No. 398.

In the Supreme Court of the United States.

October Term, 1910.

Standard Oil Company of New Jersey et al., Appellants,
v.
United States of America, Appellee.

TRANSCRIPT OF STENOGRAPHER'S MINUTES OF THE ORAL ARGUMENT OF FRANK B. KELLOGG ON BEHALF OF THE UNITED STATES.

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ORAL ARGUMENT OF FRANK B. KELLOGG, ON BEHALF OF THE UNITED STATES.

If it please your honors: This case presents one of a holding company, holding the stocks directly of 65 corporations engaged in the same branch of the oil business, in every State in the Union, controlling from 85 to 97 per cent, or 97½ per cent, of the business, with a financial power beyond that possessed by any combination ever known. The 65 corporations directly owned by the Standard Oil Co. of New Jersey own and control the stock of 49 others (most of the stock; not all of the stock), making 114 corporations engaged in this business which are controlled by stock ownership through the Standard Oil Co. of New Jersey, a holding company.

It is said that that company is also engaged in the refining business. It has $33,000,000 of plants and merchandise, which is but a small part of its assets. Its principal business is that of a stock-holding company. It took the place of the Standard Oil Trust; and its investments, other than merchandise and plants, exceed $338,000,000, upon their books—or did, in 1906; I do not know what they are now.

The court found the fact that this combination was organized in 1899 and completed some time during the year 1900—seven years before the bringing of this suit, and two years before the organization of the Northern Securities Co. The court found it to be a combination in restraint of trade under the first section of the act, and a monopoly under the second section of the act. It enjoined the Standard Oil Co. of New Jersey from exercising any control, by reason of stock ownership, over 37 of the principal corporations. It enjoined the defendant companies, the 37 principal ones, engaged in the business throughout this country, from paying any dividends to the Standard Oil Co. of New Jersey. It enjoined the evasion of the decree by the organization of a similar combination or the conveyance of the property to one of the defendants—directly within the terms of the decree in the *Swift case.* And until the defendants should sever the relations and cease the combination (giving them 30 days to do so), they were enjoined from engaging in interstate commerce while that combination lasted.

Now, your honors, there were two preceding trusts or combinations pure and simple: The one of 1882, dissolved in 1892 (but really not finally dissolved until 1899) because of its illegality at common law, and so declared by the supreme court of Ohio, which decision has been followed in every State of this Union where a like trust came before the courts; and the previous trust of 1879, which was also a pure and simple combination.

I listened, if not with pleasure, at least with admiration, to the charming story of the growth and concentration of this enterprising and benevolent institution. It was told with all the skill of a great advocate, and to listen to it one would think that the Standard Oil combination was the result of natural growth in business, guided by a master mind, and that Mr. Rockefeller, with love for all of the other people engaged in the business and with his superior ability, was the only man in the struggle for life in this business who had reached his goal.

I am not going to deal in romances. I am going to tell this court the cold, pitiless facts; and I say on my honor, on my oath as a counselor of this court, which I no not lightly prize, that the equal of this record in oppression, in concentration, and abuse of power is not known in the commercial history of this country. I distrust my own ability to present to you these facts.

These various combinations were not purchases and acquisitions of property in the usual course of business. They were combinations made effective and powerful by reason of preferential rates and rebates in transportation, the greatest ever known to have been made, and by unfair and brutal methods of competition, which in and of themselves between merchants and corner-grocery men would not be dangerous, but in the hands of a combination of this size and of this power are the most dangerous instruments to independent dealers, manufacturers, and men engaging in enterprises known in commerce.

It is said that when you come to the question of railroad transportation you should go back and place yourselves in the position of those days from 1874 to 1882. I admit it. But these preferences never ceased until this suit was brought and the Government had exposed these rebates and discriminations in 1905 and 1906, when the railroads by force of public opinion and fear of prosecution canceled practically all of them.

We will take the early days, with all the strife going on between railroads; I wish in a few moments to show you how the combination of 1879 was held together, and how it was so successful in its enterprises as against the others; and how it was that the other refiners did not succeed, and Pennsylvania was strewn with their wrecks.

What was the condition? The condition was that the corporation or the man who had the traffic, who had the power to force the railroads, could get and did get rates; and that has always been the history. The men who did not have the power paid the going rates or went to the wall. The Standard combination had the power; and is it not strange that, though Mr. Rockefeller and Mr. Archbold, who were posted up thoroughly so that they could go back into the seventies and eighties and tell those details of their business which they desired to tell, neither of them denied that the Standard Oil Co. received these enormous rebates? Not one of them pointed to a single independent who got like rebates; and it remained for Mr. Cassatt, I believe, to name a man by the name of Lloyd (I do not know who he is; he is dead now, probably) as the only one they paid rebates to.

Now, it is important as showing what that combination of 1879 was, to know how they started out, and what they did during those years. Mr. Milburn says that we have all heard about the South Improvement Co. contract. Yes; we have. It was the starting point. It was the rock on which they based their combination, and from it arose such public feeling in the State of Pennsylvania that the charter was afterwards repealed; but the rates there provided for were paid by other devices, and the discriminations continued. That agreement is attached to the bill of complaint; it is an agreement between the Pennsylvania Railroad and the South Improvement Co., in which Mr. Rockefeller and his associates were the principal stockholders.

Mr. Justice McKenna. What is its date?

Mr. Kellogg. 1872; before this combination of 1879 commenced. I will show that it continued right along. Mr. William Rockefeller, Mr. Bostwick, Mr. Payne, Mr. Flagler, Mr. Lockhart, and all these men were the stockholders in that company. That contract provided not for ordinary rebates. Why, it remained for Mr. Rockefeller to discover the principle of collecting rebates upon his own business, and everyone else's; and if it is true that at that time 5,000,000 barrels were shipped, the rebates provided by this contract alone would exceed $5,000,000 per annum. The contract provides:

"That the party hereto of the second part"—the railroad company—"will"——

Mr. Justice LURTON. What are you reading from?

Mr. KELLOGG. I am reading from page 118 of Volume A of the record.

"That the party hereto of the second part will pay and allow to the party hereto of the first part, for its own use, on all petroleum and its products transported over the railroads of the party hereto of the second part and its connections, for the party hereto of the first part, rebates, and on all transported for others, drawbacks, at the rates hereinafter provided, except in the case specified in article third."

And what were they? From 35 to 50 per cent of the rate. The rate was immediately raised, until the rate on crude oil from western Pennsylvania to the seaboard was $2.56, which is almost six times what it was in 1884, and the rate of 1884 has always been prohibitive.

Mr. Justice LURTON. That seems to be from the South Improvement Co. contract.

Mr. KELLOGG. Yes.

Mr. Justice LURTON. As I understand it, that contract was never enforced, or if enforced, only for a very short time.

Mr. KELLOGG. I am coming to that. That is true, your honor. I will state the circumstances under which it was canceled. The arrangements as to the rates were practically carried out in other ways, but this shows the object that those gentlemen had. It also provided:

"To charge to all other parties (excepting such as are referred to in article 3)"—

That is, other parties who should have the same amount of oil, and there were no such—

"for the transportation of petroleum and its products rates which shall not be less than the gross rates above specified."

And it further provided—and this throws light on the subsequent history of this transaction—

"And it is hereby further covenanted and agreed by and between the parties hereto that the party hereto of the second part shall at all times cooperate, as far as it legally may, with the party hereto of the first part, to maintain the business of the party hereto of the first part against loss or injury by competition, to the end that the party hereto of the first part may keep up a remunerative and so a full and regular business, and to that end shall lower or raise the gross rates of transportation over its railroads and connections, as far as it legally may, for such times and to such extent as may be necessary to overcome such competition, the rebates and drawbacks to the party of the first part to be varied *pari passu* with the gross rates."

Now, that agreement, when made known in the Pennsylvania oil regions, even in that day of rebates as they say, raised such a storm that public meetings were held and the Legislature of Pennsylvania repealed the South Improvement Co. charter. But the rebates continued. Such a storm was raised that they put out a justification, signed by the Standard Oil Co., Warden, Frew & Co., and others, to be found at page 166 of volume 2 of our brief:

"With our rebates for protection, none could break the price of refining without great loss, unless the producer sold his crude at from 50 cents to $1 per barrel below the price we were paying him, and this he would not be likely to do as long as he could get an advance of $3 per barrel on it."

Of course, with their rebates they could control that.

Mr. Rockefeller says in his examination:

"Q. But what would become of the refiner who did not care to consolidate his properties into this agreement?

"A. I could not state about that.

"Q. He could not possibly do business in competition with these refiners with a rebate against him of that amount, could he?

"A. He could come in."

But he could not come in.

Now, Mr. Rockefeller says in relation to that contract:

"Q. It aroused great opposition?

"A. It did; yes, sir.

"Q. And with what result? It was abandoned?

"A. Oh, it was abandoned at once, right away. The exact time of that I could not state.

"Q. The feeling and opposition to it was on the part of the oil interests in Pennsylvaina?

"A. Yes, sir.

"Q. And it grew all at once into a very marked opposition?

"A. Oh, very pronounced; yes. It did not take our good friends down there, who produced the oil, very long to arouse themselves on the subject. They had the characteristics of miners the world over"——

Mr. Justice Holmes. Pardon me. It says: "On any subject."

Mr. Kellogg. Yes. "On any subject." I beg your pardon.

"They had the characteristics of miners the world over. That was the case."

The Chief Justice. Before you go any further, I would like to say that I have a note from Mr. Justice Harlan saying that he is indisposed, and will be unable to be here to-day. I suppose, as he heard the previous arguments and will hear the greater part of this argument, there is no objection to his sitting in this case?

Mr. Kellogg. Oh, not at all.

Mr. Archbold then testified in relation to that, but I have not time to read it, in which testimony he said that public meetings were held, and he was one of the most prominent in denouncing its exclusiveness.

Is it possible, your honors, that even in those days it was ordinary to make such contracts or to carry out such contracts as this?

Now, let me state what followed—or some of the things that followed. I have not time to state many of them. Preliminary to the expansion of the business of Mr. Rockefeller and his associates, he took into the Standard of Ohio various men, he said, to obtain additional capital. Now let me read you the list, because, your honors, we can only judge of the events by these facts that stand out. Men do not write in contracts: "I hereby agree to a conspiracy to receive rebates and to suppress commerce;" and we must go back to these contracts, these facts which stand out boldly and which tell the tale of those days. Who did they take in in order to get additional capital? William H. Vanderbilt, president of the New York Central Railroad; Amasa Stone, manager and director of the Lake Shore, the "Hero of the Bread Winners."

Mr. Justice McKenna. The hero of what?

Mr. Kellogg. The "Hero of the Bread Winners." Stillman Witt, director of the Big Four; T. P. Handy, director of the Big Four; P. H. Watson, special representative of Commodore Vanderbilt, and shortly after president of the Erie. These are the men who were taken in to get additional capital. And having taken them in he made the South Improvement Co. contract. Then they proceeded to buy up those that they could, and to consolidate into a combination those they could not buy. I am not at this day questioning the purchases, many as they were, or the refineries dismantled, many as they were in that day. I am only presenting the history of this combination to show you that this was not a natural growth of business, but that it was born and reared in fraud and oppression, and it hangs over the commerce of this country to-day like a threatening cloud.

They immediately bought, according to Mr. Rockefeller's own statement, 17 refineries out of about 20, in Cleveland. Other witnesses place it at a greater figure. They immediately dismantled 12 of them. I merely state this as a fact. It is not questioned. The tide has carried that out to sea. I am stating history.

Now, during the years following, and commencing in 1878 and running down to 1890, as your honors know, there were various investigations by the New York Legislature, various suits, and investigations by committees of Congress in 1888; and from that testimony we obtained some of the testimony of these defendants and of some witnesses who have since joined the great majority, who told the facts as to these rebates. Mr. Lee, a lawyer of Pittsburg, has died since he testified. Mr. Emery is yet living; Mr. Josiah Lombard, at the head of the Tidewater and friendly with the Standard, is now dead. They told of these rebates that were paid, and the struggles to maintain their business during those years when this combination of 1879 was being formulated.

What did Mr. Archbold testify to? Why, he admitted in one of these investigations, speaking of certain figures that he was confronted with, that:

"The export business for the month of October shows a shipment to Philadelphia of 10,642 barrels of refined oil, which was billed at a rate of $1.29½ from which there was rebated a total allowance of 63 cents." (Brief, vol. 2, p. 175.)

These are specific instances. When Mr. Archbold was on the stand he did not deny them, nor did he claim when he testified in the case at bar that they did not receive them during those years.

Some question is raised by the other side about whether Mr. Cassatt's testimony is competent in this case. The Pennsylvania Railroad, of which he was traffic manager, made certain agreements with the Standard companies, and we think this makes him a coconspirator, and under the authorities we believe his testimony is competent. We cite the authorities in the brief. Mr. Cassatt said (Brief, vol. 2, p. 177):

"Unless they would guarantee us the same quantity of oil, guarantee to ship over our line the same quantity of oil that the Standard Oil Co. had guaranteed to ship, we could not make them the same rates; we would make lower net rates to the Standard than they got."

Now, I have not time to go into all these details. Let me mention one or two more. There are two letters, written by Mr. Daniel O'Day, general manager of one of their pipe lines, and by Mr. Cassatt of the Pennsylvania Railroad, which constitute a contract and are in evidence and attached to the bill. Mr. O'Day said (Record, vol. 6, p. 3288):

"I here repeat what I once stated to you, and which I asked you to receive and treat as strictly confidential, that we have been for many months receiving from the New York Central and Erie railroads certain sums of money, in no instance less than 20 cents per barrel, on every barrel of crude oil carried by each of those roads.

"Cooperating, as we are doing, with the Standard Oil Co. and the trunk lines in every effort to secure for the railroads paying rates of freight on the oil they carry, I am constrained to say to you that in justice to the interest I represent we should receive from your company at least 20 cents on each barrel of crude oil you transport."

Now, what did he testify to? He testified that these payments were not only on the oil that they furnished but on all the oil transported; thereby not only giving them a preference but taking from their competitors in the struggle for life a part of their profits. I have heard of rebates; I have been counsel for railroads; I have seen their curse to the business interests of this country; but I have never seen anything equal to that.

