

### OIL TRUST FILES BRIEF IN ANSWER

#### Government's Petition for Writ of Certiorari Is Opposed Very Strongly.

#### HOLDS THAT LAW DOES NOT AUTHORIZE REVIEW

#### Hard Rap Taken at Counsel for Government for Their View of Alleged Rebating.

WASHINGTON, Dec. 19.—The Standard Oil company's brief in the proceedings of the United States against that company on the charge of accepting rebates from the Chicago & Alton railroad, in which the United States court for the northern district of Illinois imposed a fine of \$29,240,000, was today filed in the supreme court of the United States.

The case comes before the court on a petition by the government for a writ of certiorari, bringing it up for review of the decision of the United States circuit court of appeals for the seventh circuit, by which the district court's decision was reversed. The brief antagonizes the petition, and this opposition is based principally on the ground that the law does not "authorize a review by the supreme court on an application of the government of a judgment of the circuit court of appeals in a criminal case by which a writ of error of the defendant is sustained and disposed of by reversing the judgment and sentence of the trial court." It is contended that in a case of this character a writ of certiorari is equivalent to a writ of error and that "the policy of the law is against the review of a judgment in favor of the accused in a criminal case at the instance of the government."

#### Question of Rates.

It is pointed out that while 6 cents was the lawful rate on petroleum on all shipments from Chicago to East St. Louis, except from the stations at East Chicago, Hammond, Ind., and Whiting, or other suburban switching points in Indiana, from these points the government contends that the railroad was required to charge 18 cents per hundred, or three times the Chicago rate, and that therefore the Standard company, which shipped from the suburb of Whiting at the Chicago rate, was properly mulcted by the district court in the sum of \$29,000,000 "for not shipping at and paying a prohibitive rate of three times as much as the Chicago rate."

Contention is made that due effort was made on behalf of the Standard company to discover the legal rate, and it is urged that the company should not be held responsible for its failure in that respect.

#### Degree of Knowledge.

Counsel argue the construction of the Elkins amendment as if congress, in passing it, regarded the shipment of commodities in interstate commerce as fraught with evil or danger to the safety or morals of society, and that it was therefore to be attended with penal restrictions, and that shippers are to be held to a rule of diligence in knowing that the rates at which they ship are the current lawful, filed and published rates, such as have been in extreme cases applied to druggists, keepers selling liquor to minors, or druggists selling poisons. If such shippers were required, or the "equivalent of knowledge" at the risk of criminal prosecution and severe penalties, interstate commerce would be greatly restrained and diminished, if not destroyed.

Referring to the government's contention that the district court's assessment of penalty was in the proper exercise of the personal discretion of its presiding judge (Mr. Landis), the brief declares that "this is a discovery which has been left to the learned counsel for the government to make at a very late date in the history of our jurisprudence."

#### Discretion Allowed.

"It had always before been regarded," the brief proceeds, "as settled that the discretion committed by law to the judge was a judicial discretion and not a personal discretion; and that the exercise of judicial discretion by a trial court was subject to review for its abuse; and that the provisions of the eighth amendment to the constitution, forbidding the imposition of excessive fines, was binding upon a trial judge; and that the imposition of an excessive fine in violation of that prohibition is an abuse of discretion which is reviewable."

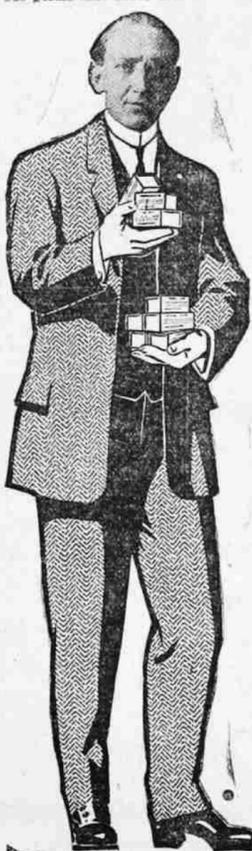
"This view that the trial judge exercised a personal power and discretion was apparently shared by the district judge himself, and the record of judgment of the trial court afford a striking demonstration of the wisdom of the rugged barons who wrested Magna Charta from King John, and of our ancestors in embedding its sanc-

# Free

## Let Me Cure Your Catarrh

Trial Package of My Combined Treatment Mailed Free. No More K'winking and Spitting or Foul Sickness. Rest! Send Your Name Today.

