

PETITION FOR REHEARING OIL FILED TODAY

Chicago, Aug. 21.—The government's petition for a re-hearing of the United States court of appeals of the case against the Standard Oil Company, of Indiana, was filed today, and represents, it is authoritatively stated, the administration's attempt to save the Elkins act and the interstate commerce law from becoming futile.

The filing of the petition was marked by the appearance of Attorney-General Bonaparte in the case as well as of Frank B. Kellogg, who is special assistant to the attorney-general. The petition is also signed by Edwin W. Sims, United States district attorney at Chicago, and Special Assistant James H. Wilkerson, both of whom presented the government's side in the original hearing before Judge Landis, who administered the famous fine of \$29,240,000 against the defendants.

Synopsis of Petition The government presents its petition in accordance with the rule of the court. The indictment in the case was for a violation of the Elkins Act of February 19th, 1903, making it a crime to accept a concession whereby any property is transported in interstate commerce at less than the published and filed rate.

It was proved at the trial that the Chicago & Alton Railway Company transported to East St. Louis, Illinois, and St. Louis, Missouri, 1492 carloads of oil.

In all dealings between shipper and carrier, the Standard Oil Company acted as a distinct business, and handled as a distinct piece of business. The published and filed rates of this business were eighteen cents per one hundred pounds to East St. Louis and sixteen and one-half cents to St. Louis.

The government claims that on account of the size of the fine alone, there is no necessity for a retrial of the case; that the circuit court of appeals may, itself, name the fine which should be imposed and calls upon the court to do so in case it adheres to the view that Judge Landis abused his discretion in imposing so large a fine.

Case Summed Up The petition concludes: "It is therefore respectfully submitted: "That the opinion of this court is based upon a misconception of the record with reference to the rulings of the trial judge as to the admission of evidence tending to show want of knowledge, and with reference to this subject, and the theory on which the case was tried; that the evidence of Bogardus which it is claimed showed

that the government met this testimony by a great array of circumstances which tended to disprove it and the jury found in favor of the government.

The trial judge ruled that ignorance on the part of a shipper of what the lawful rate was could be interposed as a defense, but that it would not constitute a defense if it appeared that the ignorance was the result of neglect on the part of the shipper or of wilful failure on the part of the shipper to resort to the sources of information which were available.

The government contends that this is the correct construction of the statute on this subject. The court of appeals lays down the rule that it is necessary for the government to show beyond a reasonable doubt as a part of its case that the shipper actually knew what the lawful published and filed rate was.

The government contends that this is an impossible rule; that it is contrary to the purpose of the Elkins act; that it is contrary to the general rule applicable in criminal cases; that put into effect it would make of the interstate commerce act "a mere will of the wisp of legislation, a phantom of substance."

The government contends that in the petition the court of appeals has misstated not only the record as to what evidence was admitted, but has also misstated the construction which the trial judge placed upon the statute, and that for this reason there should be a thorough re-argument upon the only proposition as to which the ruling of the trial judge up to the verdict of guilty, is reversed.

The government contends that an examination of the record will show that the court did not rule on the testimony tending to show want of knowledge, but that on the contrary all proper evidence tending to show that the defendant was ignorant of the facts with reference to the legal rate was admitted for the consideration of the jury, and that there was ample evidence to show that the defendant did know what the legal rate was.

In other words, the government contends vigorously and with refer-

ences to the record that the reversal of the case, so far as the ruling of the trial judge with reference to ignorance on the part of the shipper as a defense is concerned, is based upon a misstatement by the court of the record in the case as to the admission of evidence and how he really charged the jury.

The government strenuously contends that the effect of the construction of the statute announced by the court of appeals is nullify the interstate commerce act so far as shippers are concerned; to make its enforcement impossible, and to plunge the country again into the deplorable condition of railroad discriminations and favoritism which existed prior to its passage.

The government contends that the court of appeals has no right to place this construction upon the statute in the face of the fact that the very question involved in this case has been expressly left open by the Supreme court in the Armour Packing Company case, recently decided by that court. The precise question involved in this case was stated by the Supreme court in that case. It was not decided by the supreme court, however, because it was involved, but was left open.

The government insists that before laying down this harsh rule and practically nullifying the law, the court of appeals should certify in accordance with the statute this question to the supreme court for its decision; that no court short of the supreme court should undertake practically to wipe out the interstate commerce act from the statutes.