What else did they do? Why, they got control of all of the terminals. But, Mr. Milburn says, in those days the shippers furnished the terminals. I deny it; and the contracts attached to this bill will show you that that statement is an error. Mr. Milburn does not know this record as well as I do, I think. He did not sit for 187 days, through all the dreary details of 20,000 pages of testimony. Those contracts are in evidence. They give the Standard Oil Co. the power to name the terminal charges for all shippers—themselves and others. And one of those contracts, in addition to giving them the power to name the terminal charges, which are what they will levy on the independents, gives them 10 per cent of the rate besides. True, the contract with each railroad provides that they shall furnish the terminal business as cheaply as any other line entering New York shall furnish it; but as they controlled all the terminals of the other lines, what did that amount to?

Then they entered into a pooling agreement, in 1874 or 1875, whereby all the railroads joined in making a pool and dividing the oil business from Pennsylvania to the seaboard and to Cleveland and other refining points; and they agreed to pay certain rebates to those pipe lines alone which agreed among themselves to maintain the rates of pipage. The pipe lines which had this agreement between themselves (which is in this record), being the only ones which received the rebates, at that time or very shortly thereafter entered the Standard combination.

Now, what do some of the witnesses say about this? Mr. Emery says of that contract (and this preceded the combination of 1879):

"It was the final Waterloo, sir, of the entire independent interests.
"Q. What do you mean by that?
"A. Absolute destruction to all the interests. It shut down every refinery on the creek—every one of them"—

That is, Oil Creek—

"And we discharged from our barrel factory—we were making our own barrels—it set at liberty in Titusville alone over 400 men—between 400 and 500 men; threw them all out of employment."

Mr. Justice Holmes. What page are you reading from?

Mr. Kellogg. Page 187 of volume 2 of the brief.

Mr. Justice Holmes. Yes; I know the volume.

Mr. Kellogg (continuing same quotation):

"Q. In what way did it accomplish that result?
"A. Through discrimination. We couldn't ship to the export trade and we couldn't ship into the country. We met the stifling opposition of this same combination."

Mr. Emery so testified in this case. Is there a Standard witness—and they are alive and know the facts—who denies it in this record?

Mr. Justice LURTON. Upon this question of rebates, it has been asserted that it was legal, as I understand it, prior to the Federal acts regulating interstate commerce, for a railroad company to discriminate in favor of a large shipper as against a small one, all other conditions being equal, and that therefore what all these railroads that you refer to were doing was not then illegal or unlawful.

Mr. KELLOGG. I will answer that.

Mr. Justice LURTON. In your own time.

Mr. KELLOGG. I deny that to be the law. This court held, in the Western Union Telegraph case, that it was illegal at common law to give an unreasonable preference or make an unreasonable discrimination in the transportation of messages in interstate commerce. It always was illegal at common law to give unreasonable preferences.

Mr. Justice LURTON. That simply drives the question back as to whether it is legal to make a discrimination between wholesale and retail, and between a large and a small shipper.

Mr. KELLOGG. I say that this transportation, your honor, has become absolutely necessary to all commerce. The rule that the big shipper might have a better rate, or certainly the rule that he might have rebates the size of these, and rebates upon his competitor's goods, would——

Mr. Justice LURTON. To give a rebate is virtually to give a preference, is it not?

Mr. KELLOGG. Yes. I think it would be unreasonable. I say that would drive every concern in this country into the hands of the big men as surely as it was driving them in that day.

I must proceed rapidly. They did buy up the Empire Transportation Co. from the Pennsylvania Railroad; they did enter into a contract with the Pennsylvania Railroad, which is in evidence, whereby the Pennsylvania Railroad agreed to give them 10 per cent of the oil rates, as an equalizer, they say. Equalizing what? Equalizing traffic between the railroads. The result was that they got 10 per cent of the other man's money. This was not the common and usual thing in those days. It raised such a storm of protest in Pennsylvania that suits were brought to eject the Pennsylvania Railroad from the State, and to eject the United Pipe Lines from the State, and Mr. Rockefeller, Mr. Flagler, Mr. Rogers, and all their associates were indicted for conspiracy in the State of Pennsylvania; and they entered into an agreement——

The CHIEF JUSTICE. What year was that?

Mr. KELLOGG. That was 1878 or 1879—just about the time they were getting up this combination.

The CHIEF JUSTICE. Pardon me. A while ago you said, as I recall, in making a general statement, that the illegal practices or fraudulent practices as to rebates to which you referred, continued up to the time of this suit, until they were prevented by this suit. The facts which you generally detailed are all facts which occurred before 1882, and up to this time?

Mr. KELLOGG. Certainly. I shall come to that later on. When those cases were dismissed all of the independents, through their representatives, joined in a contract with all of the Standard Oil companies—I can not stop to give you the names of them, but they are attached to the bill—in which, in view of the following stipulation, the independents agreed to ask the district attorney to *nolle* those indictments and to dismiss the civil suits. The stipulation, among other things, contained the following (Brief, vol. 2, p. 195):

"That the said parties of the first part (Standard concerns) shall and will make no opposition to an entire abrogation of the system of rebates, drawbacks, and secret rates of freight in the transportation of petroleum on the railroads"

and

"That said parties of the first part further agree that the railroad companies may make known to the other shippers of petroleum on their several roads all the rates of freight; and that said parties of the first part, or any of them, will not receive any rebate or drawback that the railroads companies are not at liberty to give to other shippers of petroleum."

When confronted with that does Mr. Rockefeller deny it? No; he says that he does not recollect but that now that I mention it he has some recollection of that. He had been posting up, as it appears, about the details of construction of barrels and everything else in those days; yet he says:

"Q. But you do have a vague recollection of them?
"A. Oh, now that we talk about it, I do. I don't think I ever attached any special importance to them"——
Referring to the suits—
"It was a sort of a custom in those days to bring a suit.
"Q. What's that?
"A. It was a sort of a custom out in the Pennsylvania section to bring suits in those days. It was kind of a habit." (Brief, vol. 2, p. 196.)

Well, your honors, it was a habit that most men would not envy. Do you believe that he did not know why he was indicted? Do you believe that he did not know that it was the most outrageous rebating ever known in the annals of railroading?

Now, those are some of the transactions which led up to the trust of 1879. With your honor's permission I will state what that trust was—and the trust of 1882 and the trust of 1899. There were, during the years prior to 1879, a large number of independent manufacturers. They were large manufacturers, and had established a large commerce abroad, and exported a greater percentage of the product than ever has been exported since. They had established large refineries and manufactories at New York, Philadelphia, Baltimore, Oil City, Pittsburg, Boston, and other places, mostly in Pennsylvania and Ohio.

Mr. Justice McKENNA. You say the independents had a greater export trade than has ever been equaled since?

Mr. KELLOGG. The independents had a greater percentage of export, according to the total production in those days, than has ever been done since. It was $36,000,000 back in 1872. And it has never exceeded in this country over $93,000,000. They had worked up this business. The Standard Oil men did not work up the foreign business. They did not originate the pipe lines. They did not start that business. They did not demonstrate the feasibility of building a pipe line over the Allegheny Mountains to the seacoast. Others did it; and when they could not stop those pipe lines they bought them where they could.

Now, what did they do? Prior to 1879 these men went into the first Standard Oil combination. There were 30 corporations acquired during those years, and they were acquired through stock ownership in this way. To be sure, there might be several partnerships which, as a part of the scheme, were consolidated into a corporation, and then the stock of the corporation taken. Those were not purchases of property in the ordinary course of business. That was a consolidation, as I will show you. Take, for instance, one mentioned by my brother Milburn—the Pratt Manufacturing Co. Mr. Henry H. Rogers, Charles Pratt, and Josiah Macy, I believe, were stockholders of that corporation. They turned their stock over to, as they called it, the Standard Oil interest. Who that is we do not know; but the custody of the certificates either went to individuals or the Standard Oil Co. to hold, not for the benefit of the Standard Oil Co. or the the Standard Oil stockholders, but the Standard Oil interests and Rogers and Macy and Pratt, who were then taken in. That is the way they did it. It was just exactly such a combination as any concern would make, the stockholders of one going to the stockholders of the other and exchanging the stocks or acquiring their stocks and taking them into a common pool. In that way 10 good large corporations were acquired. They were competing concerns, and the testimony shows they were competing. On the cross-examination of Mr. Archbold and Mr. Rockefeller they do not deny that. Ten companies were taken in where they exchanged the stock of the Standard Oil Co. for the stock of the others. There were 14 companies in which the men took some stock in the Standard Oil and retained some in the other companies; and there were 4 companies where the whole stock was acquired, in which it does not appear that any of the original owners retained any. So that the list of Standard Oil stockholders increased from 9 men in about 1874 to 37 when this trust agreement of 1879 was made. It was simply a combination of stock interests. It was not a purchase in the usual course of business. Why do I say that? Those stockholders, most of them, remained in charge of the separate plants. Those plants were operated separately. They were separate corporate entities.

Mr. Justice McKENNA. What is that?

Mr KELLOGG. They were separate corporate entities, owning and operating their properties, and their stock was simply taken into a pool which was divided up in 1879.

The combination was kept secret from the public in all of the investigations of that day. Subsequent to that time, in 1888, when committees of Congress were trying to find out whether that combination existed, when suits were pending, if this was an ordinary growth of business, acquiring property to increase the business and to add to the volume, why did they not so frankly state. They denied it. The Standard Oil Co. of Ohio, in the course of its dealings in Cleveland, had made a contract with Scofield, Shurmer & Teagle whereby the latter agreed to limit the production of their refinery and not to engage in refining anywhere else, and the Standard brought suit in 1881 to enforce that agreement. They set up in the answer that the Standard Oil Co. was in a combination in restraint of trade. Mr. Rockefeller made an affidavit in that case which he was confronted with in this case, and it shows the kind of combination this was in 1879. Mr. Rockefeller said:

"Affiant says the Standard Oil Co. owns and operates its refineries at Cleveland, Ohio, and its refinery at Bayonne, N. J.; that it has no other refineries nor any interest in any other refineries, nor does the Standard Oil Co. operate or control in the United States any other refineries of crude petroleum; that there are in Ohio, West Virginia, Pennsylvania, New York, and New Jersey a large number of refineries of crude petroleum that are not owned or controlled by said Standard Oil Co., and in which the said Standard Oil Co. has no interest whatever, directly or indirectly, which are now and for years past have been refining crude petroleum and selling it in the open market"—

Mr. Justice LURTON. What page are you reading from?

Mr. KELLOGG. Pages 35 and 36, of volume 1 of the Government brief.

"That the amount of crude petroleum refined by the said Standard Oil Co. does not exceed 33 per cent of the total amount refined in the United States."

Mr. Milburn states to you that these gentlemen controlled then 90 per cent of the business.

Mr. Flagler is even more specific at this time. This was in 1881, when the combination of 1879 was actually in existence. He says, on the same page (p. 36):

"Nor is it true, as stated by John Teagle, that the Standard Oil Co., directly or indirectly, through its officers or agents, owns or controls or has control of the works formerly owned by Warden, Frew & Co., Lockhart, Frew & Co., J. A. Bostwick & Co., Charles Pratt & Co., Acme Refining Co., Imperial Refining Co., Camden Consolidated Oil Co., Devoe Manufacturing Co., or the refinery at Hunters Point, N. Y., or any of them."

These are the identical refineries which Mr. Rockefeller says in this case they bought in order to increase their capacity, and were controlled by the Standard and its stockholders. They were in a combination, as Mr. Rogers said.

Mr. Justice McKenna. That stock was in the hands of individuals?

Mr. Kellogg. No; the custody of the certificates was in the Standard, for the benefit of the Standard Oil stockholders and the stockholders they had taken in.

Mr. Justice Holmes. You mean the physical paper was there, but the title was in trustees.

Mr. Kellogg. It was in 1879. I do not know where it was before that.

Mr. Milburn. It was always, the evidence is, in other trustees.

Mr. Kellogg. Prior to 1879 it was in the names of various individuals.

Mr. Justice McKenna. It was either said in this or in the other argument that the reason was that the Standard Oil Co. under the laws of Ohio could not take the stock.

Mr. Kellogg. That may have been the reason.

Mr. Milburn. That is right.

Mr. Kellogg. Mr. Archbold says on October 15, 1879, after the signing of this agreement:

"Q. How long has the Acme Oil Co. been one of the Standard Oil Co.?

"A. The Acme Oil Co. is the Acme Oil Co.; it is not the Standard Oil Co. at all.

"Q. How long has it been controlled by or affiliated with the Standard Oil Co.?

"A. It is an independent organization; it is not controlled or affiliated with the Standard Oil Co. at all." (Brief, vol. 1, p. 37.)

That testimony was given on October 15, 1879, after the signing of that agreement with the Acme Oil Co.; and the Acme Oil Co. is one of the companies whose stock went into the combination which Mr. Milburn says was an acquisition of properties in due course of business, open to the world.

Mr. Rogers says:

"Q. Was there a sale or transfer made of your business"——

He speaks for the Pratt Manufacturing Co.——

"to the Standard Oil Co. by which practically the Standard Oil Co. really controlled your business?

"A. I will answer this much of the question by saying that the Standard Oil Co. does not practically control our business."

I have not time to read all he says. It is here in the brief.[1] But the substance is that they got up from time to time different combinations. People would come in and go out, but the nature of the combination is clearly indicated.

Other men testified to the same facts, denying that their companies (which were then in the trust) were affiliated with or controlled by the Standard Oil Co.

Mr. Justice HOLMES. Is it not the natural inference that the reason they were keeping quiet at that time was because there were limitations to the charter of the Standard Oil Co., and that this thing might be looked upon as unwarranted because of that limitation, rather than for other reasons that did not include that?

Mr. KELLOGG. I think not, because at that time it was charged by some of the people, by Scofield, Shurmer & Teagle, and others, that they were in an illegal combination; and even at that time such a combination met with the condemnation of the public. It led to the examination by the committee of the New York Legislature in 1879, and again in 1888.

Mr. Justice LURTON. What was the date of Mr. Rockefeller's affidavit?

Mr. KELLOGG. 1881, your honor.

Mr. Justice LURTON. Was the Ohio suit then pending?

Mr. KELLOGG. That was in 1891 or 1892. I will come to that.

Mr. Justice LURTON. What was the occasion of his making that affidavit? What was he trying to meet?