Catarrh is not only dangerous, but it causes bad breath, ulceration, death and decay of bones, loss of thinking and reasoning power, kills ambition and energy, often causes loss of appetite, indigestion, dyspepsia, raw throat and consumption. It needs attention at once. Cure it with Gauss' Catarrh Cure. It is a quick, radical, permanent cure, because it rids the system of the poisonous germs that cause catarrh.



C. E. Gauss.

In order to prove to all who are suffering from this dangerous and loathsome disease that Gauss' Catarrh Cure will actually cure any case of catarrh quickly, no matter how long standing or how bad, I will send a trial package by mail free of all cost. Send us your name and address today and the treatment will be sent you by return mail. Try it! It will positively cure so that you will be welcomed instead of shunned by your friends. C. E. GAUSS, Marshall, Mich. Fill out coupon below.

#### FREE.

This coupon is good for one trial package of Gauss' Combined Catarrh Cure, mailed free in plain package. Simply fill in your name and address on dotted lines below and mail to:

C. E. GAUSS, 4046 Main Street, Marshall, Mich.

tions in the bill of rights in our constitution." In conclusion it is urged that the granting of the writ would not be justified.

#### PAUL SHOUP GIVEN A BETTER POSITION

SAN FRANCISCO, Dec. 19.—Paul Shoup, assistant general passenger agent of the Southern Pacific company, has resigned and will be succeeded by F. E. Buttura, general passenger agent of the Morgan's Louisiana & Texas railway, a Harriman line, with headquarters at New Orleans. Mr. Shoup, whose resignation takes effect January 1, will take up new work with the Southern Pacific that will have to do with business affairs of the company which come under the jurisdiction of William F. Herrin, chief counsel.

Tribune Want Ads.

Bell phone 5201. Ind. phone 360-348.

### JAPANESE EMBASSADOR TALKS OF RELATIONS WITH AMERICA

NEW YORK, Dec. 19.—Comparing the recent joint declaration by Japan and the United States in regard to their respective policies in the Pacific to "a transaction between trusted friends," Baron Takahira, Japanese ambassador to the United States, in an address to night at a Lotus club dinner given in his honor, expressed in an unmistakable

way his great gratification that so strong a bond of union between the two nations had been cemented. "When I lived in this city many years ago, I used to go to the Harlem river for fishing, and I saw that the boatman always rowed hard when the tide was against him; in the same way I now see that a diplomat speaks much

when his affairs are not in good shape. "But as things are now between the United States and Japan, there is nothing to warrant much speechmaking. I fully believe I am not mistaken when I say that our relations are in the best possible condition. I think we may say there is now nothing more to be desired in the relations of our two countries. But if the past is to serve as a lesson for the future, it would be well to consider what we have had to experience for these few years. In these years we have to admit we had such a terrible time in regard to our relations as we could never anticipate. No doubt there were some undesirable incidents occurring between some people

of the two countries, but they were only local affairs, and in no way to be regarded as menacing to our traditional friendship. But too much importance was given to them in some quarters and even a war clamor was allowed to be raised in spite of the sincere good will existing between the two governments. But, thanks to the sincerity of the friendship existing at the time between the two governments, no serious consequences were allowed to occur that might otherwise follow such circumstances. "I took the opportunity at a dinner given in my honor on my arrival here some months ago to declare that there is no art in our game of diplomacy. In

our international transactions I most firmly repeat the same assertion and add that there is no such word as 'diplomacy,' as popularly defined. Declaration of the two governments recently made by the United States and Japan, in regard to their respective policies in China and the Pacific, is a good example. It is simply a reaffirmation of what was understood between them years ago, and there is practically nothing which was not hitherto declared between them. It is like a transaction between trusted friends. It requires formality to legalize the instrument.

