

P I A N O S

OUR CARLOAD has arrived direct from the Factory

Buying in such large quantities means many dollars to our customers.

Call and see our magnificent display.

DON'T BUY until you see us. (This means money to you.)



Stevens & Hulin Piano House

Commercial Club Block
Opposite Methodist Church

Eugene

Off The List

- Residence, 5 rooms, well 230 feet deep, new house, 3 lots, good furniture, on car line, all for... \$2100
- Residence, 9 rooms, modern, plastered, lot 84x172, price... \$3150
- Fourth lot west of Geary school... \$375 cash
- Ten lots on College Hill, and on the north side of the hill... \$1500
- 15 acres, house and barn, 4 blocks from car line... \$2600
- 96 acres, 3 miles from court house, fair house and barn, per acre... \$80

The Real Estate Exchange

Suite 3 and 4, Colman, Bldg

Plumbing

Furnish your new home properly. Don't slight the gas fixtures. We do all kinds of reliable plumbing and tinning work. Call and let us estimate on your work

Aya & Heitzman
34 West 8th St.
Phone black 1117

STANDARD OIL CO. FILES ANSWER

(Continued from Page One)

as is expressly shown in the opinion. Counsel, with solemnity, reiterates what no one disputes.

"Then say it an undisputed thing in such a solemn way."

For re-arguing, with wealth of authority, settled principles which no one controverts, counsel do not have the motives that they have shown that these principles have been violated or disregarded by carrier or shipper in this case. The record does not sustain, but disproves any such contention. There is nothing of inequality of rates as between different shippers, or of favoritism or preference to this defendant or discrimination in its favor in the matter of rates, either averred or proved in this record. Let that fact be kept in mind.

If this prosecution had involved any charge or issue of that kind, with respect to the 6-cent rate, or the shipments by defendant at that rate which are here in question, then before counsel could base any argument upon it, some clear proof on the part of the government must have been presented to sustain its side of that issue. For instance, if it was the fact that the 6-cent rate charged defendant was not open to all, if while giving defendant the benefit of the 6-cent commodity tariff in question the carrier refused other shippers the same rate and terms, or charged them the 18-cent or a higher rate, we should look for the government to present some competent proof of that fact, or attempt so to do. But nothing of the kind was done. The contrary is the fact; the defendant is prosecuted for receiving the same rate as was open to other shippers under substantially similar circumstances and conditions, and because it did not pay a rate three times as much as other shippers in the Chicago switching would have been compelled to pay.

Again, if the issue of discrimination or favoritism to defendant, or inequality of rates as between defendant and other shippers over the Alton, were an issue in the case, it is plain that any evidence offered on behalf of defendant which tended to disprove that contention and to show that the 6-cent rate given to defendant was open to all, was admissible, and could not properly be objected to by the government or excluded by the court. But such evidence presented by the defendant to the court and sought to have admitted to the jury was objected to by the government and excluded, and the door to such proof was kept tightly closed from the jury. For instance, Hollands, the Alton Company's rate quotation clerk, testified that the Alton issued and had in force in 1892 388 commodity tariffs of the same kind and character as the 6-cent commodity tariffs under which the defendant's transportation in question took place, and that in 1904 there were 168 such commodity tariffs, and in 1905 there were 427, and that rates

were quoted under these tariffs (Record, 148). Defendant offered those tariffs in evidence to the jury so that the jury might see how other shippers were treated; but objection of counsel for the government to them was sustained and they were excluded. Defendant then sought to have admitted to the jury further testimony of Hollands (which was given to the court on his voir dire but out of the hearing of the jury), to the effect that during the period in question he regarded this rate of 6 cents as the lawful rate from Whiting to East St. Louis, and so would have quoted the rate to any one applying. It is clear that the Alton's traffic department regarded the filing with the Interstate commerce commission of the tariff which in terms applied Chicago-East St. Louis rates to Whiting-East St. Louis shipments as a legal effect of the filing of the rates so applied; and such offered testimony was that the Alton, so thinking, had numbers of tariffs naming rates from Chicago, which were not filed with the Interstate commerce commission, but which under these filed application tariffs were applied from Whiting, Indiana; and as Hollands informed the court they "did it on every occasion" (Record, 462-663). And defendant sought by other testimony of Hollands to show that the Alton so dealt with these tariffs in question (Record, 367-38). But all this evidence was objected to by the government and excluded from the jury by the court. So, again, defendant sought to prove by the testimony of Wann (who was the Alton's general freight agent during all the period of 2 1/2 years in question except the last three months thereof, and was a witness for the government), that the rate on petroleum and its products from Whiting to East St. Louis during the period and over the route in question, was not 18 cents. But this was also objected to by the government and excluded by the trial court (Record 257-58).

Now obviously, this evidence, if admitted, would have tended to disprove any contention that the Alton practiced any discrimination or inequality as between the shipping public, or showed any favoritism to defendant over others, in applying the 6-cent tariff and not the alleged 18-cent rate to the defendant's shipments in question—because if the Alton rate department regarded the 6-cent rate, and not an 18-cent rate, as the lawful rate, any shipper who might apply would have received the same 6-cent rate which was given to this defendant.

Then follows that part of Judge Landis' opinion quoted in the petitioner's brief.