Mr. KELLOGG. The Standard Oil Co. had entered into a contract with Scofield, Shurmer & Teagle, whereby the latter agreed to limit the production of their refinery in Cleveland to a certain amount per month, and not to engage in refining anywhere else. They violated that agreement, and suit was brought to enjoin them, and they set up as a defense that the Standard Oil was a party to a combination; and Rockefeller and Flagler made affidavits to the effect that the Standard was not in a combination, and that the identical companies which were then in this trust in 1879 were not under the control of or affiliated with the Standard Oil Co. That is the point. They kept this thing secret.

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[1]Brief, vol. 1, pages 38-42.

Mr. Justice HOLMES. They were going it pretty close, but taking it in a literal sense, I suppose that affidavit was true, was it not?

Mr. KELLOGG. I do not believe, even taking it in a literal sense and giving Mr. Rockefeller the benefit of every doubt, that he told the truth or that Flagler did. He either did not tell the truth then or he did not tell it on the stand in this case. He may take his choice.

Mr. Justice LURTON. Well, which choice did he take? Was he confronted with this affidavit?

Mr. KELLOGG. He was confronted with this affidavit and he did not deny it.

Mr. Justice LURTON. Did he offer any explanation——

Mr. KELLOGG. No.

Mr. Justice LURTON (continuing). Of the broad terms of this affidavit?

Mr. KELLOGG. No. He could not.[1]

Now, what was the trust agreement of 1879? Having gathered in 30 companies in this way through stock ownership, they formed the first trust, which was the parent trust, which all the investigations of the committee of Congress (the Committee on Manufactures) and the committees of the New York Legislature never succeeded in dragging to light when they were trying to find out the history of those days, and never, until the exigencies of this case compelled them to, did they bring it forward. I am glad they did so, because this was the forerunner of the trust in 1882.

Thirty companies were combined in the hands of three trustees; and we will call it the Vilas, Keith, and Chester trust, because they were the trustees. It reads:

"Whereas the Standard Oil Co., of Cleveland, Ohio, holds the possession of certificates for certain stocks and interests which it is desirable to distribute among the parties entitled thereto; and whereas such stocks and interests now stand in the names of several persons, and it is desirable for convenience in dividing them that all be transferred to trustees, and that the same be so transferred by the Standard Oil Co., by each party holding the same, and by every person holding or claiming an interest therein"——

Mr. Justice HOLMES. What page is this?

Mr. KELLOGG. This is Appendix A, at page 414 of volume 1 of our brief. It goes on and gives a list of the corporations the stocks of which are transferred to Myron R. Keith, George F. Chester, and George H. Vilas, as trustees, "to have and to hold said stocks and interests to them and their survivors and successors, in trust nevertheless for the following purposes, to wit: To hold, control, and manage the said stocks and interests for the exclusive use and benefit of the following-named persons and in the following proportions named:"

[1] Cross-examination of Rockefeller, vol. 16, pp. 3204-3211.

Then follow the names of the 37 stockholders in the combination, including those who had been taken in by this acquisition of the stocks of these various competing companies.

"And to divide and distribute the same as soon as they can conveniently do so between the said persons for whose benefit they hold the same as aforesaid, and in the respective proportions aforesaid."

Therefore, if they did divide them, there were 37 stockholders in 30 different companies, each holding the same proportion of the stock of each company. But they did not hold all the stock of all the companies, they only held part of the stock of some of them, and in those instances the part which they held was divided into equal parts.

Mr. Justice McKenna. Divided how? You drop your voice so that I can not hear you.

Mr. Kellogg. They divided the stocks which they held into equal parts, so that all of the persons named in the trust held the same percentage of the stock of each corporation.

The Chief Justice. In other words, the mother corporation, as you call it, the Ohio corporation, practically owned that stock?

Mr. Kellogg. No; I do not think so.

The Chief Justice. In substance, when they divided it out in proportion, they put it in the name of the stockholders in proportion to the stock that they held in the other companies.

Mr. Kellogg. I do not think that is the fact. I beg to differ with your honor, because there is no evidence that the Standard Oil Co. of Ohio ever owned a dollar of it. It was simply the custodian, as stated here. It belonged to the stockholders of the Standard Oil Co. and to the new stockholders as they came in from time to time.

Mr. Justice McKenna. I thought that was your contention in connection with the Rockefeller affidavit—that they did have an interest and did own it.

Mr. Kellogg. No; my contention was that Mr. Rockefeller's testimony in this case that they purchased the refineries in the ordinary course of business was not true. That was the main combination, and the combination in those days was the same thing as the combination in this day. There we have 37 stockholders. Vilas, Keith, and Chester held the stock in trust for those 37 men.

Mr. Justice Day. What did Vilas, Keith, and the other man give to these people? Did they give anything at that time?

Mr. Kellogg. Not that appears.

Mr. Justice Holmes. I suppose this was just like plenty of other trusts that exist. Persons invest in different kinds of stocks, or in this, that, or the other kind of security; and I suppose the trustees issued certificates to the different people?

Mr. Kellogg. They may have issued certificates. That I do not know. There is no evidence of it.

Mr. Justice DAY. Who were the three trustees?

Mr. KELLOGG. They were attorneys of some of these various companies. They were lawyers.

Mr. MILBURN. Two of them were lawyers in Cleveland, I think.

Mr. Justice DAY. The name of Keith I thought I recognized.

Mr. KELLOGG. Yes; he was a lawyer in Cleveland.

Mr. Justice DAY. Who was Vilas?

Mr. KELLOGG. I believe he was in Pittsburg.

Mr. Justice DAY. They were three attorneys for the parties in interest?

Mr. KELLOGG. Yes, sir.[1]

These companies were not bought by issuing Standard Oil stock or paying for them out of the treasury of the Standard Oil Co.

The CHIEF JUSTICE. You lower your voice so that I can not hear you.

Mr. KELLOGG. These were not paid for by the issue of Standard Oil stock. Some of them were. Only two years and nine months later these identical companies, with four or five others, were put in the Standard Oil Trust of 1882, valued at $56,000,000.

Mr. MILBURN. Oh, no; all the oil storage was included in the $56,000,000.

Mr. KELLOGG. The oil storage belonged to the separate corporations. I say these companies were put in at that valuation[2] only two years and nine months later. They did not grow in value from three and a half million to $56,000,000 in two years.

Now, let me come to the Standard Oil Trust of 1882. It does not appear whether Vilas, Keith and Chester did distribute these stocks or not. I doubt if they did, as they also signed the trust of 1882.[3] In 1882, when the Standard Oil Trust of that year was organized (which we will hereafter refer to as the Standard Oil Trust, the validity of which came before the Supreme Court of Ohio), there were 40 corporations and limited partnerships. I will explain what I mean by "limited partnership." Your honors probably understand that a Pennsylvania limited partnership is a stock corporation in effect.

The CHIEF JUSTICE. A joint stock company.

Mr. KELLOGG. Yes. So we will say there were 40 corporations then owned, I believe, by 42 stockholders. There was a trust agreement drawn, which Mr. Rockefeller says Mr. Dodd, the general counsel, is entitled to the credit for if there is any credit in it. It created the trust for the lives of the trustees and the life of the survivor and 21 years thereafter, because that was as long as they could make it; it provided that the stocks of the 40 corporations should be transferred

[1] See Record, vol. 16, p. 3176.
[2] Record, vol. 21, p. 88.
[3] See brief, vol. 1, pp. 428, 429, 430.

to the trustees and that they should issue trust certificates, which were issued in the form almost of stock certificates. Of the 40 corporations the trustees held all of the stock of 14 and a majority of the stock of 26 others, so that there were outside stockholders at that time in 26 of those corporations. But the trustees took all of the stock owned by this body of 40 men, who came together and put their stock in a trust, to hold together these companies, which were potentially competing and had been actually competing until brought together. They were engaged in the same general business.

Now, the trust agreement of 1882 provided that there should be organized in each of four States, New York, Pennsylvania, New Jersey, and Ohio, a Standard Oil company to take over the properties of the 14 corporations of which they owned all the stock.

Mr. Justice HOLMES. This is the agreement of 1882?

Mr. KELLOGG. This is the agreement of 1882; yes, sir.

Mr. Justice LURTON. Is that the date of the birth of the Standard Oil Co. of New Jersey?

Mr. KELLOGG. Yes; I am coming to that.

Mr. Justice LURTON. That was one of the corporations then provided for?

Mr. KELLOGG. Yes; it was created in pursuance of that stipulation. And, as I recollect it, as fast as they got in all the stock of the other 26 corporations, the properties of those companies were to be conveyed to the "Standard Oil Co. of the proper State." Two days later that agreement was modified.

There existed a Standard Oil Co. of Ohio. They organized a Standard Oil Co. of New York and a Standard Oil Co. of New Jersey; and to the Standard Oil Co. of New Jersey they caused to be conveyed from some of the subcompanies that were in the trust of 1879, and which went into this trust, certain properties. It was the same with the Standard Oil Co. of New York. There the amalgamation stopped. The Standard of New Jersey was organized with $10,000,000 capital,—not $10,000,000 in the first instance, but it was increased to $10,000,000 before the reorganization of 1899. We will call it ten millions. So there we have held together in the Standard Oil Trust all of the stocks of 14 companies and the majority of the stocks of 26; the only change was that some of the subcompanies, where they held all the stocks, had conveyed their properties from one subcompany to another, as, for instance, the Pratt Manufacturing Co. to the Standard of New York. Thus they had 40 companies held together by a trust, and that is the famous Standard Oil Trust.

There were 42 stockholders who went into the trust and signed the trust agreement. The trustees had their property appraised, and the record shows that it was valued (I will give round figures, your honors) at $56,000,000, and they issued, to 42 men, seventy millions of trustees' certificates in exchange for the stock in the 40 corporations.

They organized with a president, with a secretary, with stock certificate books, just like a stock corporation. I say "stock certificate books;" I should say "trustees' certificate books."

Mr. Justice LURTON. Can you make a quick reference to one of those certificates?

Mr. MILBURN. There is one in the bill.[1]

Mr. KELLOGG. I will turn to one in a moment.

Mr. Justice HOLMES. That was rather a common matter.

Mr. KELLOGG. It was common after this. It was followed by the Sugar Trust agreement of New York, copied almost verbatim. The Sugar Trust agreement of New York was held illegal by the supreme court of New York. It was followed by the Whisky Trust of Nebraska and Illinois, almost verbatim, and was declared illegal as tending to monopoly by the supreme court of Nebraska and the supreme court of Illinois. It was followed by the Lead Trust in Missouri almost verbatim and it was declared illegal by the court of appeals of Missouri; and it has been declared illegal and has met condemnation as a combination in restraint of trade and a monopoly at common law by every State court in this Nation before which it has come.

When they changed to the Standard Oil of New Jersey they simply substituted a corporation under the liberal laws of New Jersey for the nine trustees. They elected the same president; they made the same by-laws, scarcely changing a word; and they substituted the perpetual power of corporate existence, which can hold together the amalgamated wealth of many men through all time, for that of trustees whose life may be cut short by death. Is it any more legal?

They issued, then, $70,000,000 of certificates. They issued thereafter $12,225,400 for additional stocks of companies and additional properties taken in during the life of this trust. They issued a stock dividend on May 25, 1887, of $15,024,600.

The cash value of the property put in in 1882 was $67,936,098. The total trust certificates were $97,250,000. There was, according to the statement from their own books, $29,313,902 of water—on their own valuation. I am not condemning that at all. I think that was a very reasonable amount of water. But when I come to state the profits (which Mr. Milburn says are reasonable) I will show you the profits they obtained on this capitalization stagger credulity; and it is very strong evidence of monopoly.

It is said they issued 20 for 1,—that is, 20 shares of trust certificates for 1 of Standard Oil stock. They did; but they were issued to stockholders who turned in the stocks of these 43 corporations, and

[1] See Record, vol. A, p. 33.

in order to make up this 20 for 1 (or $70,000,000 of certificates), they added something like thirteen or fourteen millions of watered certificates which did not represent anything.

Now, what happened? These trustees went on acquiring stocks of other competing concerns, and there is attached to the reply brief (also to the original brief in less complete form) a statement, as far as we were able to prove it, of the stocks and properties which this combination acquired from the beginning. We never were able to get them all; we demanded a complete list of their acquisitions, but they never furnished it.

What happened after that? There were various investigations in this country; one in 1888 by the congressional Committee on Manufactures; one in 1888 by the New York Senate; and there had been one in 1879 by the New York Legislature; and this Standard Oil Trust was particularly in the public eye. The public was becoming alarmed at such tremendous aggregations of capital, perpetuated in the form of trusts.

The Attorney General of Ohio brought a suit in the Supreme Court of Ohio to oust the Standard Oil of Ohio from that State and from the right to carry out that trust agreement. Mr. Milburn says that that was purely a suit in quo warranto, as it was, to oust the Standard Oil Co. of Ohio because it had become a party, through all its stockholders, to an agreement which was ultra vires, and that there was no question of monopoly in the case. The Attorney General embodied in his petition and his amended petition a copy of the trust agreement, which contained the list of all the stockholders who signed the agreement, named all the corporations, and showed on its face just what the Trust was designed to accomplish. So all the facts were before the court, and in 1892 the court rendered a judgment declaring in the opinion that it was not such an agreement as the corporation could execute, among other reasons because it tended to monopoly. Under such circumstances I do not believe this court is going to inquire whether a pleading in a State court was sufficient to raise an issue on a question which was within the decision of the court, when that decision is in harmony with the declarations of every other court in this country having a like agreement before it. That is my answer to the gentleman's statement that the question of monopoly was not involved. It was not decided to be a monopoly under a statute of Ohio. The Valentine antitrust statute of Ohio was not passed until 1898. It was decided to be a monopoly at common law, and if the trust was a monopoly at common law when it covered intrastate commerce it is a monopoly at common law when it covers interstate commerce. The body of the common law, as this court has said, covers the Union.

Now, what did the court say?

"That the nature of the agreement is such as to preclude the defendant (Standard Oil Co. of Ohio) from becoming a party to it is, we think, too clear to require much consideration by us. * * *

"By this agreement, indirectly it is true, but none the less effectually, the defendant is controlled and managed by the Standard Oil Trust, an association with its principal place of business in New York City, and organized for a purpose contrary to the policy of our laws. Its object was to establish a virtual monopoly of the business of producing petroleum and of manufacturing, refining, and dealing in it and all its products throughout the entire country, and by which it might not merely control the production but the price at its pleasure. All such associations are contrary to the policy of our State and void."

