# What Judge Landis Said When He Imposed the Big Fine

When he imposed the fine of $29,240,000 against the oil trust Judge Kenesaw M. Landis delivered this opinion:

"This is the prosecution of the Standard Oil company of Indiana, for alleged violations of the act approved February 19, 1903, known as the Elkins law. The charge is that defendants' property was transported by the Chicago and Alton Railway company at rates less than those named in the carrier's tariff schedules published and filed with the interstate commerce commission, as required by law. The offenses are alleged to have been committed during the period from September 1, 1903, to March 1, 1905. The indictment contains 1,903 counts, each charging the movement of a car of oil. Certain of the transportation is alleged to have been from Whiting, Ind., to East St. Louis, Ill., the remaining counts covering transportation from Chappell, Ill., to St. Louis, Mo. The plea was 'not guilty.' On the trial 441 counts were withdrawn from the consideration of the jury on grounds not going to the ultimate questions involved in the case. On 1,462 counts the verdict was 'guilty.' Motions for a new trial and in arrest of judgment having been overruled, the matter is now before the court for the imposition of the penalty authorized by law."

### Quotes Statutes

In full the court then quoted the statute making it unlawful for any person, persons or corporation to offer, grant or give, or to solicit, accept or receive any rebate, concession or discrimination in respect of the transportation of any property in interstate or foreign commerce by any common carrier.

The court then said it was proven on the trial that the defendant, a corporation of Indiana, operates an oil refinery at Whiting, Ind.; that the Chicago and Alton Roilroad company, a corporation of Illinois, operates a line of railroad from Chicago to East St. Louis, Ill.; that the Chicago Terminal Transfer Railroad company operates a switching road from Whiting across the state line into Illinois, intersecting the Alton road at a station called Chappell, a short distance from Chicago; that there are three companies operating terminal roads from East St. Louis, Ill., across the Mississippi river to St. Joseph, Mo.; that prior to the occurrences upon which this prosecution is based the Chicago and Alton company had filed with the interstate commerce commission and distributed to its various freight agencies tariff schedules showing the rates for the transportation of oil in car lots from Whiting, Ind., to East St. Louis to be eighteen cents per hundred pounds, and the rate for like transportation from Chappell to St. Louis, Mo., to be nineteen and a half cents per hundred pounds. These schedules were as follows:

Class tariff No. 24, issued by several carriers, including the Alton, operating between Chicago and East St. Louis, naming a rate of eighteen cents per hundred pounds on oil from Chicago to East St. Louis; a joint tariff of the Chicago Terminal and Alton companies providing that the rate from Whiting to East St. Louis shall be the same as the rate from Chicago to East St. Louis, and specifically enumerating class tariff No. 24, above mentioned; schedules of the three St. Louis terminal companies fixing a rate of one and one-half cents per hundred pounds from East St. Louis to St. Louis.

### Proof of Rebates

It also appeared that the shipments were made over the route covered by these schedules, that is to say, from Whiting to Chappell, via the Chicago Terminal road; from Chappell to East St. Louis via the Chicago and Alton road, and from East St. Louis to St. Louis over the lines of the three St. Louis terminal companies. For this service the defendant paid the Alton six cents per hundred pounds on the traffic to East St. Louis and seven and one-half cents for the shipments to St. Louis, bills at these rates being rendered by the Alton company to the defendant semi-monthly.

Out of the moneys it received from the defendant the Alton company paid the terminal companies for their part of the service.

With these terminal companies the defendant had no relations whatever, save only that the shipments were delivered to the Chicago Terminal company at Whiting, the point of origin. At no time did the defendant apply to either of these companies for a rate covering the service performed, nor did they render any bills to the defendant. Their dealings were exclusively with the Chicago and Alton company, to which company, as the defendant's testimony showed, it applied for the through rate from Whiting to destination.

On these facts the court denied defendant's motion that the jury be peremptorily directed to return a verdict of not guilty. Whereupon, as justifying and excusing the use of the six cent rate, the defendant's traffic manager testified that in December, 1902, 1903 and 1904 he applied to the chief rate clerk at the office of the general freight agent of the Chicago and Alton company for the rate on oil from Whiting to East St. Louis for each succeeding year; that on each occasion the clerk handed him a document purporting on its face to be a special billing order as follows:

The Chicago and Alton Railway company Traffic Department.

Special billing order.

Issued ———, effective January 1, 1903.

From ———, Chicago, Ill.

To Alton, Granite City and East St. Louis, Ill., via. ———.

On oil and petroleum products o. l. in tank cars.

Rate, six cents per cwt.

Expires December 31, 1903, unless sooner revoked.

Collection to be made through auditor's office. Charles A. King, General Freight Agent.

