THE STANDARD OIL TRUST WILL NOT BE FINED

Wednesday, July 22, was a notable day for the Standard Oil trust magnates. Judge Peter S. Grosscup, speaking for the United States court of appeals, reversed the judgment of Judge Kenesaw M. Landis, who fined the Standard Oil trust $29,240,000. The grounds upon which Judge Landis' decision was reversed are briefly stated as follows:

That the trial court abused its discretion in the post-trial investigation which was held after the conviction of the Standard Oil company of Indiana and by measuring the amount of the fine by the ability of the parent corporation—the Standard Oil company of New Jersey—to pay.

That the trial court was in error in excluding evidence of knowledge and intent on the part of the defendant in the acceptance of rebates.

That the trial court erred in the manner of computing the number of offenses. Each cash settlement and not the shipment of each car load of oil constituted an offense.

Referring to Judge Grosscup's decision, the Chicago Tribune says:

"The decision of the upper tribunal, which was read in court at 10 o'clock in the morning, fairly bristled with picturesquely worded criticism of Judge Kenesaw M. Landis and his rulings on the questions involved in the original hearing. Although Judge Landis's name was not mentioned, the criticisms plainly were leveled at 'the trial judge,' and not in any way involving the prosecutors."

Following are extracts from the Grosscup opinion:

No monarch, no parliament, no tribunal of western Europe, for centuries, has pretended to have the right to punish except after due trial under all the forms of the law. Can that rightfully be done here, on no other basis than the judge's personal belief that the party marked by him for punishment deserves punishment? If so, it is because the man who happens to be the judge is above the law.

Would a cab driver, convicted of violating the city law against excessive cab fares, be sentenced to pay a fine that would take his horse and cab and then leave him a bankrupt many times over, unable to pay anything but the least proportion of his debts to his other creditors?

That under such circumstances the punishment would have been the maximum punishment does not seem possible, for the maximum sentence, put into execution against the defendant before the court, would wipe out many times and for its first offense all the property of the defendant.

The interstate commerce act, important as that law is, is not the only law under which we live.

Can an American judge, without abuse of judicial discretion, condemn any one who has not had his day in court?

Is this case another case, simply because, instead of being an individual, the defendant is a corporation, and instead of being up for sentence under a city ordinance that was intended not to destroy, but to regulate, the defendant was up for sentence under a national law that was intended, not to destroy, but to promote?

Can a court, without abuse of judicial discretion, wipe out all the property of the 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 has not been convicted, has not been tried, has not been indicted even?

The measure adopted by the trial court was wholly arbitrary; has no basis in any intention or fixed rule discoverable in the statute. And no other way of measuring the number of offenses seems to have been given a thought either by the government or the trial court.

Passing over the fact that no word of evidence or other information supporting the trial court's comment is to be found in the record, would the comment, if duly proven, justify a sentence such as this one that otherwise would not have been imposed?

The cases cited by the government, such as those requiring liquor sellers, at their peril, to know whether the person to whom a drink is sold is a minor, or within the prohibitions of the act or not, are not controlling, nor very persuasive.

Indeed, that the sentence was not imposed on the basis of the facts just stated, respecting the defendant before the court, but was imposed wholly because of other facts, wholly outside the record, is disclosed by the reasons set out in connection with the sentence.

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.

The beginning of commerce is constitutional government and the foundation of constitutional government is the faith that every guaranty of our institutions, no matter what the provocation, will be sacredly observed.

BIG PROFITS

The Standard Oil company escaped the $29,240,000 fine and also profited by the advance in oil stock, because of the decision, the facts concerning which had leaked in advance to Wall Street. The Chicago Tribune, issue of July 23, tells the story in this way:

"While the market for Standard Oil stock has not been active, it has had an advance of forty-eight points since last Thursday. The advance must have been quite agreeable to John D., for he is credited with owning about $33,000,000 of the $98,538,300 capital stock of the Standard Oil company, and the rise is equal to a little market gift of $15,840,000. There was something about the movement in the price of the stock that suggested that some one had 'leaked.' Any one having acquaintance with 26 Broadway, New York, the main office of the Standard Oil company, can understand the resources for information which center at that particular locality. No one has intimated that any one connected with the appellate court is in the market, but court justices have friends, and the quick advance in Standard Oil stock would indicate the latter were either in possession of definite information, or were good guessers of the judicial mind."