The court cited the decision of the supreme court of New York, as I recollect, rendered in the Sugar case. This decision was rendered after the Sugar Trust decision and after the Whisky Trust decision, although those trust agreements were made after this trust agreement.

The CHIEF JUSTICE. You may suspend.

(The court thereupon took a recess until 2.30 o'clock p. m.)

AFTER RECESS.

Mr. KELLOGG. Mr. Justice Lurton asked me where the form of the trust certificate was. I beg your honor's pardon; it slipped my mind. It will be found in Volume A of the record, page 33.

After the decision of the Supreme Court of Ohio in 1892, declaring this Standard Oil Trust illegal, and excluding the Standard Oil Co. of Ohio from the right to perform the same, the certificate holders met and dissolved the trust, and liquidating trustees were appointed. It appears by the evidence of Mr. Rockefeller and Mr. Archbold that it was liquidated because of this decision.

Mr. Milburn fell into an error yesterday, no doubt not intentionally, when he said that when they liquidated in 1892 there were only 20 companies; that the other companies had been consolidated by the conveyance of their properties. That is not correct. There were 84 companies, the stocks of which were held by the trustees just previous to the liquidation. The stocks of 64 of those companies were transferred to the several 20 companies, as the court below found; for instance, 23 to the Standard of New Jersey, 11 to the Standard of New York, 11 to the Anglo-American Oil Co., and so on. So that when finally liquidated the stock of the 20 companies only was divided. Those 20 companies held the stocks of the other 64 companies; and I believe that there are something like 23 of them still in existence.[1] From time to time afterwards they did consolidate properties, of course, and some of them went out of business; and the Standard holding company also acquired the stocks of various other companies.

The liquidating trustees were practically the same as the trustees of the Standard Oil Trust. This is the way they liquidated: Mr. Milburn explained that there were 972,500 trust certificates. They divided the stocks of the 20 companies into 972,500 parts, and distributed them among the trust-certificate holders—we do not know how many; there were two or three thousand. We never have been able to get the books of the trustees, in spite of the litigation in Ohio and all the notoriety. We traced them down by the examination of every man who we thought would know—Rockefeller, Archbold (who were liquidating trustees), the secretary, the attorney in fact of the liquidating trustees, the man who kept the books (Mr. Bensinger); we found they were in a safe in the Standard Oil building in 1900; and although those books were important books, nobody could or ever did explain their loss; and we never have been able to tell how many stockholders there were after the dissolution, between 1892 and 1899. All of this is narrated in the brief, and I will not take further time with it.

Mr. Justice LURTON. Mr. Kellogg, what is the materiality of all that preceded the occurrences that operated to put the shares of all these companies in the New Jersey company in 1899?

Mr. KELLOGG. The defendants claim that by reason of the trust of 1882 and the trust of 1879 there became a body of common stockholders, common owners.

Mr. Justice LURTON. Your argument upon that subject is intended to meet that suggestion?

Mr. KELLOGG. Yes; and to show that there were two void trusts, one of which was declared void and dissolved and the companies separated.

Mr. Justice MCKENNA. As I understood counsel on the other side, he stated that the common ownership preceded the trust of 1879.

Mr. KELLOGG. It came about as I explained, your honor, by taking them into the combination. The common ownership was established by the trust of 1879.

He says in that respect it differs from the *Northern Securities case.* I will call your honors' attention to that matter when I come to it. When the Northern Securities suit was brought and decided, it is not true that Mr. Hill owned stock in the Great Northern and not in the Northern Pacific, and his associates the same. Mr. Hill and his

[1] Sixty-four companies, stocks of which in 1892 were transferred to various of the 20 companies. (See Gov Exhibits 253, 254, vol. 7, pp. 446–451).

The list of companies now owned in whole or in part (see brief, vol. 1, pp. 80–93), shows 23 of the above 64 companies to be still in existence.

associates owned stock in both companies and controlled both companies, and were a body of common stockholders of two companies, and the competition between those two companies had been suppressed. There were outside shareholders, of course, as there were outside shareholders under the trust of 1882. In principle there is not any distinction; in the facts there is substantially no distinction.

Up to December 31, 1892, out of the total of $97,250,000 worth of certificates, they had liquidated $49,461,900—just a bare majority. The men who did that were Rockefeller and his associates and six or eight others. So that 15 or 20 men—but not alone these individual defendants—did own a majority of the certificates, and liquidated theirs, and took their stock in the subcompanies. From December 31, 1892, until December 31, 1897, only two more shares of trust certificates were liquidated. Mr. Milburn characterizes it by saying that they were pondering on what they could do to relieve the small stockholder; and he bore down very heavily upon the hardship (as they always do in these cases) to the small shareholder who would have been injured by a distribution of his shares. Let me show you some of them who did not liquidate during the five years in which Rockefeller and his associates controlled the companies through the ownership of the majority of the shares of the subcompanies, the balance of the shares, two or three thousand in number, being represented by the certificates not liquidated.

The Bostwick family, with 18,199 shares, did not liquidate; Lockhart, with 17,094; Harkness, with 14,000; another Harkness, with 13,077; the estate of H. H. Houston, 11,775; the Brewster family, 9,885; the Macy family and estate, 12,880, and so on. Why, they were not small stockholders. It is perfectly evident, your honors, that they liquidated in a way to have a body of men so small—the associates of Mr. Rockefeller—that during as many years as they were allowed to do it they could go on and manage these companies as 1 instead of 20. And in order to make the companies fewer in number, they previously transferred the stock of 64 to these 20.

What started up the liquidation so promptly in 1897?

On September 15, 1897, the attorney general of Ohio filed a petition in the Supreme Court of Ohio in the original *quo warranto* case, stating that the trust as to the Standard of Ohio had not been dissolved, and asking to have it punished for contempt. A large amount of testimony was taken. It is sufficient here to say that evidently the court must have been convinced that as far as the Standard Oil Co. of Ohio was concerned its stock had been distributed, as Mr. Rockefeller, I believe, testified; so that after considerable testimony had been taken the petition was dismissed. Of course it should have been dismissed if the stock of the Standard Oil Co. of Ohio had been taken out of the trust, as it appeared. But the other companies, owning a majority, had not been taken out. So in 1897 the liquidation became rapid; and immediately these gentlemen cast around to find some other way of holding these separate concerns.

It is said they were not competing companies; that they were held together by a body of common owners. There were only 20 of the original stockholders parties to the trust of 1882 who went into the trust of 1899; the balance of the several thousand stockholders in 1899 were new men, coming in and going out. They were like every corporation. And if all that was necessary to make a legal combination to-day is that they should trade stocks and get a body of common owners, one man owning stock in every company, it is perfectly simple to evade the Sherman law. For after the decision in the Northern Securities case, when they distributed all the stock of the Northern Pacific and the Great Northern to the certificate holders of the Northern Securities Co. *pro rata*, there was a body of common owners. And if this body of common owners could do as they pleased with their property (as Mr. Morgan claimed they could), of course they could form a combination which was illegal before. I simply mention that in passing.

After the Attorney General filed his petition, testimony was taken from November 8, 1897, until about March 20, 1899. But about the time that matter came up for hearing, in the spring of 1899, they formed this new combination. And it will take me only a moment to explain it.

The Standard Oil Co. of New Jersey was one of the 20 companies, and had $10,000,000 of capital. They increased its capital to $110,000,000, making the original $10,000,000 a preferred stock, and afterwards retiring that. The new $100,000,000 of common stock was issued to the two or three thousand shareholders of the 20 companies (because the $10,000,000 of New Jersey preferred was exchanged also); and the record in this case shows that the stock of the Standard Oil Co. of New Jersey was sold and exchanged for the stock of the 20 companies to the extent of $97,249,200; the effect being, of course, that there were just as many shares of stock of the Standard Oil Co. of New Jersey outstanding as there had previously been Standard Oil trust certificates.[1] Then, and at that time, was when the present combination was organized, which the court held to be illegal. From that day to this the Standard Oil Co. has been a holding company.

It is said that these companies were not competing. It does not make any difference whether they were or not. If they were not actually competing, they were potentially competing companies. They were claiming the right of separate corporate entities and

[1] It thus appears that the equivalent of 8 trust certificates have not been exchanged for stock in the Standard Oil Co. of New Jersey.

were engaged in the same business. Mr. Rockefeller testified, in the contempt proceedings in Ohio, that they had been separated and were competing with each other—actually competing. I do not think they were, but I am simply giving his testimony. He said they were; that they were dissolved in pursuance of the decree of the supreme court of Ohio, and after the dissolution were actually competing companies. His testimony is quoted in the brief. If they were not competing, it was because they were held together by a trust during dissolution, which was illegal at common law and illegal under the Sherman Act, because it was a continuing trust; and they can not set up an illegal agreement as a basis for a right to combine again.

To-day the Standard Oil Company of New Jersey owns 114 companies, as I have previously stated. The decree runs against the 37 principal ones. They are recited in full in the brief, and I will not stop to go through them. Of the 37, all but 7 were in the trust of 1882. The 7 are the Manhattan Oil Co., a large concern in Ohio, which they secretly purchased in 1899, which I will state to your honors; the Standard of California (formerly the Pacific Coast Oil Co.) in 1900; the Prairie Oil & Gas Co., which the trustees created as a separate corporation; the Standard Oil Company of Nebraska, created by the Standard of New Jersey in 1906; the Security Oil Co. and the Corsicana Refining Co. of Texas, which were secretly owned, one of them through an English firm of solicitors, which I will state when I come to it.

So that prior to 1899 and 1900 those companies were separate, potentially competing concerns, engaged in the same business all over this country, and they were put together. This combination differed from the trust only in the respect that a corporation, perpetual in its powers, took the place of the trustees in the Standard Oil Trust. And, as I will show your honors by the debates in Congress, it was the Standard Oil Trust which was considered, among others, and against which Congress was legislating or intending to legislate when it passed this bill.

Having briefly outlined the three trusts, I come now to the business of the various Standard Oil companies, and the acquisition by the Standard of the pipe lines and secret companies.

. It is said that this company simply acquired properties in the usual course of business. No company in this country ever entered into a business in which able men were engaged and suddenly sprang from 10 per cent to 90 per cent of the business by natural growth. They took companies into the combination as they could get them, when they were important and competing. They bought up refineries and marketing companies when they could not get them to come into the combination, and dismantled them.

It is said that they only bought and dismantled refineries of which they could use the material, and which were old and of no particular use. The record does not show that to be a fact. Mr. Archbold testified before the Manufactures Committee of Congress in 1888 (and his testimony is in this record) that up to that time they had purchased and dismantled from the beginning about 50 refineries, he believed.[1] People do not buy refineries for the sake of the junk in them. They dismantle them to get rid of them in the business.

During the life of this concern we have only been able to show that they have acquired by stock ownership, combination, or purchase 225 separate concerns. We asked time and again during the taking of the testimony for a complete list. They talk about the power of the Government to go in and get these things. Under the *Hale* case, the Government can only get such information as it designates in its subpœna the books will show. The subpœnas, which are in this record, show that the Government complied strictly with that rule, as we should. Talk about the power of search of the Government! Why, your honors, it is nothing to the power of the Standard Oil Co., with its lawyers and its agents in every State. We got, as the subpœnas in this record show, only what we compelled them to produce.

Of the 225 companies, of course many were small marketing concerns; 137 were refineries, including lubricating works and vaseline works; 64 were exclusively marketing concerns; 24 were pipe-line concerns. Of the refineries which they bought, large and small, during the life of these combinations, they dismantled about 75. There may be an error of one or two as to which it is very difficult to determine from the record.

Between 1883 and 1888 they got 31 per cent of the stock in the Tidewater, a large competing concern.

In 1886 Holdship & Irwin's refinery, and Reighard's refinery, both in Pittsburg, were acquired and immediately dismantled. They were large refineries. And it was Mr. Irwin, I believe, who was interested in one of these, who Mr. Milburn said "saw the handwriting upon the wall." Of course, he did.

Mr. Justice LURTON. To what extent were refineries bought and dismantled after the amalgamation of 1899?

Mr. KELLOGG. Not to a large extent. They bought a new one of the Cudahys in Illinois and immediately dismantled it. They bought two refineries of Scofield, Shurmer & Teagle and dismantled those. They bought the Manhattan Oil Co.'s refinery and dismantled that. I will come to those in a moment.

In 1887 Logan, Emery & Weaver had a new refinery, built in 1880. They bought it and dismantled it.

[1] Record, vol. 6, p. 3281.

In 1890 the Globe Refining Co. of Philadelphia and the Globe Refining Co. of Pittsburg were acquired and both refineries dismantled. For these and 45 per cent of the stock of the Western & Atlantic Pipe Line they paid $1,274,820 in cash and certificates.

Did they buy those merely to dismantle them? These are the indicia of their combination and monopoly.

In 1895 they bought the Crescent Pipe Line, with a refinery, about completed, which they never have operated. They have operated the pipe lines, but not the refinery.

In 1895 they also bought the Union Refining Co. of Titusville, the Mutual Oil Works, the International Oil Works, and others.

For the Manhattan, bought in 1899, as I say, they paid in property and a contract $2,800,000, as I will show your honors. That was a large pipe-line and manufacturing concern. And they dismantled its refinery.

The Indiana field was a new one. That is the new field which Mr. Milburn said they went in and developed. How did they develop it? The Indiana Pipe Line & Refining Co. had pipe lines into this field, and a new refinery at Kankakee, Ill., which had been built by the Cudahys; and these people bought its stock, as I will show you, through an English firm of solicitors. The refinery had been completed, though some of the by-product departments were not completed. They dismantled it at once.

In 1901 Scofield, Shurmer & Teagle (as I will show when I come to take up the testimony as to unfair competition) was a large competing concern, manufacturing about 200,000 barrels of oil per year, which it sold in seven or eight States. It had two refineries in Ohio. After a warfare they bought it and held it out as an independent concern and dismantled its refineries.