### Misled by Clerk

This witness also stated that when these special billing orders were delivered to him he received from the rate clerk an Alton tariff schedule called an application sheet applying Chicago and East St. Louis rates to similar traffic from Whiting to East St. Louis; that at each of said times the traffic manager inquired of the rate clerk whether the rate had been filed and was assured by him that it had. The traffic manager was thus misled by the rate clerk into the honest belief that the rate of six cents per hundred pounds as shown by the special billing order from Chicago to East St. Louis had been filed with the interstate commerce commission, and that, acting in this honest belief, payments at the six cent rate to East St. Louis and seven and one-half cents to St. Louis were made. This special billing order was not and did not purport to have been filed with the interstate commerce commission, nor was it distributed by the Alton company to any freight agent for use in quoting rates to the general shipping public, with the single exception that, as the rate clerk testified, a copy was retained in the tariff files at the general freight office. Nor did the application sheet contain any reference to the special billing order, but it did specifically enumerate the Chicago-East St. Louis tariff No. 24 above mentioned, which tariff No. 24 showed the Chicago-East St. Louis rate to be eighteen cents per hundred pounds. This alleged occurence between the traffic manager and the rate clerk will receive more detailed consideration hereafter.

It is the position of the defendant that the Elkins law and certain pertinent portions of the interstate commerce law of 1887 are unconstitutional for the following reasons:

### Interstate Powers

First—That the defendant has a natural inherent right to make a private contract for a railroad rate, of which right the Elkins law would deprive the defendant by requiring it to pay the rate published and filed by the carrier, and making a failure so to do criminal, in violation, as is claimed, of the fifth amendment to the constitution of the United States, which provides that "no person shall be deprived of life, liberty or property without due process of law."

Second—That by authorizing common carriers to establish rates, which when published and filed shall be binding upon the shipper, the law delegates to the carrier legislative power, which section one of article one of the constitution confers upon congress exclusively.

Third—That the law vests in the interstate commerce commission the power to pass ultimately upon the question of reasonableness or unreasonableness of freight rates as established by a carrier, thereby depriving the defendant of its right to invoke the judgment of the courts in respect thereto, in violation of section one of article three of the federal constitution, which vests the judicial power of the United States exclusively in the courts.

Fourth—That paragraph three of section eight of article one of the constitution, commonly known as the commerce clause does not empower congress to forbid and make criminal the act of the defendant in accepting from the carrier a less rate than that published and filed by the carrier as required by section six of the interstate commerce law.

The decision continues: "With respect to the second proposition, it need only be said that the supreme court of the United States has in a number of instances ruled adversely to the defendant's contention in cases where the same question arose on state statutes empowering railroad commissions to fix rates. And the third objection is not sound for the reason that the interstate commerce law does not purport to deprive the courts of their jurisdiction at the suit of a shipper to ultimately deterimne the question of reasonableness or unreasonableness of a rate.

"Respecting the defendant's alleged natural right to make a private contract for a secret railroad rate, candor obliges the court to say he knows nothing to support the proposition but the eminence of counsel who advance it.

"In such case, as in all others, it would require two parties, each competent to contract, and considering the nature of the thing to be contracted for the railway common carrier is fundamentally incompetent. This is so for the reason that the railway company is a public functionary and is enabled to construct and operate a railroad only by its exercise of the power of eminent domain, which is a sovereign power of government. Thus, by condemnation proceedings such a corporation may take the real property of the individual citizen, even his homestead, against his will and protest. The theory upon which government authorizes this to be done is that it is necessary for the public welfare, and nothing can possibly be more plain than that property thus acquired must be used for the benefit of the public—not part of the public, but all of the public. Under the doctrine insisted upon by the defendant the railway company might give the Standard Oil company a very low transportation rate and by contract obligate itself to withhold the same rate from the very man the taking of whose property by condemnation rendered possible the construction of the road. A more abhorrent heresy could not be conceived. There is no more reason for the claim of natural right to private contract for the exercise by a railway company of the public power with which it is endowed than there would be for the claim of similar right to private contract with the collector of customs or tax assessor for a secret valuation of property.

### Power of Congress

"It is the defendant's position that the commerce clause does not empower congress to forbid and make criminal the defendant's act in accepting from the carrier a less rate than that published and filed by the carrier, as required by law. In the court's view the only point involved in this proposition is whether congress has authority to require that railroad rates shall be uniform. It being now settled that congress has this power, it necessarily follows that to preserve uniformity that body may prohibit the doing of any act or thing whatever by any person or corporation calculated to impair uniformity and may enforce such prohibitions by such penal provisions as congress may deem requisite.

"The defendant maintains that the interstate commerce law does not apply to the Alton company's connection with the transportation of defendant's property, inasmuch as the road it operates lies wholly within the state of Illinois. The theory is that the haul by the Chicago Terminal from Whiting across the Illinois line to Chappell, and the haul by the St. Louis Terminal from East St. Louis across the Missouri line to St. Louis are each interstate, and therefore subject to federal control, but that the Alton company's intrastate haul of the same property from Chappell to East St. Louis is beyond the reach of federal authority. The trouble with this contention is that it ignores the basic proposition underlying the whole question and confuses the intrastate character of the carrier with the interstate character of the commerce in which the carrier is engaged. The true and primary test is whether the commodity to be transported is to pass from one state into another state. If it