It appears from the record in the circuit court of appeals that the net profit of the business of the Standard Oil Company of Indiana, the corporation that Judge Landis fined, for the years during which the violations of the law for which it was convicted were committed, and including the year in which it was indicted, amounted to \$33,683,208.80.

On this point the petition states: "We respectfully call the attention of the court to the statement of the Standard Oil Company of Indiana on file in this case, referred to by the court in its opinion and treated as proper for consideration in determining whether or not the penalty was excessive."

That statement shows, with reference to the assets and liabilities and profits of the Standard Oil Company of Indiana, the following:

Table with 4 columns: Year, Gross Assets, Liabilities, Profits. Rows for years 1900-1906.

That punishment, therefore, is no more severe than that inflicted upon a letter carrier who steals a letter and is sent to the penitentiary for three years, thereby depriving him of his earning capacity for that time. It is not nearly so severe as the minimum penalty of five years imposed on a banker who misapplies the funds of his bank.

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All Humors LIVE BOOSTER MEETING HELD IN THIS CITY

Are impure matters which the skin, liver, kidneys and other organs cannot take care of without help. Pimples, boils, eczema and other eruptions, loss of appetite, that tired feeling, bilious turns, fits of indigestion, dull headaches and many other troubles are due to them. They are removed by

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tion to the effect that a fine is excessive when it exceeds in amount the ability of the defendant to pay is an innovation in criminal law and if generally applied would prevent the practical enforcement of most criminal statutes;

"That in short the opinion as it stands erroneously states material portions of the record; does injustice to the trial judge; leaves doubtful in a new trial the rule of law to be applied, both as to the knowledge on the part of the shipper, and as to the number of offenses; appears to be in conflict with the language of the supreme court, and with the previous language of the presiding judge of this court, and with the great weight of legal authority; and, if permitted to remain unmodified, will tend to encourage disobedience to law, to impede the enforcement of salutary statutes and largely to defeat their purpose."

UPPER VALLEY LEAGUE PASSES INTO HISTORY The upper Willamette valley baseball league is a thing of the past, the teams having agreed to disband. Halsey could not come to Eugene tomorrow, and the break followed. Springfield finished in first place, Colby second, Eugene third and Halsey fourth.

Taft Replies to Bryan's Late Speech Hot Springs, Va., Aug. 21.—"The people have ruled through the Republican party."

This is Taft's answer to Bryan's challenge, "Shall the people rule?" and the answer was made in an address of the Republican presidential candidate made today before a gathering of several thousand Virginia Republicans who came to the mountains to see and hear him, and to celebrate Virginia Day. To make this point perfectly clear Taft referred to McKinley's first election as "one of the most intelligent and effective expressions of popular will ever manifested in the world, and the maintenance of the gold standard and protective tariff by his administration was the correct interpretation of the people's will."

"This was shown to be so," he continued, "by the even greater majority in 1904 when Roosevelt was elected and we may submit to the country whether his administration has not expressed the will of the people."

"It is true," said Judge Taft, "that additional legislation is needed to perfect the machinery for enforcing the principles laid down by Mr. Roosevelt and declared in the remedial statutes already passed."

"The present congress," he added, "has re-enacted the employers' liability act; has passed the government employes compensation act; has directed investigations into mine districts and has passed a model child labor bill. It has not amended the interstate commerce law so as to prevent over issue of stocks and bonds on interstate railroads, and it has not amended the anti-trust law as suggested by Mr. Roosevelt."

Great care, he said, would be required in the enactment of additional legislation and the fact that the Democratic party has "high but little" experience in the responsibilities of power and but little training in actual legislation makes the party and its distinguished leader utterly oblivious of the necessity for care and caution in the enactment of statutes which are to accomplish changes in our social and business relations.

Mr. Taft reviewed the record of the Democratic party from the time of the last Democratic administration in 1903.

"During this administration," he said, "it repealed the McKinley tariff bill passed in 1890 and enacted the Gorman-Wilson tariff bill of 1893. With the prospect of a Democratic tariff for revenue and under the operation of the Gorman-Wilson bill subsequently passed, a period of industrial depression set in which continued during the next presidential campaign of 1896."

"As soon as the Republican party came into power in 1897," he said, "it repealed the Gorman-Wilson tariff bill and with the assurance of an honest monetary standard confidence was restored and a period of business expansion and prosperity followed to an extent never before known in the history of the world."