In 1900 they bought the Pacific Coast Oil Co. I do not think it is fair to say that they dismantled its refinery; they abandoned it and built a bigger one at another point. But I wish to say something about the Standard Oil Co. of California (formerly the Pacific Coast Oil Co.), which has been held up here as one of the great enterprises of these gentlemen, a legitimate growth of business which their energy and money alone was able to develop. There is no evidence of anything of the kind. The record shows that the California field was discovered a good many years ago. It has developed largely from 1900 to the present time. A large part of the oil produced in California—the 40,000,000 barrels they speak of—is not refinable oil. It is crude oil, sold for fuel. But there is a large amount of oil which is refinable, and the production in 1897 was 1,903,411 barrels; in 1898, 2,257,207 barrels; in 1899, 2,642,095 barrels; in 1900, 4,324,484 barrels.[1] When they went there they were selling their eastern oils

[1] Record, vol. 19, pp. 624–625.

in California through the Standard Oil Co. of Iowa as their selling agent; and they met in competition with the California producers and refiners, who were successfully prosecuting their business. It is not true that the Standard discovered the process, and that they could only make good oil out of the California oil by mixing 70 per cent of eastern oil with it, or 30 per cent of eastern oil, whichever it is. The independent refiners were successfully making illuminating oil in California when the Standard went there, and were selling it in competition with the Standard's mixed oil.

And what did they do? They found the Pacific Coast Oil Co., the Puente Oil Co., the Union Oil Co., and others established in business there and they proceeded with their usual tactics. They bought the Pacific Coast Oil Co. for $761,000. Before that was bought, the Standard of Iowa (which at that time was the company doing the marketing in the Pacific Coast States) made a contract with the Puente Oil Co., in 1898, whereby the Puente agreed to limit its production of refined oil to 600,000 gallons per year and sell it all to the Standard.

Mr. MILBURN. Mr. Kellogg, is that the contract annexed to the bill?

Mr. KELLOGG. Yes; attached to the bill.[1]

Mr. MILBURN. Does it limit their manufacturing?

Mr. KELLOGG. Yes—that one, or the other. One of them does.

Mr. MILBURN. No; neither.

Mr. KELLOGG. It is in evidence, too. They were to purchase it all. The Union Oil Co. is another one. I do not know the date of that contract; but it appears that in 1904 they had a contract with the Union Oil Co., a copy of which is in evidence. That was the best we could do. We could not give the original; but I think you will find on reading the brief that the copy is substantiated. By that contract the Standard agreed to purchase 600,000 barrels per annum of the crude production of the Union Oil Co., in consideration of which the Union Oil Co. agreed not to manufacture any illuminating oil, naphtha, benzine, gasoline, or light distillate.

They made contracts with independent producers whereby they agreed to sell only to the Standard, and to store their product if they produced more than the Standard could take. And having done this, they proceeded to take the business of California.

In 1902, 1903, and 1904 the independents were doing from 15 to 33 per cent of the business in Los Angeles. The Standard reduced the price to a loss, so that their books in evidence in this case (we are not relying on oral testimony) show that they lost from 2¼ to 3½ cents a gallon. And when your Honors consider that half a cent a gallon on the crude production that the Standard Oil Co.

[1] Record, vol. A, p. 168; vol. 21, p. 101.

manufactures will pay 12 per cent dividends upon their entire stock, over $12,000,000, and that a cent a gallon will pay over $20,000,000, you will see what a stupendous loss 2½ or 3½ cents a gallon is on the oil.

In this case we got at the statistical department (and I will show you by and by how we did it) with a subpœna; and we showed the price of oil all over this country, and the losses, and the cost of selling, and we showed that wherever there was competition like this the Standard was selling at a loss. Why, they sold oil at 7½ cents a gallon, and at a loss of 2½ cents—perhaps lower than that; I do not know, but a loss of 2½ and 3½ cents—in Los Angeles, when they were making 3, 4, and as high as 5 cents a gallon in other places, and when they were getting from 13 to 21 cents at Spokane, Portland, and other places.

You may say that is competition. It is, your honors. And I announce that I do not believe it is possible by law to prevent that kind of competition. The States have tried it, and these corporations have been excluded from some of the States for violating those laws. But I believe that to be a degree of paternalism that is not in the policy of the law. Such competition is only dangerous, your honors, when in the hands of a combination of such size that it may lower prices to a ruinous degree in one place and make up its losses in another. It is the most common way of driving men out of business; and I will show you how they have done it all over this country. Independents have come before the examiner and have testified to the circumstances and I shall narrate them accurately to the best of my ability. This is the way the Standard company of California became such a great corporation.

It is true, your honors, that since 1904 and 1905 the independents have grown. And why? I believe it is the natural deduction from this record: Because they were freed from the persecutions of the Standard Oil Co. And as Mr. Milburn went outside of the record in talking about that, I will say that you will find both by the proof and by the statistics of the department, which he read, which are not in evidence, that from that day to this the independents have grown. I should be glad to have your honors take the entire report of the Department of Commerce and Labor from which the gentleman read and consider it in evidence, every particle of it. They have grown because the Standard has ceased its unfair methods of competition, ceased to get discriminatory rates from the railroads, liquidated its secret companies, and they have had a fair show.

The Chief Justice. The deduction from that would be that all the troubles you complain of came from the character of the acts which you complain of.

Mr. Kellogg. I think a good deal of it does, your honors, and the rest is due to their size and the fact that they hold together these separate companies which are in no way related. Why, the business of the Standard Oil Co. of California is as absolutely foreign to the business of the other companies as my business is to that of any other counsellor at law. It is holding together in corporate form these companies scattered all over the country, through which they may put the price so low in one place as to ruin a competitor, while raising it in another. You may say, "Enjoin their methods." Leave them their power, the monopoly which they have acquired, take away the fear of the law, the fear of prosecution that the Government holds over them, and the Standard Oil Co. can put every concern in this country out of business in five years.

Is that in the interest of a free and open opportunity for every man to engage in business with equal protection before the law? It is and always has been one of the provinces of government to protect the weak against the overpowering force of wealth.

The CHIEF JUSTICE. Mr. Kellogg, do you mean by that (I am not asking by way of criticism, but by way of information) that government has always been able to control and regulate, and has controlled and regulated illegal acts of the powerful and the strong?

Mr. KELLOGG. Not always, your honor.

The CHIEF JUSTICE. Do you mean by that that government has so acted as to prevent there being powerful and strong people in the world?

Mr. KELLOGG. No, your honor; it has not. But it has always been the province of government to protect a people against monopoly, whether it be by grant or by individual acts. It has not always succeeded.

The CHIEF JUSTICE. Those are acts you are addressing yourself to now, not power. What I want to know is where the distinction lies; whether you draw the distinction between the illegal acts done by powerful people, which everybody concedes ought to be reprehensible and the Government has the power to punish, and the fact of power itself, resulting from the accumulation of power and wealth in the hands of one person?

Mr. KELLOGG. Their great power enables them to use the unfair methods and to do acts, some of them perhaps illegal and some not illegal in and of themselves, which would not be harmful in the hands of the corner-grocery man as against his neighbor.

Mr. Justice LURTON. Do you conceive that an injunction against the further doing of any of the illegal and unlawful acts of which you complain would leave this corporation or congerie of corporations to a lawful existence, lawful competition?

Mr. KELLOGG. I do not think it would, your honor.

Mr. Justice LURTON. Or does the Government seek more than that? And if so, why?

Mr. KELLOGG. I do not think it would be sufficient.

Mr. Justice LURTON. Is it in accordance with your view that if they were enjoined from the doing of these unlawful and unfair acts in competition, then there would be nothing left to complain of but size?

Mr. KELLOGG. And combination.

Mr. Justice LURTON. A size resulting from combination may be one thing; a size which is the natural growth of the germ is another thing.

Mr. KELLOGG. Quite another thing. As was said by Mr. Parker (and I listened with a great deal of interest to the gentleman's able argument), I do not think this court can follow up these corporations and regulate their competition. Take away from them the power and the competition is left harmless and the avenues of enterprise are left open.

Mr. Justice McKENNA. I do not exactly understand you there. Suppose they have the power, the giant's strength, and do not use it like a giant. Do you still say the Government ought to proceed against them?

Mr. KELLOGG. Yes; because they are a combination; they will use it; all human experience shows that they have and will.

Mr. Justice McKENNA. I understood you to say that you joined with Mr. Milburn in referring to, and asked to have introduced as evidence, the complete record which shows that by the cessation of illegal acts the independent companies have commenced to thrive?

Mr. KELLOGG. Yes, while this suit is pending; while they are threatened with prosecutions. Withdraw them, withdraw the fear of the law and give them the power, and I do not believe there will be an independent concern of any size in this country in five years, your honors.

Let me now take up some of the various means by which they have established this monopoly.

A great deal has been said about the pipe-line situation. Time will not permit my going into the details of this subject; but I think I can state in a general way how they have obtained control of pipe lines and how they attempted to get control of other pipe lines and succeeded in limiting their activities.

Prior to 1882 the Standard Oil combination, through the National Transit Co. (which is its principal pipe-line company to-day), had obtained, by purchase of the stocks and consolidation, the control of most of the pipe lines, which were then local gathering lines in the oil regions of Pennsylvania. This record does not show that the Standard Oil people originated the idea or put into practice the scheme of building pipe lines, tanks, etc., and carrying oil in that way. It was done by the Pennsylvania manufacturers. The

Standard interests went in, after Mr. Rockefeller started this scheme, and acquired the principal ones in the oil regions. Others first undertook to build pipe lines to the seaboard; not the Standard Oil Co. When they had demonstrated its feasibility, and when the Standard had failed to get control of them after a bitter fight, the Standard itself built a pipe line to the seaboard at New York Harbor; and, strange as it may seem, it is the only company which has ever been able to get across the State of New Jersey. The railroads never held up the Standard Oil Co. The Standard Oil Co. held up the railroads. They were bigger than the railroads. But they stopped the others from crossing New Jersey, where there was no pipe-line condemnation law. In one case the Standard itself bought rights of way, strips, across the territory; and its lawyers and some of its officers superintended the fights by which one of these independent companies failed to get across the State of New Jersey to New York Harbor, and had to pull up 70 miles of its pipe and go to Marcus Hook, a place in Pennsylvania.

The Tidewater Oil Co. and the Tidewater Pipe Co. are parties to this bill. The Standard owns 31 per cent of their stock. The record is absolutely clear that between those large concerns (of nine, ten, or I think now fifteen millons of capital) and the Standard properties, there is absolutely no competition; and I will show you how. Away back in 1879 Lombard, Ayres & Co. and others, found that they were not able to get railroad rates equal to those received by the Standard, so that they could not ship their oil to New York. Your honors will understand that at that time the low-grade oils could only be marketed in Europe. The high-grade oils could be marketed here. Mr. Lombard and Mr. Warren detailed their efforts in this testimony. They are fair gentlemen. They told how they applied to the railroads, and how the railroads told them they would not give them the same rates as the Standard got. They told how they built a pipe line and got a little railroad to carry their product up to Buffalo, or some place up near there, and shipped it by the Erie Canal down to New York in summer, and how they got some over the Erie road in another way to New York. But the canal froze up in winter, and they could not do anything then. So they started out to build the Tidewater pipe line to the seacoast in about 1878. The railroads held up the construction of the line until they made this contract with the Standard which is in this record. Practically all of the Standard combination companies signed the agreement in 1883. It is in the record attached to the bill. (Volume A, pp. 152 to 160.) They signed an agreement with the Tidewater companies whereby they divided up the business of purchasing, transporting, manufacturing, and selling crude petroleum and its products, the Standard companies to have 88½ per cent and the

Tidewater $11\frac{1}{2}$ per cent. The contract was to run for 15 years. Then they were allowed to and did complete the Tidewater pipe line to New York Harbor. The Standard undertook to get control of it. They got some stock in the Tidewater in their fight along about 1883; and they went out to Pennsylvania and undertook to elect themselves into control of the company at one of its meetings. The officers of the Tidewater company who testified in this case tell us what happened. Mr. Benson swore that they barricaded their offices and protected their property by force until they could apply to the court for protection. The Standard bought refineries connected with these concerns in order to take away their business. And after all this struggle the Tidewater "laid down." Mr. Benson, Mr. Lombard, and Mr. Warren told the tale in New York. They "laid down" and made that contract. The contract was canceled in 1891 as of the year 1890, when the Sherman Act was passed; but they have gone right ahead in the same way. The Tidewater is no longer a competitor of the Standard. The Standard markets all, or practically all, of its product; and the Tidewater buys considerable of the crude it refines from the Standard. Its competition is out of this case; and it has lived from that day to this under the shadow of the Standard.

In later years there was another party of gentlemen—Mr. Lee (a well-known lawyer of Pittsburg, known to my brother Watson), Mr. Emery, and Mr. Tarbell (the brother of Ida Tarbell), and others.

Mr. Justice HOLMES. Do you mean he is a brother of the lady who has written a good deal in magazines?

Mr. KELLOGG. Yes. He testified in this case, and Mr. Emery and Mr. Lee also testified. They gave the history of the struggle of the Producers' Oil Co. (Ltd.), and the United States Pipe Line, which succeeded it, which is to-day the only real competitor of the Standard to the seacoast. When your honors understand the amount of this oil (which is not as large as my brother Milburn stated; he is mistaken in his figures) which is marketed abroad, and always has been, you will see the importance of this pipe line. They undertook to get the control of the Producers' Co.; but, it being a limited partnership, buying stock was not sufficient—they must be elected to membership. The supreme court of Pennsylvania in 1892 held that they could not get control of that concern. Then the gentlemen connected with it undertook to build the United States Pipe Line to the seaboard in about 1893 as a common carrier; and since it has been completed it has acted as a common carrier, transporting oil, refined and crude, for everybody.

When this line was being constructed the Standard renewed its tactics. We have evidence in this case that the Standard agents were engaged in buying strips of land across its proposed route.

And the railroads were engaged in fighting them in New Jersey; they could not go under their rights of way, because there was no condemnation law in New Jersey, and the evidence shows that the Standard's attorneys were defending the railroads. They got 70 miles built into the State of New Jersey, and the Supreme Court of New Jersey held that they could not go under a railroad, and they had to tear up their pipe for 70 miles back and build to Marcus Hook. The testimony is detailed, and is given in volume 2 of the brief. It shows how they held by force their pipe lines from being torn up under the railroad tracks until they went into court. It is remarkable that the Standard never had any trouble with the railroads. Why, the Prairie Oil & Gas Co. was built for miles upon the railroad's right of way.