Tribune Want Ads. Bell phone 5201. Ind. phone 360-348.

# IMPROVE YOUR

## CHRISTMAS Present well worth working for.

## THE Second Special Prize

## PIANO

## IS SECURED BY THE

## Y. M. C. A. CITY, WHO RECEIVED 1,464,600 VOTES.

# CARSTENSEN & ANSON CO.'s

## \$40,000 Voting Contest Has Been Extended to January 23rd, 1909.

On account of the immense amount of business we are doing during this Christmas Season, and from the fact that up to this time we have been unable to find room in which to display our prizes, we find it impossible to close this contest December 24th, as originally planned.

## This Great Contest will close January 23, 1909,

WITHOUT FAIL, and all the prizes will be GIVEN AWAY at that time

## The fifteen prize Pianos including the \$1,000 Everett Grand

Will be on display beginning Monday, Dec. 21st, at 71 West Second So.

## COME and see them

# ANT

### Total Standing of the Winner and others leading in the Race for the Ludwig Piano

1—Y. M. C. A., Salt Lake City	2,239,200 Votes
2—Riverside Kindergarten	1,044,000 Votes
3—Lieutenant Snow, Fort Douglas	320,100 Votes
4—Mrs. James Carkeek, Bingham	284,000 Votes
5—A. H. Roylance, Springville	255,200 Votes
6—J. A. Smith, Mercur	252,200 Votes
7—M. E. Gilmer, City	120,000 Votes
8—Mrs. S. H. Furniss, Ogden	128,000 Votes

NOTE—NO CONTESTANT WILL BE AWARDED A PRIZE WHO HAS NOT RECEIVED MORE THAN 2,000 NOMINATING VOTES. NOW GET BUSY. GET INTO THE WINNING CLASS.

# Carstensen & Anson Co.

75-77 W. Second South, Salt Lake City.

### CHRISTMAS IS SADDEST DAY OF YEAR, ACCORDING TO VIEW OF WARREN FOSTER

Mr. Editor—I believe that merry Christmas is the saddest day of all the year. It is most certainly an innovation to give vent to such an expression as the above, and the only excuse I offer for the innovation is the still sadder fact that it is true. Christmas holiday, as we now have, is a day of deep emotion, and while it may be true, and probably is true, that there is more joy felt on that day than on any other day of the year, it is also true that there are more real heartaches and pangs of disappointment felt than on any day on the calendar. This is the day when the lines between the rich and the poor are sharply drawn; the day of all days when the children of the poor not only suffer the pangs of sorrowful disappointment, but are made acquainted with the humiliating fact that their parents are in some way different from the parents of their rich associates. They feel the sorrow, but in their innocent minds they do not understand the reasons why their parents do not provide them with presents like unto those provided by the rich.

The real sadness of these little ones can be understood and appreciated only by those who have passed through a similar experience in their own lives. The parents in turn feel as deeply the disappointment as do the children, possibly more so. Nothing so saddens the hearts of loving parents as to be compelled to feel that their little ones are losing confidence in them. All hopeful parents try to hold first place in the minds and hearts of their children. That is hard to do in full view of the fact that other parents are doing things for their children the like of which they cannot afford. The big doll on the Christmas tree may afford exquisite delight to the well-favored child who receives it, but the same doll sends a pang of sorrow and disappointment to every other child in the audience. This article, it is hoped, will be construed as a protest against extravagant displays being made of gifts in the presence of children. If I can save one heartache I am fully repaid for this effort.

WARREN FOSTER.