent and insist upon the carriers keeping the whole amount."

**Abused His Discretion.**

As to whether Judge Landis in imposing the monumental fine abused the discretion vested in the court, the court says:

"Briefly stated, the reason of the trial court for imposing this sentence was because after conviction and before sentence evidence was brought out that the capital stock of the Standard Oil Company of Indiana, the defendant before the court, was principally owned by the New Jersey Corporation, a corporation not before the court, the trial court adding:

"'Upon no evidence, however, to be found in the record and upon no information specifically referred to, is it shown that in concessions of the character for which the defendant before the court has been indicted, tried and convicted, the New Jersey corporation was not a virgin offender.'

**Hot Shot for Judge.**

"Is a sentence such as this sound? Can a court without abuse of judicial decision wipe out all the property of a defendant before the court and all the assets to which its creditors look in an effort to reach and punish a party that is not before the court, a party that is not even indicted? Can an American judge without abuse of judicial discretion condemn one who has not had his day in court? That, to our mind, is strange doctrine in Anglo-Saxon jurisprudence.

"Can it rightfully be done here on no other basis than that the judge's personal belief that the party marked by him for punishment deserves punishment? If so it is because the man happens to be the judge and above the law."

## LANDIS REFUSES TO TALK

**District Attorney Sims Admits That News Was Unexpected.**

CHICAGO, July 22.—Judge Landis, after the higher court's decision had been announced, declared he had no comment to make.

United States District Attorney Edwin Sims held a hurried conference with his assistants who had aided him in the prosecution before the District Court, after which he said:

"All I can say now is that what has happened was not expected. However, we shall make the best of it. Undoubtedly there will be an early re-trial."

John S. Miller, Alfred D. Eddy, Moritz Rosenthal and Chauncey Martyn, who conducted the active work in defense of the corporation, were very happy. "We are free to confess that the decision is gratifying to us," said Mr. Miller, "although it is nothing more than we expected."

## SHOULD GO TO HIGHEST COURT

**But Decision Prevents, Says Bonaparte—Expects New Trial.**

LENOX, Mass., July 22.—On being told today of the decision of the United States Court of Appeals in the Standard Oil case, Attorney-General Bonaparte said:

"A suit of such importance certainly ought to be submitted for final decision to the Supreme Court of the United States, but, as the Court of Appeals has decided, this cannot be done."

Asked if the case would again be tried, Mr. Bonaparte replied:

"I should be much surprised if it is not, but I really cannot discuss the matter further until I have seen the opinion."

# FRENCH HEEL HITS MASHER

## WOMAN'S VIGOROUS KICK DISLOCATES HIS RIB.

**Persistent Gorman Morgan's Advance Meets Rebuff From Mrs. Hennessy's High Shoes.**

CHICAGO, July 22.—(Special.)—Mrs. Margaret Hennessy, 22 years old and pretty, is the inventor of a masher-exterminator that bids fair to become popular among women generally. Mrs. Hennessy dislocated one of Gorman Morgan's ribs, when he tried to flirt with her, by kicking him with a French heel four inches high. Judge Scovel fined Morgan $100, despite his protestation that the woman had stabbed him with some blunt instrument.

Officer Williams crossed the street when he saw something happening. He says there was a momentary flash of filmy draperies, a howl of pain from Morgan, and the French heel had done its deadly work. "I could not get rid of the man," said Mrs. Hennessy. "He kept right on talking after I had told him to go away, and, at last, when he seemed about to touch me, I kicked him. Then I slapped his face."

# HUSBAND COSTS MILLION

**Lena Head, Who Eloped With Coachman Loses Fortune.**

NEW YORK, July 22.—Corporation Counsel Pendleton has received the legacy of $187,748 given to the city by the will of Betsey Head. She died in June last year and left one-half her property to various charitable institutions and the other half to the city to be devoted to the improvement of recreation grounds in the metropolis. Mrs. Head was for many years the housekeeper for G. C. Taylor, of Great River, who died last September. Taylor, a son of the late Moses Taylor, lived as a recluse, and at the time of his death was reputed to be worth about $20,000,000. About 20 years before he died Mr. Taylor went to Europe and returned with Mrs. Head and her infant daughter, Who Mrs. Head was, was never revealed. She was installed as his housekeeper and secretary and was treated by him as his social equal. She took charge of Mr. Taylor's business affairs and at the time of her death was worth about $400,000. Lena, the daughter, about six years before her mother's death, eloped with John M. Bodley, the family coachman. Bodley afterwards got a job as gardener on the estate of W. K. Vanderbilt, but his young wife never saw her mother again. When Mrs. Head's will was opened after her death it was found that she had left only $5 to her daughter. There was talk of a contest, but the threat was never carried out. In his will Mr. Taylor bequeathed $500,000 to Lena, but this was revoked after her elopement. The Taylor estate was distributed among relatives and charitable institutions.