What did they do? Mr. Milburn says that it is absurd to say that they increased their price of crude oil in Pennsylvania and reduced the price of refined oil at the seaboard, because that would make them so much loss. Remember that the United States Pipe Line had a limited field to draw from. They did not have to reduce it everywhere. The testimony of Mr. Lee and the other gentlemen connected with this matter is not denied by anybody. I do not know but that Mr. Archbold did rather give it a side wipe, or something of that kind, but I do not think he squarely denied it. Mr. Lee testified that along during this fight in 1893 the price of crude oil was increased in Pennsylvania (where the United States pipe lines were getting their oil) and the price of refined export oil at the seaboard was decreased, so that the crude was worth $2\frac{1}{2}$ cents a gallon in western Pennsylvania and the refined 1.92 cents a gallon on board ship in New York Harbor.

Mr. Lee says——

The CHIEF JUSTICE. What page are you reading from?

Mr. KELLOGG. I am reading from Mr. Lee's testimony, pages 3166–3169, in volume 6 of the record.

Mr. Justice HOLMES. Is it in the brief?

Mr. KELLOGG. It is cited in the brief; a part of the testimony is in the brief.

I wish to call your honor's attention to the fact that Mr. Lee testified that the pipe line was built by an association of independent refiners for an outlet, and that the pipe line finally had to carry oil for nothing to keep some of the refiners connected with it from going to the wall. Finally, representing these gentlemen, he called on Mr. Dodd, the general counsel of the Standard Oil Co., and formerly his partner, to protest against such competition and such methods. What he said to Mr. Dodd and what Mr. Dodd said to him are found in the record; and what Mr. Dodd said, under the authorities we cite, is in my opinion evidence in this case of their motives.

Mr. Lee says:

"I said to him, 'Admitting for the sake of the argument that the Standard Oil Co. can destroy them, they can't afford to do it in this free country; that under the American flag and in the United States persons having adequate capital, industry, knowledge of the business, ought to be permitted to carry on that business without being clubbed to death by inordinate capital.'"

That may have been a little oratorical, but it was the fact. How little he realized the protecting force of the American flag will be shown. For Mr. Dodd, in reply, said simply that he would have to consult the officers, and he came back next day and said this to Mr. Lee:

"He simply said to me that they had considered the matter and would do nothing; that they thought they had matters their own way abroad."

There is where this oil was being sold. It was their only market. Of course they had their own way. This company struggled on rather than go to the wall. Mr. Lee testifies that committees were sent to the Standard Oil Co., and they came back and reported that the Standard would do nothing but buy their properties at cost. Some of them said they were young men and they did not wish to go out of business. They desired to continue their business. They wished to be let alone. A public meeting was called in Pennsylvania, and special trains were run to Pittsburg, and money was called for and subscribed by the independent refiners to carry on the enterprise. And in the face of those difficulties that enterprise has gone on. They weathered the storm. And that is the independent company which my brother Milburn, in his brief, points to with pride as a success. It pays 8 per cent on its stock, so he says it is profitable, while the Standard of Indiana pays five and six hundred per cent.

The Standard did succeed, however, in getting $393,000 out of $1,200,000 of the capital stock of the United States Pipe Line—it owns a little more than that amount to-day, to wit, about 33.5 per cent. When Mr. Archbold was asked why they bought that stock he said: "It was for an investment and for the purpose of being in the way of knowing what was being done." In spite of that, this company has lived and prospered in a moderate way.

Again, there was the Crescent Pipe Line, with its gathering lines known as the Mellen Lines, from western Pennsylvania to Marcus Hook, near Philadelphia. There was a law in Pennsylvania prohibiting the Standard from buying a competing pipe line; they got the law repealed, and in 1895 they bought that—271 miles of trunk line, 302 miles of gathering lines, and the refinery at Marcus Hook.

They bought the Pittsburg Pipe Line in 1886 and the Western and Atlantic pipe line in 1890. The result is that from that day to this there has been only one independent line to the seaboard, carrying from 6 to 7 per cent of the business. The Standard has the balance, or controls the balance, or has contracts with them, so that they do not compete with it. Those pipe lines, until the development of the Texas field, furnished the export business of this country.

I can not pass this subject without showing how they "sewed them up" (to use a slang expression) in another way.

In 1884, the Standard having practically got control of the pipe lines to the seaboard, the Pennsylvania Railroad was the only railroad which competed for a large amount of oil in western Pennsylvania. So the National Transit Co. entered into a contract (which is attached to the bill, Vol. A, p. 160) with the Pennsylvania Railroad, whereby it was agreed that the Pennsylvania should have 26 per cent of the transportation of oil from Pennsylvania to the seaboard; and on the same day the National Transit Co. entered into another contract with the Pennsylvania whereby the Transit Co. agreed to carry the oil in its own pipes and pay the Pennsylvania four-fifths of the rate of 40 cents a barrel, without the railroad performing any service whatever. That contract was never canceled until 1905, but whether in late years it was operated under or not, I am unable to say. I do not think it was, except in this respect: The rates provided for in that contract remain in existence to-day, or did when this suit was brought; and they are absolutely prohibitive. The result is that the only outlet some of the Pennsylvania refiners have is to sell their product to the Standard or to ship it by the pipe lines of the United States Pipe Line Co. Some sixteen of them have contracts to sell their export product to the Standard.

Mr. Archbold testified that after the Pennsylvania had made that contract there was no further object for the railroad to carry any oil. His testimony on that point was as follows:

"Q. Since that agreement was made the rates of oil upon your pipe line and upon the Pennsylvania Railroad have been identical, have they not?

"A. I think they have.

"Q. There is now no earthly reason whatever to have any competition between your line and the railroad in consequence of the fact that you have an agreement that divides the business on a pro rata or proportion?

"A. I do not see any reason."

Mr. Justice HOLMES. "Your line" means the pipe line?

Mr. KELLOGG. This was an agreement between the Pennsylvania Railroad and the pipe line.

Mr. Justice HOLMES. Yes; but you read the words "your line;" and I ask whether that means the pipe line? I think it does.

Mr. KELLOGG. Yes; that means the pipe line, your honor.

"Q. They (that is, the railroads) have therefore now no longer, assuming the maintenance of the agreement of which you have spoken, any inducement to decrease rates for the purpose of increasing their business?

"A. They have not."

That testimony was given by Mr. Archbold in 1888, when that contract was in force. The rates remain the same to-day.[1]

Again: These pipe lines are common carriers in Pennsylvania, New York, and Ohio, built under laws requiring them to be common carriers, and the lines originally built across the State of New Jersey were built by companies whose charters in Pennsylvania required them to be common carriers. I say, therefore, that when under their chartered powers they went from Pennsylvania to New Jersey and constructed a pipe line in New Jersey the obligations of that charter followed them and made them common carriers wherever they were.

What did they do to get around that? Why, a short time before the passage of the Hepburn bill they did this——

Mr. MILBURN. Before its introduction.

Mr. KELLOGG. Well, before its introduction.

Mr. MILBURN. Some time before its introduction.

Mr. KELLOGG. The dates are stated accurately in the brief.[2] They conveyed the pipe lines in New Jersey and in Maryland, where there were no pipe-line laws, to the Standard of New Jersey. At Unionville, N. Y. (I do not know where it is, but somewhere on the border between New York and New Jersey), and at Center Bridge, Pa., on the border line between Pennsylvania and New Jersey, and at a place called Fawn Grove, Pa., on the State line between Pennsylvania and Maryland, little villages out in the country, they constructed so-called delivering stations, where they would deliver oil to anyone who wished it, and spent about $100,000 a station to comply with the Hepburn law, as they say, but doing so in a way that no one under heaven could ship a barrel of oil through these pipe lines unless he carted it away from these little stations with a team.

Then they put in tariffs which did not, as Mr. Payne testifies, purport to give rates to points where the independents were situated; and with the possible exception of Philadelphia, he admitted on cross-examination that not a barrel of oil could be carried for an independent under those tariffs. Again, the rates were so high that they were prohibitive.

Then, again, the Standard Oil Co. would not act as a common carrier anyway, although it is entirely feasible and practicable for

[1] Brief, vol. 2, pp. 92-94.

[2] "As of November 1, 1905." (Chesebro, record, vol. 1, p. 394; brief, vol. 2, pp. 95-103.)

pipe lines to do so, as shown by men who are doing it—for instance, the United States Pipe Line from western Pennsylvania to the seaboard and the Texas Co. from Oklahoma to the Gulf. That is all I have to say on that subject. I have spent more time on it than I should have.

Now I wish to call your honors' attention to some more acquisitions of the Standard Oil Co., and particularly to the Manhattan Oil Co. of Ohio and the Security Oil Co. of Texas. I will also call your honors' attention to the Corsicana Refining Co. of Texas.

Up to about 1899 the Manhattan Oil Co. was a large independent concern, which had been built by Brady & Benedict for the purpose of insuring their gas works in Chicago and Indianapolis a supply of gas oil. Gas oil is taken from the residuum in refining. The property cost them \$2,800,000. The \$2,000,000 was represented by stocks and the \$800,000 by bonds on the plant. The company had a pipe line in Indiana and Ohio, a large refinery, seven or eight hundred tank cars, and oil wells. Mr. Brady then turned the stock over to the Chicago gas company for about \$2,000,000, and the gas company assumed the bonds. About 1899 Mr. Johnson, of Budd, Johnson & Jecks, a firm of London solicitors, appeared on the scene and desired to purchase the Manhattan Oil Co. To make a long story short, Mr. Johnson bought it, and he paid therefor about \$1,500,000; and gave to Benedict & Brady a contract from the Standard Oil Co. of Indiana to supply Benedict & Brady's works in Chicago with gas oil for 10 years at 1¾ cents a gallon, delivered, when the market price at the refineries averaged about 3½ cents a gallon. Brady testified that that contract was worth \$1,300,000 to him. The defendants denied absolutely that they bought the Manhattan Company, although they immediately took over and bought its refinery for \$250,000 and dismantled it; they took over its car lines for \$468,000, and its oil wells for \$380,000, making over a million; and the stock still owned stands in the name of the General Industrials Development Syndicate (Ltd.), of England. That was admittedly a competing concern. When we got that far, Mr. Milburn was willing to and did enter into a stipulation that if we procured a decree in this case against any company we should have the same decree against the Manhattan; and we did not go any further with the proof. They denied absolutely having anything to do with this company. Many of their officers testified that they did not know anything at all about the Manhattan; and that the Standard did not own it.

In that connection, let me say that that same General Industrials Development Syndicate (Ltd.) got the stock of the Indiana Pipe Line & Refining Co. and dismantled its refinery—the one I mentioned as having been bought by the Standard.

Those were quite large concerns.

About that same time the Security Oil Co. of Texas, with a capital of $1,500,000 and bonds of $2,500,000, was projected by the same firm of Budd, Johnson & Jecks, of London (who seemed to have been lawyers engaged in oil practice), through the London Commercial Trading & Investment Co. (Ltd.)—another English company. It appears that Mr. S. G. Bayne, president of the Seaboard National Bank (right beside the Standard Oil Building), was the president of the Security Co., and Howard Bayne was the general manager. We did not get S. G. Bayne on the stand, but Howard Bayne testified that the money was sent over by Budd, Johnson & Jecks, and they built this refinery in Texas and finished and put it in operation in 1903. They have ever since sold practically their entire product to the Standard, and made about half a cent a gallon, although the Standard marketing company (the Waters-Pierce Co.) was making 4 or 5 cents a gallon in Texas at the same time. The Security Oil Co. has never paid any dividends. Bayne testified that he did not know anything about Budd, Johnson & Jecks, or whether the Standard Oil Co. was interested; that as far as he knew, Messrs. Budd, Johnson & Jecks sent the money over, and they built the plants. Then Mr. Milburn gave us a similar stipulation as to that company.

But of course the burden was on the Government to show that these large concerns were secretly owned through a foreign holding company. Does anybody believe that Mr. Archbold, Mr. Tilford, Mr. Pratt, Mr. Rockefeller did not know anything about it? Why, we found on the books of the Anglo-American Oil Co. (one of the Standard companies) running along about that time a loan to James McDonald of $2,484,590.86, which was about contemporaneous with these Manhattan and Security transactions, and nobody in the Standard Oil Building who we could get hold of could explain what that loan was. James McDonald lived in London and was the London representative of the Standard Oil Co. Mr. Archbold was asked to find out about it. He said he could not find out, although he and his associates had been directors of the Anglo-American Co. up to about the time we commenced to take testimony, when they resigned. All the stock was owned by the Standard, and still he said they could not find out anything about that loan; that they did not know what it was for. Is it possible? Of course the evidence is sufficient to justify your honors in holding that they owned the company.

Mr. Justice LURTON. What was the decree in respect to those corporations?

Mr. KELLOGG. The court found that they were owned and controlled by the Standard and that we were entitled to our decree; that they entered into the combination and became parties to it. The decree ran against those companies. They bought the Manhattan, of course, after it was built, and they either caused the Security to be built or bought it afterwards.

Now, as to the Corsicana Refining Co.: They denied absolutely in their answers that they owned that. We found on the books of the National Transit Co. a loan to Mr. Folger and Mr. Payne, two Standard Oil officials, and officials of some of their subcompanies. That loan ran up as high as—well, I do not remember; something over $1,000,000; I think $1,300,000 at one time. The exact figure is stated in the brief. When Folger and Payne were called on to explain that, they said that they had used the money to build the Corsicana, and that it really belonged to the Standard, but that the Standard had subsequently sold it to them. No deeds were made; no notes were taken; no payments were made. The property went on, managed just as it was before, by the Standard of New Jersey. And the court found that that belongs to the Standard.

They owned about 69 per cent of the Waters-Pierce Co., which was a big marketing company, covering the south half of Missouri, Kansas, Oklahoma, the Indian Territory (at that time), Louisiana west of the river, Texas, and Mexico. It was carried in the name of the C. M. Pratt Investment.

Mr. Justice HOLMES. What concern is this? I have lost the name.

