DID THIS JUDGE READ THE RECORD IN A TWENTY-NINE MILLION DOLLAR LAWSUIT?

Although Judge Grosscup, in his opinion for the court of appeals, assumed to reverse a fine of $29,240,000 which had been imposed by a judge who had heard all the evidence, and although in delivering his opinion Judge Grosscup took occasion to give Judge Landis a severe scolding, it is now made plain that Judge Grosscup did not even take the trouble to thoroughly study the case.

In order that Commoner readers may better understand the blunders made by this federal judge who, in deciding for the Standard Oil trust, bitterly criticised a faithful judge, an article published in the Chicago Tribune (rep.) is hereinafter reproduced. Read it carefully:

THE STANDARD OIL CASE—REVIEWED BY A LAWYER

In his opinion in the Standard Oil case Judge Grosscup makes the following statement:

"We shall take up these subjects in the order stated, the first being whether a 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—a view of the law that is embodied in the charge carried out in the ruling excluding certain proffered testimony, including that of one Edward Bogardus, who, being in absolute charge of the traffic affairs of plaintiff in error during the period covered by the transactions, offered to testify that during that period he did not know anything about an eighteen cent rate over the Alton railroad; that his attention had never 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 Hollands, tariff clerk for the Alton railroad, that the rate over the Alton road was six cents, and that such rate had been filed with the interstate commerce commission."

On pages 422 and 423 of the record there appears with reference to the testimony of Edward Bogardus the following:

"The witness, in response to questions by counsel for the defendant, was permitted by the court, over the objection of counsel for the United States that the evidence was incompetent, irrelevant and immaterial, and merely the conclusion of the witness and not the facts, to testify as follows:

"During the years I have mentioned—1901, 1902, 1903, 1904 and 1905—I did not know anything about an eighteen cent per hundred rate on oil over the Chicago and Alton railway between Whiting and East St. Louis in any tariff whatever. My attention had never in any way been called to such a rate by any human being or by the examination of any document of any kind or character, or otherwise. During the period of time mentioned it was my understanding and belief that this six cent rate regarding which I have testified, was filed with the interstate commerce commission; that understanding and belief was based on what I was told in the Chicago and Alton office by Mr. Hollands. During all that period of time in connection with the shipment of oil over the Chicago and Alton railway by the Standard Oil company of Indiana, as its representative in that particular work, I had no intention to violate any lawfully established rate of the Chicago and Alton railway company. During all that time I believed absolutely that I was shipping the oil under a lawfully established and filed rate issued by the Chicago and Alton railway company."

It will thus be seen that the reversal of the case, so far as it involves the rulings of Judge Landis on the question of the knowledge of the shipper, proceeds upon an absolute misapprehension of the evidence actually introduced at the trial. Bogardus was permitted to testify that he did not know that eighteen cents was the lawful rate, that his attention had never been called to it, that he believed that six cents was the lawful rate, and that he had no intention to violate the law. This testimony, together with all the other evidence, was submitted to the jury and yet in the face of it the company was adjudged guilty.

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Further along in the opinion on the question of knowledge reference is made to the decision of the supreme court of the United States in the Armour Packing company case. The case is cited by Judge Grosscup with the inference that the supreme court had held that it was necessary, in order to convict a shipper, to show that the shipper had actual knowledge of the elements constituting the lawful rate. What the supreme court, in fact, said was:

"While intent is in a certain sense essential to the commission of a crime, and in some classes of cases it is necessary to show moral turpitude in order to make out a crime, there is a class of cases, within which we think the one under consideration falls, where purposely doing a thing prohibited by statute may amount to an offense, although the act does not involve turpitude or moral wrong. In this case the statutes provide it shall be penal to receive transportation of goods at less than the published rate. Whether shippers who pay a rate under the honest belief that it is the lawfully established rate, when in fact it is not, are liable under the statute because of a duty resting on them to inform themselves as to the existence of the elements essential to establish a rate as required by law, is a question not decided, because not arising on this record."

It will therefore be seen that this question of knowledge, so vitally important to the efficiency of the interstate commerce act, was expressly left open by the supreme court. The statutes provide for the certification of such questions to the supreme court. The plain inference to be drawn from the language of the supreme court in the Armour Packing company case is that when the question of knowledge and intent in connection with the application of the interstate commerce law should arise in a case pending in a circuit court of appeals, that question should be certified to the supreme court pursuant to statute. It may be pertinently inquired why that course was not taken in this, the most important criminal case which has arisen in the whole history of the interstate commerce act. Most lawyers who have studied the Armour Packing company case carefully, believe that, applying the logic of that case, the supreme court will hold that there is a duty devolving on the shipper to inform himself as to what is the lawful rate and that the rule of law as laid down by Judge Landis on that subject is the corrected construction of the statute.