# WAR AGAINST UNION

## New Version of Mexican Revolt Is Advanced.

## IN MINERS' CONVENTION

**Federation Secedes From Industrial Workers Because of Factional Split—Advises Union to Establish Co-operative Stores.**

DENVER, July 22.—A resolution was introduced in the Western Federation of Miners convention today protesting against the arrest and detention of four Mexicans in California at the request of the Mexican government, charged with inciting riot and revolution in Mexico. The resolutions declare the men were not acting against the government, but were merely trying to better labor conditions. The resolution was referred to a committee.

The federation today officially repudiated the Industrial Workers of the World by adopting an amendment to its constitution striking out the words "mining department of the Industrial Workers of the World" wherever they appear and inserting in lieu thereof "Western Federation of Miners." Yesterday the organization went on record as favoring industrial unionism and, though today's action might seem to be opposed to that policy, in reality it is not so, as many members of the convention declared that the Industrial Workers of the World had become so disorganized and filled with factions that it no longer represented industrial unionism.

After considerable discussion, the convention adopted a resolution advising the various local unions to make an especial study of the Rochdale co-operative system of stores and establish them in mining camps wherever possible.

## DO WORK FOR GOVERNMENT

**New Move in San Francisco Coal-handlers' Strike.**

SAN FRANCISCO, July 22.—The lockout of the Union coal-shovelers on the waterfront took a new turn today, when the Pacific Stevedoring Company employed a number of nonunion men to discharge several British colliers now at the Government coaling station at California City, on the northern side of the bay. The men were taken to the station in launches and will be put to work at once unloading the coal into bunkers. The barks St. Catherine and Hawaiian Isles, which are to be used as store ships for the Navy, are at the station and a portion of the coal brought there is to be placed in them.

For some days nonunion men have been engaged on the Western Fuel Company's vessels but the taking of men to the coaling station came as a surprise to the union laborers, who have refused to accept a reduction in wages from $6 to $5 a day.

Olaf Hansen, a nonunion man, employed on Steuart-street wharf, complained to the police today that he had been attacked by strike sympathizers and swore to a complaint charging "John Doe" with assault.

## SHOPMEN ARE DISSATISFIED

**Canadian Pacific Employes May Reject Conciliation Board's Findings.**

WINNIPEG, July 22.—The shopmen of the Canadian Pacific in Western Canada are dissatisfied with the recent findings of the conciliation board that investigated the matters in dispute between the company and the men, and today, T. McVety, head of the mechanics in the shops in Western Canada, went to Chicago to consult with officials of the American Federation of Labor with a view to securing assistance in the event of a struggle. Ten thousand men are affected.

# WANT SHIPS THAT HAMMER

(Continued From First Page.)

harbor firing salutes as the Mayflower steamed away.

**Lay Up Big Liners in Winter.**

NEW YORK, July 22.—The Cunard liner Mauretania, which will sail today for Liverpool, will still be under three propellers. It has been decided not to use her port forward turbine until she has been in drydock in November. After November 1 the company will discontinue the Wednesday sailings from New York and Liverpool until next Spring, and run only large Saturday service. Both the Mauretania and the Lusitania will be taken off for two months for a thorough overhauling, so that they will be ready to go into commission again in January.

## ROOSEVELT IS IN COLLISION

**President's Yacht Runs Down and Sinks Schooner.**

NEWPORT, R. I., July 22. — The President's yacht Mayflower with the President on board, in a dense fog last night, ran into and sank the lumber-laden schooner Menawa. All on board the schooner, consisting of the captain and five men, were taken on board the Mayflower. No one was injured. The President's yacht had her bowsprit and one anchor carried away, but the jar of the collision was so slight that none of the President's party knew of the accident until they arose this morning.

The Menawa belonged to C. G. Pendleton, of Islesboro, Me. The collision occurred at about 1:15 A. M., when the Mayflower was between New London and New Haven.

After President Roosevelt had dressed, the crew of the Menawa was presented to the Chief Magistrate in the cabin. The President expressed great concern regarding the accident, the loss of the vessel and gratitude at the rescue without loss of life.

The Menawa was in command of Captain Charles Hutchinson. The following dispatch was sent by direction of the president to William Loeb, his private secretary:

President Roosevelt arranged for advancement of money to captain and crew of schooner, enough to take crew to their homes and the captain to his agent in New York. Captain Snowden at once communicated with the Navy Department requesting a full investigation.