Mr. KELLOGG. The Waters-Pierce Oil Co.—a very large concern, which Mr. Milburn was talking about yesterday. It was a marketing concern. Thirty-one per cent, we will say, was owned by Mr. Pierce, and 69 per cent by the Standard. That was kept secret, and it was used as the marketing company for that country, until about the time of the Missouri case, when the court ousted both the Waters-Pierce Co. and the Standard Oil Co. of Indiana from the State for violating the local antitrust act by being a party to a combination with the Standard Oil Co. of New Jersey.

There were two refineries out in Colorado—The United Oil Co. and the Florence Oil & Refining Co. Men connected with the United Co. undertook to start another one. A fierce war ensued. Prices went down so low, as Mr. Tilford said, that they went out of business. The two remaining ones had contracts with the Standard whereby they sell all their product to the Standard, and the Standard owns 17 per cent of the United Co. and sells all the product of both. The result is that in those five States known as the Denver territory, consisting of Montana, Idaho, Wyoming, Colorado, Utah, and New Mexico, the independents do from two-tenths of 1 per cent to 1.1 per cent of the business; and although the Standard gets the oil right there in Colorado, it is selling in that territory at a profit of from 3 to 6 cents a gallon, and the prices range all the way from 12 to 23 cents a gallon, while 10 or 11 cents is a good price.

These figures perhaps do not mean so much to your honors. Fifteen cents or 23 cents seems cheap for oil. But oil is the light of the poor man, the laborer, the miner, the farmer. It makes a difference to him whether he is paying, from his money earned by toil, 15 or 23 cents, or 10 or 11 cents. And it makes a difference to the people of this country whether they monopolize five States and exclude everybody else, or whether the avenues of enterprise shall be left open.

While I am upon that marketing question let me explain one thing. They have divided this country up into territories. Perhaps I can explain that best by taking the case of the Waters-Pierce Co. They have an agreement with the other Standard companies that they shall keep out of each other's territory. The Waters-Pierce has the south half of Missouri and the States I have named. The Standard of California has the Pacific coast States Oregon, Washington, California, Nevada, and Arizona. The inter-mountain States go to the Continental Oil Co. The Standard of Indiana has Minnesota, Wisconsin, North and South Dakota, Iowa, Kansas, northern Missouri, Indiana, Illinois, and Michigan. The Standard of Nebraska has Nebraska. The Standard of Kentucky has all that territory south of the Ohio River and east of the Mississippi, reaching to the Atlantic coast States, and formerly had some of those. The Atlantic Refining Co. has Pennsylvania and Delaware. The Standard of New Jersey has the Atlantic coast States. The Standard of New York has New York and New England; and the Standard of Ohio has Ohio. None of the companies do business in any of the others' territories.

As I have said, however, their percentage of business is not evenly distributed all over the United States. In large tracts of the country the percentage of independent business is very, very small, and the Standard has almost a complete monopoly. Where they have, the prices are high, and where they have not the prices are low. In this record there are tables showing the margin of profit per gallon and the percentage of business in which we find losses by the Standard Oil where the percentage of competition is large and profits by the Standard Oil if the competition is small. These figures are taken from their books and there is no guesswork about them. They illustrate clearer than any words of mine or living witnesses can do how this company, reaching out, having 85 per cent of the business, is enabled to sell oil at its own prices wherever it has a monopoly and to reduce it below cost where there is strong competition.

I think the pipe lines have been sufficiently described. They are shown upon the map in the record, which is referred to in the briefs.

Mr. Justice HOLMES. Is that in Volume A? I remembered a map from the last argument, and I have been looking for it.

Mr. KELLOGG. Yes; if you will turn to that——

Mr. Justice HOLMES. Is it in Volume A?

Mr. KELLOGG. No; it is not, your honor. I will find it in a moment and show the court where it is.[1]

Mr. MILBURN. [Handing blue-print map to the court:] We had this at the last hearing. Is that what you refer to?

Mr. Justice HOLMES. I suppose there is no objection to using this?

Mr. KELLOGG. Oh, not at all. There are large maps which I have, and which I should be glad to put up but for the amount of room they would take. They are in the clerk's office, and if the court would like to have them I will have them brought in Monday morning. They illustrate this.

We have shown with accuracy for a term of years the percentage of business done by the Standard Co. in every territory of this country. We got it from their books in this statistical department which we found in New York. We have shown the cost of producing, the profits of the manufacturing companies, the cost of selling oil and the profits of the selling companies, and the percentage of competition, all over this country.

The CHIEF JUSTICE. Is that taken from their books, also?

Mr. KELLOGG. That is taken from their books. Those figures are summarized in the first volume of the brief, and more in detail in the second volume, which contains a more detailed statement of the evidence. In passing, let me state that 196 pages of volume 1 consists of a statement of the facts on which, substantially, the court below based its finding; with a brief reference to unfair methods of competition, railroad rebates, profits, and percentages of business, which are stated more in detail in the second volume. Of course it will not be necessary, except as the court may desire to do so occasionally, to refer to the record. The briefs of both parties will be sufficient.

Mr. Justice LURTON. Mr. Kellogg, is there any table here showing the acquisitions made since 1899?

Mr. KELLOGG. Yes, your honor.

Mr. Justice LURTON. As distinguished from those made before?

Mr. KELLOGG. Yes, your honor. Attached to the reply brief is a detailed schedule, with a reference to the place in the record where each will be found, of all acquisitions from the beginning, with the dates, and (where it could be given) size, value, etc.

Mr. Justice LURTON. Do you distinguish between the properties acquired and properties created?

Mr. KELLOGG. No; but the record shows, and I am coming to that.

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[1] Map showing principal pipe lines, Government Exhibit 30, vol. 7, p. 150; Buckeye pipe lines, Government Exhibit 356-A, vol. 8, p. 878; Northern pipe lines, Government Exhibit 356-B; National Transit lines, Government Exhibit 356-C; Eureka pipe lines, Government Exhibit 356-D; Indiana pipe lines, Government Exhibit 356-E; Crescent pipe lines, Government Exhibit 356-F; Southern pipe lines, Government Exhibit 356-G; New York Transit lines, Government Exhibit 356-H; Cumberland pipe lines, Government Exhibit 356-I; Southwestern Pennsylvania pipe lines, Government Exhibit 356-J.

Mr. MILBURN. Mr. Kellogg, will you say that there is also one annexed to our brief?

Mr. KELLOGG. Yes; there is.

Mr. MILBURN. Which distinguishes between acquisitions and creations.

Mr. Justice LURTON. Yes; thank you.

Mr. KELLOGG. But in the one attached to the counsel's brief they say "created," as I recollect it, wherever they organized the corporation; and many corporations were organized —

Mr. Justice LURTON. The Indiana Co. is an example of that?

Mr. KELLOGG. I am coming to that and will explain it as soon as I finish this. They created many corporations simply to take over a competitor that was put in a different form– a new corporation. But this record of ours shows accurately the purchases, when purchased, the value as near as we can give it, and the briefs will give you the details of the companies.

Now, as to their percentage of business: I must pass hurriedly over that.

Of course your honors know that they do not produce out of the wells a large amount of the oil. They buy it from thousand of producers. Except in Pennsylvania and Ohio they do not own a large amount of oil wells, I think.

But their percentage of the pipe-line business will illustrate the percentage they buy as compared with the total. I will take the years 1900 and 1906. You will find in the last three or four years they have done less. In Pennsylvania, in 1900, they did 92.9 per cent; in 1906, 83.2 per cent. That, as we have stated in the brief, includes the Tidewater, which does not compete with them, and in which they have an interest. In the Lima field in 1900 they did 92.9 per cent; and in 1906, 89.6 per cent. In transportation to the seaboard, which is very important, they did 97.1 per cent in 1900, and 95.1 per cent in 1906; excluding the Tidewater, they did 89 per cent in 1900, and 87.4 per cent in 1906.

They speak of the crude production in this country. Of course the crude production in this country does not all go to the refiner. A large amount of it is crude that is used for fuel oil, and is not fit for refining—at least, not by the present processes.

The CHIEF JUSTICE. Let me see if I appreciate your last statement, Mr. Kellogg. What you claim, then, is that their figures as to the crude production are misleading because they include both that which is refinable and that which is not?

Mr. KELLOGG. Oh, yes; for instance, 126,000,000 barrels is the total crude production; but we give in our briefs the refinable crude, that which is refined, and the percentage refined by the Standard; and it is these percentages which I am giving you.

They manufacture from 83 to 87 per cent; excluding the Tidewater and United, from 77 to 79 and 80 per cent.

I have spoken of the marketing business; we have shown what they do all over this country; and it averages in the various years from 90.1 in 1900 to 84.8 per cent in 1906.

The export business is very important. Of the total product of all crude oil manufactured, about 36 per cent is exported,[1] and a larger percentage than that of the low-grade oil. There is not a particle of testimony in this record, as you will see (I have not the time to go into the figures) to support the statement that 63 per cent of their business is export business—not a particle of testimony. We have stated it accurately in the briefs. Of the total export business in refined oil in 1900 they did 90.8 per cent; in 1906, 86.3 per cent.

Mr. MILBURN. Mr. Kellogg, in view of that statement, I think it is only fair to say that there is an exhibit here giving the percentage of illuminating oil exported and sold.

Mr. KELLOGG. Oh; illuminating oil.

Mr. MILBURN. You have made a very distinct contradiction of my statement.

Mr. KELLOGG. I am speaking of all the products of oil.

Mr. MILBURN. No; I referred to illuminating oil.

Mr. KELLOGG. There is a table which I will refer your honors to in volume 19 of the record, page 660, which gives the percentage of the Standard's illuminating oil which is exported.

The CHIEF JUSTICE. Illuminating oil?

Mr. KELLOGG. Yes. It gives it as 63 per cent in 1906, and the domestic percentage is 37 per cent. That is, of illuminating oil simply. But if you take all the products of oil you will see that our tables are substantially correct. As to illuminating oil, it is 37 per cent and 63 per cent. The cheaper grades of oil go abroad.

Of the railroad lubrication business, in spite of the strenuous efforts of independent companies, they admit that they do 97½ per cent; and they could only name one railroad in the United States that was being lubricated by anybody else. That was the Tidewater Road, owned by Mr. Rogers, who for some reason evidently did not wish to buy his oil from the Standard. They do 97½ per cent of all the railroad lubrication. And why did they do it? The testimony clearly shows that the independents could lubricate the railroads as well as they. Nobody denies that they did it well. It was because they have always had the power over the railroads; they have the power of monopoly.

I wish to call your honors' attention now, briefly, to three questions:

1. The profits of these companies, as indicating a monopoly.

[1] See brief, vol. 2, p. 34.

2. Their railroad rebates and discriminations in later years, down to 1906.

3. Unfair methods of competition.

I am compelled to hurry over these points, especially the question of profits, but the matter is all stated in the brief.

Your honors will find that the profits of the American companies, those doing business exclusively in this country and those doing business exclusively abroad, are very different. The American companies make many times the profit of the foreign companies. I wish to take up now one company which, as Mr. Milburn says, was created by the Standard Oil trustees.

The CHIEF JUSTICE. Is that the Indiana Co., the one you are now coming to?

Mr. KELLOGG. Yes; the Standard Oil Co. of Indiana.

The Standard Oil Co. of Indiana was created by the Standard Oil trustees. As Mr. Milburn said, about 1886 the Lima-Indiana field was discovered. He says that the Standard discovered the processes by which they could refine that oil, which contained sulphur. The testimony clearly shows to the contrary. It shows that before the Standard ever refined it at all the Eagle Consolidated refinery, at Lima, in 1887 or earlier, had successfully refined it; that the Peerless Refining Co. (succeeded by the National Refining Co. in 1897) has also successfully refined this crude since 1888, and that the Craig Oil Co. and Paragon Oil Co. at Toledo, and the Manhattan Oil Co. at Galatea (until purchased by the Standard in about 1899), had successfully refined this crude.[1]

Mr. Milburn says that there was a tremendous production of crude. There was. But during the years when the Standard was acquiring a large amount of the oil wells (of which I believe it had acquired about 31 per cent) the oil was selling for 15 to 20 or 30 cents a barrel. During 1888 and 1889 it was 15 cents a barrel. When the Standard got 23,000,000 barrels (which was the largest amount they ever got) in the storage tanks, the oil had gone up as high as 63 cents, and it kept going up until it reached $1.08 a barrel at the wells. In other words, the larger part of that oil was bought by them; 10,000,000 barrels in 1888, 15,000,000 barrels in 1889, bought at 15 cents a barrel. They immediately commenced the construction of the Whiting (Ind.) works. And this is what they did:

The Standard Oil trustees caused the creation of the Standard Oil Co. of Indiana, and, so far as the books show, paid in $1,000,000 of its capital. That is all the capital it ever had. On this $1,000,000 of capital, without 1 cent additional, as the books and the balance sheets show, which are in evidence and referred to in our briefs, that company has earned in 16 years, down to 1906, $63,275,000, and has

[1] Record, vol. 20, pp. 303-310, especially 307.

paid in dividends $39,988,550. But Mr. Milburn says it has large assets. It made those assets out of $1,000,000. He says it is a typical American company. Yes, it is; it is typical. It has the largest profits of any of them, I believe.

The books do show that during the early years it did borrow some money. The amount is stated, three or four or five millions. But the books also show that it has paid back those loans out of profits; and the profits that I state are exclusive of its loans paid. As shown by the record, when this statement was made all of its bills payable were the ordinary current bills of its business, and were deducted before arriving at the surplus and profits which I name. So that in that period of 16 years the Standard of Indiana earned profits of from 419 per cent in 1899 to 1,051 per cent in 1906. And it has, or did have in 1906 at the closing of the books, as shown by the evidence, a surplus of over $23,000,000.

Are those ordinary profits? Why, as I said before, if it is fair for me to characterize them, they are monopolistic profits. They stagger our imaginations.

Mr. Justice McKenna. How were they made, Mr. Kellogg?

Mr. Kellogg. By refining and selling oil and its products, and in no other way.

Mr. Justice McKenna. Just the ordinary methods of refiners?

Mr. Kellogg. Just the ordinary methods of refiners.

Mr. Justice McKenna. It was the ordinary oil?

Mr. Kellogg. The ordinary oil, the same as their competitors used in Ohio.

Mr. Justice McKenna. Then why did they not make those enormous profits somewhere else?

Mr. Kellogg. I will give you some of the profits they made in other places. They are very large. Let me go back and take the whole Standard aggregation. These things have a very great bearing upon this question.