Preceding Taft Congressman Sloop said in answer to the same question that in Virginia under the existing laws, sixty per cent of the white and ninety per cent of the colored population were disfranchised from voting, having no voice in the government of the state and nation, and inquired, referring to Bryan, "Can he call this the rule of the people?"

Taft was surrounded by thousands of people during his address, which was delivered at the ball park.

The bear which has been kept at the Hotel Gross for some time and which was captured near Cottage Grove, was sold to the Barnum & Bailey circus at Albany, and will be in the management of the circus when it shows in Eugene.

LIVE BOOSTER MEETING HELD IN THIS CITY

The Western Oregon boosting campaign got a big lift at the Commercial Club reception tendered the visitors last night, and they were all impressed with the progressive spirit and hospitality for new ideas for which Eugene is becoming famous. There were over a hundred business men and members of the club present and President C. S. Williams presided with great tact and appreciation of the merits of the occasion. He introduced Colonel E. Hofer, president of the Willamette Valley Development League, who stated that he was out as chaperone for a party of public-spirited men who were giving up two weeks of their time for the promotion of Western Oregon interests along the larger lines of work which his organization had taken up. This included boosting for a great state highway policy, the free locks and canal at Oregon City, a deep sea harbor on the west coast, and cutting up of large land holdings into small homes and fruit tracts to fill up the Willamette valley with people at a faster rate than was ever before attempted.

Complimented Eugene Colonel Hofer handed the Eugene boosters a great many compliments on their enterprise, saying that this city was the example other Oregon towns were seeking to imitate. Of course he was enthusiastically cheered. Colonel Hofer's remarks were of an introductory character, outlining the mission of the party, and he was followed by Judge Scott, Mayor of Salem, who talked on good road building, Judge Scott having been chosen at the recent state convention in Portland to head the movement for better roads in Oregon for the next year. In his address he advocated building a state road from the north line of Oregon to the south line with existing labor, establishing quarries along the route. He asserted that such a road will bring thousands of automobile tourists through the country and distribute millions of dollars in the state annually. He touched upon the need of good roads and discussed practical methods. He stated that later in the fall a good road convention would be held in Eugene.

West on Land Grants Oswald West, of the Oregon state railroad commission, followed Judge Scott and discussed land grants in part as follows:

About one-eighth of the landed area of this state has been given to corporations to aid in the construction of rail and wagon roads. The grants were as follows: Oregon & California and Oregon Central railroad, 4,500,000 acres; Oregon Central Military Road Company, 800,000 acres; Corvallis & Yaquina Bay Navigation Company, 30,000 acres; Willamette Valley and Cascade Mountain Wagon Road Company, 850,000 acres; Coos Bay Wagon Road Company, 115,000 acres; The Dalles Military Road Company, 685,000 acres. Total, 7,000,000 acres.

These figures are based upon the mileage of the several roads, but are not exact, as some of the lands were lost to the companies on account of overlaps, adverse decisions, etc.

These grants have a total area of 11,000 square miles, and would make a tract of land 100 miles square which would be as large or larger than any of the New England states, or larger than Maryland and Delaware combined. It is equal to the combined area of Clatsop, Columbia, Tillamook, Washington, Multnomah, Yamhill, Polk, Marion, Linn, Benton and Lincoln counties, or in other words as large as all that part of Western Oregon lying north of Lane county and west to the summit of the Cascade mountains.

Perhaps one-half of the acreage included in these grants has been sold, but the balance is still intact. The owners have never encouraged immigration with a view of placing settlers upon these lands, but on the contrary have withheld the lands from sale and not only shifted the burden of development of the country on to the shoulders of the small settlers but have for years systematically dodged the payment of their share of taxes.

The largest of these grants is the Oregon & California Railroad grant, which parallels the S. P. main line and extends from Portland to the California coast. This grant is controlled by Harriman interests; let us see what they have done in the way of dodging taxes.

The O. & C. R. Co. postponed the procuring of patents in order to escape taxation, and during the 25 years following the date of the grant but a few acres had been listed for taxation. During this time the company did not pay taxes to exceed \$75,000. Since 1891 the assessors have been gradually getting these lands on their tax roll, and now practically all of the mare listed. The assessed valuation placed on them in past years was very low and the total amount of taxes paid on this great land grant down to and including 1907 does not exceed \$1,000,000. In other words, the total taxes paid by the railroad company during the past 40 years only amounts to about 40 cents an acre.