THE PRESIDENT'S STATEMENT

On July 23 President Roosevelt authorized the following public statement:

"The president has directed the attorney general to immediately take steps for the retrial of the Standard Oil case. The reversal of the decision of the lower court does not in any shape or way touch the merits of the case, except insofar as the size of the fine is concerned. There is absolutely no question of the guilt of the defendants or of the exceptionally grave character of the offense. The president would regard it as a gross miscarriage of justice if through any technicalities of any kind the defendant escaped the punishment which would have unquestionably been meted out to any weaker defendant who had been guilty of such offense. The president will do everything in his power to avert or prevent such miscarriage of justice. With this purpose in view the president has directed the attorney general to bring into consultation Mr. Frank B. Kellog in the matter, and to do everything possible to bring the offenders to justice."

GROSSCUP'S BAD BLUNDER

It now appears that Judge Grosscup made several bad blunders in the details of his Standard Oil opinion. The following is taken from the Chicago Tribune (rep.) issue of July 24:

Discovery of several apparently irreconcilable discrepancies between statements made in Judge Grosscup's decision in the Standard Oil case and the actual facts, as shown by court records of the trial, has changed the whole aspect of the case.

At least one of the three important reasons assigned by the higher court for reversing the decision of Judge Landis appeared to have been swept away for the simple reason that the premise upon which it was based was not borne out by the evidence.

Moreover, the clause taken from Judge Landis' decision, which was made the grounds for practically all of the picturesque denunciation of that judge, was shown to have been erroneously quoted—or misquoted. Judge Landis' decision, if the stenographic copies are to be relied upon, did not contain the statement concerning the parent body for which he is scored so roundly in the decision of the court of appeals.

The government consequently will petition the court of appeals for a rehearing of the case using these discrepancies as the grounds for such a plea, instead of waiting until the case is remanded back to the lower court for a new trial. Such action substantially amounts to a request that the upper court reverse itself and permit the $29,240,000 to stand because of its own "errors" in considering the evidence in the case.

In substance some of the supposed discrepancies pointed out by lawyers yesterday are:

Judge Grosscup's Opinion—That Judge Landis erred in failing to permit Edward Bogardus, traffic manager for the Standard Oil company, to testify as to his knowledge of the rate charged by the Alton road.

The Court Record—Bogardus went into details, denying that he knew an illegal rate was being charged. Judge Landis admitted this testimony over the objections of the district attorney.

Judge Grosscup's Opinion—Judge Landis erred when he indicated that the New Jersey corporation was being fined by saying "the New Jersey corporation was not a virgin offender."

Judge Landis' Decision—Did not mention "New Jersey corporation," but said "the defendant (the Indiana corporation) is no virgin offender."

Judge Grosscup's Opinion—Judge Landis erred when he held that each shipment constituted a violation of the law.

The Court Record—The Standard Oil's attorneys did not object to this view of the case, although they objected to practically every other statement of the court.

The Chicago Record-Herald (rep.) says:

Meanwhile lawyers and others who have followed the affairs of the Standard Oil company discovered what appear to be several discrepancies in the opinion of the court of appeals. These are revealed in a comparison of the opinion with the record of the case before Judge Landis. One castigation of Judge Landis in the opinion is that in which the trial judge declared to have abused the discretion vested in him in his arraignment of the Standard Oil company of New Jersey, declaring that it was not a "virgin offender."

What Judge Landis actually said, according to the records, was that "this court is unable to indulge the presumption that in this case the defendant was convicted of its virgin offense." The defendant, Judge Landis' friends point out, was the Standard Oil company of Indiana and not the parent corporation.

Another excerpt from the upper court's opinion referring to the enormity of the fine says: "There is nothing in the record in the way of evidence to show that the assets of this corporation were in excess of $1,000,000." The petition of the government for an increase of the company's bond sets forth a tabulated statement tending to show that in 1906 the Standard Oil company of Indiana had assets of $27,502,809 and that its profits that year aggregated $10,516,082.

JUDGE GROSSCUP TAKES A TRIP

The following New York dispatch was printed in the Chicago Examiner:

New York, July 23.—After a trip from Chicago on the Twentieth Century Limited in the

"It is unfortunate that this most harsh condemnation of a judge by his higher associates should have been for his attempt adequately to punish the Standard Oil Company."--From a New York World editorial.