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The second point upon which the judgment of Judge Landis is reversed was that each separate carload did not constitute a distinct offense. Judge Grosscup in his opinion holds that there could not be a conviction except upon the separate shipments. The fact is that the record in the case shows that at the trial the attorneys for the defendant admitted that there was no evidence to show that each car did not constitute a distinct shipment.

Speaking of the abuse of discretion by Judge Landis in imposing such a large fine, Judge Grosscup states:

"This brings us, then, to the last question. Did the court, in the fine imposed, abuse its discretion? The defendant indicted, tried and convicted, was the Standard Oil company, a corporation of Indiana. The capital stock of this corporation is $1,000,000. There is nothing in the record in the way of evidence, either before conviction or after conviction and before sentence, that shows that the assets of this corporation were in excess of $1,000,000. There is nothing in the record either before conviction or after conviction and before sentence, that shows that the defendant before the court, had ever been guilty of an offense of this character."

In the next paragraph, however, there is the following:

"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. Put into execution, this maximum sentence would add to the liabilities of defendant to its creditors and, according to the petition of the government on the matter of supersedeas, there were current liabilities of from $3,000,000 to $5,000,000, an additional liability of $29,240,000, resulting, without doubt, in a condition of bankruptcy that would deduct from every creditor's share of the asets to be divided a sum running from fifty to nearly one hundred per cent of the money that such creditors had advanced. Is the defendant to be thus punished? Are the creditors to be thus punished?"

In assailing the size of the fine on the ground that creditors should be protected, the circuit court of appeals resorts to the petition filed in that court containing a statement by the Standard Oil company of Indiana with reference to its gross assets, liabilities, and profits. In that very statement it appears that the gross assets of the Standard Oil company of Indiana, the defendant in the case, was $27,502,089.86 and that the profits of its business for the three years during which it had committed the violations of the interstate commerce act for which it was convicted amounted to more than $23,000,000. If it was proper for the circuit court of appeals to consider this petition for the purpose of assailing the fine on account of the liabilities of the Standard Oil company of Indiana, was it not equally proper for the court to have taken it into consideration for the purpose of determining the assets of the company and the profits of its business with a view to determining whether or not there was an abuse of discretion by the trial judge?

The opinion contains the following:

"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?"

Suppose a cab driver had committed a large number of violations of the city ordinance and was called to account for it and punished, could the fact that the aggregate of the fines imposed upon him exceeded the value of his horse and cab be asserted successfully in any court in support of the proposition that the punishment was cruel and unusual and a violation of his constitutional rights? To state the question is to answer it.

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In the opinion of the circuit court of appeals there is the following:

"Briefly stated, the reason of the trial court for imposing this sentence was because, after conviction and before sentence, it was brought out, on an examination of some of the officers and stockholders of the Standard Oil company of New Jersey, 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) that in concessions of the character for which the defendant before the court had been indicted, tried and convicted, the New Jersey corporation was not a 'virgin' offender."

It will thus be seen that the statement is broadly made that Judge Landis assumed to fine the Standard Oil company of New Jersey and not the Standard Oil company of Indiana. The fact is that in the foregoing portion of the opinion of the court of appeals there is a misstatement of what Judge Landis in fact said on this subject. What he did say is as follows:

"Of course, on the trial of a defendant for a specific offense, this presumption is indulged in favor of that defendant as to that offense, but where, as in this case, the crime charged was the acceptance of a preferential railroad rate, in violation of a law that had been on the books for nearly twenty years; where during a period of eighteen months 1,900 carloads of property were shipped at an unlawful rate, which amounted to but one-third of the rate available to the general shipping public; where the convicted defendant's transportation affairs were in the charge of an expert traffic official of at least ordinary intelligence and many years' railroad traffic experience, and who was a frequent visitor at the general freight office of the railway company; where the unlawful rate was shown only by a paper appearing on its face to be a special billing order, and which directed that settlement for services rendered at the rate which it authorized should be made through the railway company's auditor's office instead of at the railway station or freight office, as is done by the general shipping public; and where the defendant when brought to trial persistently maintains that the constitution of the United States guarantees to it the right to make a private contract for a railroad rate, this court is obliged to confess that he is unable to indulge the presumption that in this case the defendant was convicted of its virgin offense."

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In no place in Judge Landis' opinion did he say that he was fining the Standard Oil com-

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