Mr. West's Remedy The way to break up these large holdings is by taxation. The constitution should be amended so as to permit the levying of a graduated land tax on unimproved values, as they do in New Zealand. In New Zealand every land owner, large and small, pays an ordinary land tax of about four mills upon unimproved values, butholdings, the value of which amounts to \$25,000, are taxed one-fourth of a mill, and this is gradually increased until it reaches 12 mills, the rate on an estimated value of \$1,000,000 and over. Non-resident owners pay an additional tax of 50 per cent of the amount of the graduated tax. In other words, the large land owner pays four or

five times as much per acre in taxes as the small land owner does. An acre of wild land is assessed at just the same amount as an adjoining acre of highly improved land. The result is that it becomes unprofitable to hold these large tracts of land from settlers, who would build homes and improve the land, and take their places in the great army of home-builders that is making this state the garden spot of the earth.

Next Water Legislation John H. Lewis, state engineer, is discussing "Need of Legislation in Oregon upon the Subject of Waters" said this need is more fully realized by prospective investors in works for utilization of water than by the present water users or those interested in the state's development. He said if the unappropriated waters belong to the state, there should be means provided for determining the amount that may be used for the benefit of an investor. Where diversion is inexpensive, little attention is paid to the legal right of diversion, but very few of this kind remain undeveloped. It is provided by legislation for an abstract system and police protection for vested rights in water, capital will hesitate to invest in expensive undertakings.

Delegates Named At the close of the meeting the chairman asked for volunteers to join the delegation to Coos Bay. None responded, so he appointed J. H. Harlow, G. W. Griffin, Allan Eaton, and Chas. H. Fisher.

Resolutions. The following resolutions were presented and adopted: "Resolved, by the Commercial Club and citizens of Eugene that we are heartily in sympathy with the state good roads movement, as outlined by Judge John H. Scott in his address. We pledge our support in the campaign of education that has begun to secure co-operation by the state and counties in the construction of permanent highways as a general policy for the state of Oregon."

Resolved, That we favor a more just and equitable system of water laws to make water rights secure, to encourage investments in irrigation projects, and the development of agricultural resources of this state.

Vote of Thanks. On motion of Mr. Svarverud a vote of thanks was tendered the visitors for their interest in the advancement of Oregon.

During the evening the streets were illuminated with colored electric lights.

Boosters Had Trout Breakfast A very pleasant incident of the boosters' visit to Eugene was a fine trout breakfast given at the Smeede Hotel by Colonel Hofer to the officers of the Commercial Club, the reception committee and the newspaper men of Eugene. The trout were caught by Marshall Simpson, an uncle of Sam Simpson, the poet laureate of Oregon, who wrote the immortal poem, "Beautiful Willamette," and there was one trout for each guest. They were dressed up in the finest style of culinary art for which the Smeede is famous.

The party was afterward taken for an auto ride to see the sights of the University city.

INSANITY DEFENSE FOR HAINS OUTLINED New York, Aug. 22.—John F. McIntyre, counsel for Peter C. Hains, who shot Ann, today stated that the defense would be based upon the confession of Mrs. Hains, alleged to have been made to her husband. The document it is claimed so affected Hain's mind that he was not responsible for his subsequent actions.

RYAN'S TARIFF SPEECH BEFORE GREAT CROWD AT DES MOINES Des Moines, Ia., Aug. 22.—Comparing the attitude of the two dominant parties on the tariff question, William J. Bryan, the Democratic candidate for the presidency, at the ball park in this city last night, before a vast audience, fired the first gun of the campaign. He attacked the Republican tariff revision and asked if the Democratic party was not justified when it included in its platform the declaration that "the people cannot safely intrust the execution of this important work to a party which is so deeply obligated to the highly protected interests as the Republican party."

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G. W. Taylor has returned from Portland. His mother, Mrs. A. Benson, was recently assaulted in her home by a drunken brute and terribly beaten. She is recovering slowly. Mr. Taylor also has the contracts for digging the wells at Dallas for the Willamette Valley Company. The wells will be five hundred feet deep and will not be completed until sometime in the autumn.

The grandmothers of the old Dutch Dunkard families in Western Pennsylvania have made and used "Hickory Bark Cough Remedy" and raised their families on it for a hundred years. Now you can buy it of your dealers. As for it and use it, because it's pure; because it will stop your cough; because it is the best cough remedy made today. Try it. For sale by Red Cross Drug Company and all dealers everywhere.

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