## BUREAU SYSTEM IS DOOMED

**Reuterdahl Thinks Roosevelt Intends to Reform Navy.**

NEW YORK, July 22.—Henry Reuterdahl, the marine artist who has been the foremost critic of the navy bureau system, says he is convinced beyond a doubt that President Roosevelt's visit to the naval college today means the end of the entire bureau system. Mr. Reuterdahl would give no intimation of what President Roosevelt said to him on his recent visit to Oyster Bay which made him so firmly convinced of the outcome of the President's visit.

"The Newport conference means that the navy is passing through a transition just as important as the transition from sail to steam," said Mr. Reuterdahl. "The success or failure of our new navy rests upon gunnery and the men who go to sea, who work the guns and the ships. For years the men in control of the policy of battleship construction have been officers schooled in the days of the sailing ship who learned modern man-of-war tactics in the old tin pot squadron. They have had little or no experience on board the present type of modern ships. It is natural that when reaching high rank or becoming bureau chiefs they are not familiar with many of the military requirements of modern battleships."

**Postoffices on Warships.**

WASHINGTON, July 22. — Arrangements are being perfected for the installation of a postoffice on every ship in the United States Navy, authorization for this action having been made at the last session of Congress. Under the provisions of the enabling act enlisted men on each ship may be appointed as Postmaster and Assistant Postmaster, their regular pay to be increased $500 and $300 a year, respectively. They will be required to give bond of $100.

## ASKED TO VISIT JAPAN

**Coast Chambers of Commerce Are Invited to Exposition.**

SAN FRANCISCO, July 22.—The local Chamber of Commerce has received a joint invitation from the Chambers of Commerce of the five Japanese cities, Tokio, Kyoto, Osaka, Yokohama and Kobe, asking that representatives be sent to visit those places. The invitation was cabled to Japanese Consul-General Chose Koike, of this city, with the request that it be extended to San Francisco, Portland and Seattle. At its quarterly meeting yesterday the local Chamber decided to accept the invitation and a party will leave for Japan on September 25, arriving there in time to witness the arrival of the Atlantic battleship fleet. It will also witness the celebration in Japan of the Emperor's birthday, November 3.

# GIRL IS BEHEADED

## Daughter of Freiberg's Mayor Executed for Killing Lover.

## GUILTY OF SHOCKING CRIME

**German Maiden of Only 18 Years Coolly Planned to Make It Appear That Her Fiance Was Suicide.**

FREIBERG, Saxony, July 22.—Grete Beter, the 18-year-old daughter of the Mayor of Freiberg, was beheaded last night sometime btween dark and dawn, in punishment for the murder of the man to whom she was engaged to be married. The executioner reached the city last night. He carried a box containg the ax with which he did his work and brought with him also a suit of evening clothes. The wearing of this garb is an official requirement of the sombre occasion. The preparations for the execution at the prison had been completed and the man did his work quietly and privately and departed as quietly as he came. The King of Saxony had refused a pardon.

The personality of this young girl and her thoughtfully arranged murder of her fiance, a civil engineer named Preffler attracted international attention. The social position of her family was very good and she became engaged to Herr Preffler, a rich young professional man. At her trial she admitted with the utmost simplicity that she visited her fiance's house one evening, gave him cyanide of potassium in a drink she mixed for him and then, to make sure of his death, shot him in the mouth with his own revolver.

She then dropped the weapon at the dead man's side, placed a forged will in her own favor on his desk, together with a note of good-bye, also forged, saying that he feared to lose her love through the revelators of a dishonorable liason.

In addition to these papers, the girl also left behind a package of forged letters purporting to come from a woman in Italy, accusing Preffler of deserting her and threatening to tell Grete everything.

## LAND BOARD FACES CHARGE

**Montana Commission Accused of Fraud—Hearing Under Way.**

KALISPELL, Mont., July 22.—(Special.)—Charges that the State Land Board sold timber lands in Flathead County at less than market value, thus defrauding the state school fund out of a quarter million dollars, are being heard in this city.

The State Land Commission convened here today, Governor Norris sitting as a court to hear the charges. The other members of the Board are Secretary of State Yoder, Attorney-General Galen and State Superintendent Harmon. The hearing is attracting wide attention.

Citizens of the county, where the charges were brought, have asked to have action commenced to compel return of the land to the state. When the charges were made, the Board made indignant denial and demanded an investigation.

Governor Norris was not a member of the Board when the sales were made. Ex-Governor Toole was in office then and is here to meet the charges with other members of the Board. The session today was devoted to reading the charges and preparing for the investigation. Only three witnesses were examined.

Governor Norris says the investigation will be searching and will continue until all facts are developed.

Pekin is building a large factory to make window glass, which is largely used in China and forms one of its principal imports from foreign countries. The capital is Chinese, the machinery British, and Germans will manage the factory. The glass works at Posham, province of Shantung, are a success.