Following, on page 1059 of the record, the trial court again said:

"The nominal defendant is the Standard Oil Company of Indiana, a million-dollar corporation. The Standard Oil Company of New Jersey, whose capital is one hundred million dollars, is the real defendant. This is so for the reason that if a body of men organize a large corporation under the laws of one state for the purpose of business of carrying on business throughout the United States, and for the accomplishment of that purpose absorb the

stock of other corporations, such corporations so absorbed have themselves forward but a nominal existence. They cannot initiate or execute any independent business policy, their elimination in this respect being a prime consideration for their absorption. So when after this process has taken place a crime is committed in the name of such smaller corporation, in fixing punishment the law will consider that the larger corporation is the real offender. And where the only possible motive of the crime is the enhancement of dividends, and the only punishment authorized is a fine, great caution must be exercised by the court lest the fixing of a small amount encourage the defendant to future violations by estimating the penalty he in the nature of a license. The defendant argues that to hold it for 1462 offenses would be a violation of the constitutional prohibition against the imposition of excessive fines, and it is urged that congress could never have intended to confer upon the court such power. It is the view of the court that for the law to take from one of its corporate creatures as a penalty for the commission of a dividend producing crime less than one-third of its net revenue accrued during the period of violation falls far short of the imposition of an excessive fine, and surely to do this would not be the exercise of as much real power as is employed when a sentence is imposed taking from a human being one day of his liberty. In this connection it may be observed that the figures exhibiting the net earnings of the Standard Oil Company of New Jersey during the period covered by this indictment are exceedingly instructive because of the peculiarly intimate relation between the character of the crime and the revenues of the offender."

It is readily seen, therefore, that the criticism of the extract taken from this court's opinion is in the highest degree hypercritical."

Properly, the aggravating circumstances or matter which may be looked into should be in some way connected with, or the immediate consequence of, the offense for which the defendant is on trial. 41 Bishop, Criminal Law, Section 918, and notes. The trial court observed no such limitation.

Counsel can find no authority to support that which the trial court did and this court condemns in fixing their unheard-of fine.

The provision of the bill of rights in the eighth amendment to the federal constitution forbidding the imposition of excessive fines enacts a cherished principle of the Magna Charta, which is the foundation of American and Anglo-Saxon laws and jurisprudence, and which required that fines imposed for faults or crimes should be "after the manner of the fault," or "according to the heinousness of it," and forbade fines so large as to deprive a defendant of that which was necessary to his vocation or livelihood.

BAD ACCIDENT AT STONE QUARRY

BIG ROCK FALLS UPON HARRY CLARK, CRUSHING HIS LEG—TAKEN TO EUGENE HOSPITAL

Harry Clark, an employe of the Warren Construction Company at the rock quarry at the west end of Skinner's Butte, was severely injured while at work at the quarry just before noon. He was prying at one of the perpendicular columns of rock when suddenly the column was loosened and fell with a crash, catching Clark before he had time to get out of the way. The big boulder crushed his right leg near the hip, and for a while it was thought that the limb would have to be amputated, but when he was examined at the Eugene hospital a few minutes later it was found that amputation was not necessary. The leg, however, was terribly mangled and it will be a long time before the man will be able to work again.

PLUCKY JOE GANS WILL FIGHT NO MORE, HE SAYS

Colma Arena, San Francisco, Sept. 9.—Battling Nelson clinched his claim to the lightweight championship by defeating Joe Gans for the second time at Colma Arena this afternoon. The fight ended in the twenty-first round, when Gans, beaten down by a succession of blows from his sturdy conqueror, failed to get upon his feet at the count of ten. The veteran colored fighter was severely punished, but the champion, too, has the marks of battle.

When Gans was seen in his dressing room his face presented a terrible picture. His right eye was closed, the left partially so; his lips and nose were badly lacerated, and his face puffed out like an inflated balloon. He mumbled out the following statement:

One Fight Too Many
"I made one fight too many, Nelson



is a tough boy and beat me fairly. I will never fight again. I will return to Baltimore immediately and attend to my hotel business there. This is no Patti farewell, but in dead earnest."

Nelson appeared to be as strong at the finish as at the beginning of the fight. One of his teeth was knocked out in the fourteenth round and blood flowed freely as a result. The sight of the blood spouting from Gans' mouth caused short-ender to mount their seats and shout encouragingly to the fast-dying colored fighter. He responded gamely and in the following round made what was the most furious round of the fight. The men weighed in stripped at 133 pounds. Betting was even but Gans would not last 29 rounds, a 1 was 10 to 3 in favor of Nelson on the general result.

CASITORIA. The Kind You Want Always. Clear the Sigmars. *Chas. H. Fletcher*

EUGENE HOSPITAL

Medical and Surgical STAFF
W. Kuykendall, M. D.
W. O. Prouser, M. D.
P. J. Bartle, M. D.
B. E. Sciele, M. D.
D. A. Paine, M. D.
Geo. O'B. DeBar, M. D.
L. E. McDougal, M. D.

For the care and treatment of Medical and Surgical Cases. Modern operating room and equipment. Appliances for X ray work. Sputum and blood examinations. Full corps of trained nurses. Rates on application.

..Training School for Nurses..
Regular course of lectures by the faculty and practical training in the hospital. The medical and surgical staff of the hospital constitutes the faculty. For rates or information address W. KUYKENDALL, M.D., Supt.

...to
...tried the services
...by the Merchants
...of Eugene.
...come in and talk over
...matters with us.
...YOU should become
...partner with us—and
...the benefits of keeping
...bank account here.

MERCHANTS BANK
EUGENE, OREGON

TOTAL - \$65,000.00

WEN & KOMPP
...AGE & BOWN
...Feed and
...Stables
...Eugene, Or.

ceries
...always find
...brands of
...Cereals
...Green Vegetables
...and Feed
...our own delivery

ce Bros.
...East 9th St.