The only competitor that they state in the record here as a prosperous one is the United States, which earns and pays 8 per cent. This is not a hazardous business, your honors. A business which places a necessary of life in every household of a nation is not a hazardous business.

Mr. Justice Holmes. Is it not a business that deals with what they call a wasting security? I suppose all these wells are rapidly being exhausted; are they not?

Mr. Kellogg. The Pennsylvania field has been in existence since 1860, and is producing a large amount. The other fields have been discovered from time to time, and they are no nearer exhaustion to-day than they ever were, apparently.

Mr. MILBURN. Oh——

Mr. KELLOGG. I do not say Pennsylvania; I mean all the fields together. They have been operating during these 40 years, and the production is greater than ever. Why, during the years from 1893 to 1896, when there was the greatest panic this country ever knew, when the avenues of commerce were lined with wrecks, the earnings of this company more than doubled. In 1893 the Standard Oil Co. of New Jersey earned \$15,457,000 net; in 1894, \$15,544,000.

Mr. Justice McKENNA. That was before the development of the Indiana field, was it?

Mr. KELLOGG. Oh, no; afterwards.

Mr. Justice McKENNA. Was it afterwards?

Mr. KELLOGG. Yes, sir. They commenced to sell oil from the Whiting refinery about 1890. In 1895 they earned \$24,078,000. In 1896 they earned \$34,077,000. In 1897 they earned \$47,443,000. During all those years, when merchants and manufacturers were struggling to keep their heads above water, and many of them went down, the Standard's profits increased every year.

Again: The Standard Oil Company (I refer to the last Standard Oil Trust and to the Standard Oil Co. of New Jersey), with all of its foreign business (which the record shows is not as profitable as the American business), with only \$69,000,000 ever paid into it, has paid out in dividends from 1882 down to 1906 \$548,436,446.87, and has a surplus (or did have in 1906) of \$261,000,000 more. Why, its earnings during the last 10 years are nearly 100 per cent on the money paid in, and 85 per cent upon its capital stock. They are earning to-day (that is, if they are earning as much as they were in 1906) an average of about \$83,000,000 or \$84,000,000 net, with all their foreign business, which is not as profitable.

But the counsel says this should be calculated upon net assets. Why, if your honors are trying to find out what a public service corporation, which has put a lot of money into its property, is entitled to earn, I grant that you would allow the percentage on the value of its property. But if you are trying to find out whether, over a term of 16 years, a company has made monopolistic profits, you take their earnings on the money actually invested.

Now, just very briefly: The pipe-line companies in this country have earned all the way from 51 per cent on their net assets to 278 per cent. Take the Southern Pipe Line. Here is an illustration of financing that I should like to call to your honors' attention.

The Southern Pipe Line had a capital of \$5,000,000. From 1899 to 1905 its net revenue from transportation was from \$3,536,145 to \$4,003,061. During each one of those years they had two balance sheets. One of those balance sheets, after taking out operating expenses (which would be about \$350,000), showed: Paid to P. S.

Trainor, $2,607,000, $4,599,000, $2,745,000, $3,256,000. In seven years they paid to P. S. Trainor, in addition to earning large dividends, $22,131,000—the seven years ended in 1905.

Mr. Justice LURTON. Who is Trainor, who got all that?

Mr. KELLOGG. P. S. Trainor is a purchasing agent of the Standard Oil Co. of New York. He swore that he knew nothing about it; it was never paid to him and never used by him. These sums are not included in those tremendous profits that I am giving you.

Mr. MILBURN. They are the profits of one Standard Oil Co. out of another?

Mr. KELLOGG. Not a bit of it. He swore it was never paid to him. We asked the president, the comptroller, the treasurer, the auditor, Archbold himself, and other leading Standard Oil officials what became of that $23,000,000, and they could not tell. They did not know what became of it. It has not gone into the earnings of these companies, your honors. It has simply disappeared. Where has it gone to?

A year later, after questioning those witnesses, Mr. Archbold was on the stand, and I asked him if he remembered those questions, and if he would look it up. He said he would if he could. He came back a week later and swore that he did not know and that he could not find out. That $23,000,000 has disappeared. Does anybody believe that they could not find out? When he said it must be a bookkeeping entry, I asked him to explain why, where, how a bookkeeping entry. He could not; he did not know. And there was not a man in the Standard Oil building put on the stand who could explain it. And the counsel have never explained it, unless you can call what was said on the argument in the lower court an explanation—that Mr. Milburn said he did not propose to gratify my curiosity.

This is the fairness, this is the open methods by which they met the demands of the Government to know where out of a small pipe line $23,000,000 has gone. We had a right to know. Why, they could not find out about the McDonald loan of $2,800,000. They could not find out or tell me about the loan to a man up in Pennsylvania of $6,000,000 or $7,000,000. There were other companies here where money was paid out that we could not find out about.

Take another instance: The New York Transit Co. owns the pipe line, or did own the pipe line, across New York from the middle of the river to Brooklyn; and it stands on the books of the Standard Oil Co. at $84,832, cost. It runs to one of their leading refineries. Mr. Payne swore he did not know it was there. I suppose he had not been along and sounded the ground to ascertain. He was the general manager of it. It appeared later that he authorized payments of rental of $1,191,145 in one year for a line which stands on their books as costing $84,000; and another year the rental was $438,000.

Why these enormous payments, covering up the profits of some of these companies?

Again, take the export business: In order to arrive at the amount of money that they say is made out of the American business, they figure up that oil sells at the same price in this country that it does in Europe. Why, the foreign companies do not begin to make the money that the American companies do. "But," says the counsel, "the reason is this—that the foreign company is merely a selling company." The profits I have given you, in most instances, were of the pipe lines, the manufacturing and the selling companies entirely separate, or certainly in the case of many of them. There is no reason why an American selling company like the Waters-Pierce Oil Co. should earn 600 per cent, or why one like the Continental Oil Co. should earn 100 or 200 per cent, and a foreign company 10 or 15 or 20 per cent, both of them doing exclusively a selling business. The figures are all stated in the briefs.

There is only one of the foreign companies which has earned any large amount of money, and that is the Colonial Oil Co., shipping oil to South Africa, which earned 502 per cent. Let us see how they made it. And here is another illustration of the fairness and the ordinary growth of this business and the business enterprise of these gentlemen: In 1906 or 1904 or 1905 (I have forgotten the exact date, but somewhere along there) the New York Lubricating Oil Co., represented by Mr. Philip Harrison, having failed to get any lubrication of American railways, or lost the contracts that he did have, had built up a lubricating oil business in South Africa—quite a large business. The rates on the steamships to South Africa had averaged for years 21 shillings a case. The rate was a fair rate. The Standard Oil companies shipping lubricating oil to South Africa entered into contracts with these South African steamship lines—the Union Castle Steamship Line (which was indicted in New York for a similar transaction, though not for this one), and others—whereby the Standard got a rate of from 13 to 15 and 17 shillings, which, with the total unloading charges and everything, made about 21 shillings. Immediately upon those contracts being made with the Standard Co. the steamship lines increased Mr. Philip Harrison's rates to 42 shillings, which increase amounted to about 2½ cents a gallon, thereby taking up his entire profit. He begged of them not to do it. He struggled with them; went to the Interstate Commerce Commission, or to the Department of Commerce and Labor. The Interstate Commerce Commission had no jurisdiction. And he had to buy his oil in Africa of the Standard, losing all his profit, to keep a trade that he had built up. He came before the examiner in court and told the story of his struggles. Why, your honors, they could not let that man earn his little money by shipping oil to South Africa!

Mr. Justice LURTON. How late was that transaction?

Mr. KELLOGG. That was in 1905 and 1906. I will show your honors that they were reaching out everywhere. They thought the interstate-commerce law did not cover it. Their standard of honesty was the criminal law, and none other; and they would reach out for that little trade and crush this little competitor. They do not deny it in this record. The contracts are here.[1]

No wonder the Colonial made 502 per cent. What did their other foreign companies earn? Why, the largest German company only earned 18 per cent on its capital stock, and 13 per cent on its net assets; and some of the others up to as high as 26 and 27 per cent on net assets, and 43 per cent on capital stock, and some 18 per cent. None of them began to have the enormous earnings of these companies in America.

And they say that they have built up a foreign trade. I say, without fear of contradiction, that they did not build up the foreign trade. In 1871, 1872, 1875, and 1877, when the independent men in this country were shipping their goods to Europe and building up a foreign trade, the value of the exports of petroleum and its products was from $36,000,000 to $57,000,000; and it has never since exceeded $93,000,000.[2] And I see, according to statistics which I suppose the court will take judicial notice of, that it is not as much as that now.

It is said that oil was worth $12.60 a barrel in 1871. To be sure it was. But it was not in 1875; it had gone down to $6.91. But see how the product has increased in this country; with all its enormous increase, the exports have relatively not increased.

Furthermore, I do not believe that there is any public policy which allows corporations, combinations like this, to take from the American people inordinate profits with which to purchase the commerce of Europe. They are making a plea for foreign commerce. I deny absolutely the right to crush American men and women under the wheels of progress or to sacrifice American industrial independence to the Moloch of foreign trade. Build up our trade if we can; but do not build it up at the expense of creating such a monopoly as this. Keep the home markets open. They talk about public policy! That is as much a public policy as any I know for American people. They have taken small profits abroad and enormous profits in this country; and they should be judged by the price they are taking at home, not abroad.

One other matter: I say that in the principal oil fields they control absolutely the price of the crude product, and they control absolutely the price of the finished product. Why, this record shows, and Mr. Benson testified, that they absolutely name and give

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[1] See brief, vol. 2, pp. 382-384.

[2] Archbold, record, vol. 17, pp. 3413-3416.

out the export market price in New York, and everybody has to follow it. He is connected with the Tide Water Co., friendly with them, working in harmony with them, selling substantially all his product to them.

Some producers of Indiana and Ohio came before the examiner and were examined. Some of them said they had made money and done very well, but that the Standard named the price; the seller had nothing to say. Of course he has not. It appears that they simply give out the price; they announce it. This man Trainor and another man named Seep run what they call a "Seep agency." They announce the price of crude, and that fixes it for everybody; it settles it.

They fix the price of export, and they fix the price of domestic trade. No man can get a price anywhere in the United States that they do not permit. And if he undertakes to sell his product at a fair profit which is below their price, they put it down immediately to a loss, and he either goes out of business or comes to their price. The testimony is plainly to that effect.

Not only that, your honors——

Mr. Justice HOLMES. You are talking of crude oil?

Mr. KELLOGG. I am talking of crude oil, and I am talking of refined oil and naphtha sold all over this country. They name the price, and everybody else has to accept it.

Mr. Justice LURTON. Do you mean that they name the price which they will pay for the raw material?

Mr. KELLOGG. Yes, sir; I do. I mean that they name the price absolutely that they will pay for the raw material. Nobody else has anything to say about it. Mr. Archbold testified on that point. He said: We take into consideration the demand abroad and the demand in this country and the production, and figure up what we think ought to be paid. I asked: Who takes it into consideration? He replied: I do—nobody else.

Mr. MILBURN. That is the price that they offer for the oil they want to buy; that is all.

Mr. KELLOGG. Yes; and it is the price that is paid by everybody, and nobody else can pay any other price. They take it into consideration; nobody else does. There is no question of the ordinary laws of supply and demand so far as the producer's position is concerned; he must take what they name at the pipe.

But they say: "He can store it." Store it in their tanks, at storing charges which the record shows would eat him up in a year—would take all his profits in a year?[1] Of course they can not. They take what the Standard names.

The CHIEF JUSTICE. You may suspend here, Mr. Kellogg.

(The Court thereupon adjourned until Monday, January 16, 1911, at 12 o'clock m.)

[1] See brief, vol. 2, p. 58.

WASHINGTON, D. C.,
Monday, January 16, 1911—12 o'clock m.

Mr. KELLOGG. May it please the court: It has generally been the claim of these trusts or large combinations that, through economies on account of the size of their business, they have been enabled to reduce prices to the benefit of the people generally. That claim has not been made in this case, and could not be; but it is claimed that during the last 10 years the price of illuminating oils and other products of crude petroleum has not advanced as much as the price of other staple products in this country. Our claim is, your honors, that they have advanced more. The details are worked out in the brief. I shall state as briefly as possible the substance thereof.

The Government procured, after a good deal of trouble, from the books of the Standard Oil statistical department, the prices charged to the retailers throughout the United States. In the first instance we were only able to get it back as far as 1897; but when the defendants came to put in their testimony they found that they could get the figures back as far as 1895. Their witnesses, when first called by the Government, said that they could not go back of 1897—that they did not have the records. 1895 appeared to be a year of very high prices; so the defendants in their case compared the prices in 1895 with the prices of 1906.

Now, your honors will probably remember that from the close of the war until 1897 prices in this country were generally going down, and 1897 was probably the year of the culmination of the decrease of prices in this country. Comparing the average of the four years 1895 to 1898, as the last three years of low prices in this country, with the average of the four years 1903 to 1906—so as not to be affected by any sudden rise or depression (a system of comparison that any economist will say is fair)—the price of refined oil and the other principal products of petroleum in this country have gone up from 39 to 65 per cent.——

Mr. Justice HUGHES. Is there any table in connection with the brief that shows the figures?

Mr. KELLOGG. There are tables in volume 2, at pages 43 to 45, where it is worked out with care and detail. It is mentioned in volume 1.

Now, your honors, during those years the raw material had gone down in price, the great bulk of it; there was a great influx of midcontinent oil, which had been selling at from 30 to 42 cents a barrel; there was a great influx of Illinois, of Texas, and of California oil. A most marvelous increase in the raw material occurred. Undoubtedly it was that which, to a very great extent, kept the cost of manufacture down.

These defendants have not shown the increase in the cost of raw material in other lines of manufacture; but they have taken all manufactures. They have taken the Government's tables of all manufactures and compared it with the products of petroleum. So have we. Taking the three years 1895–1898 that I speak of, compared with the last four years 1903–1906, refined oil increased 39 per cent; all other products, according to the Government tables, increased 26.6 per cent; naphtha, 65 per cent; refined oil and naphtha together increased 49 per cent; refined oil, naphtha, and paraffin wax increased 45.8 per cent. These percentages are not denied.

So that this benevolent combination, with all its wealth and power, and all its great capacity, has, during those 12 years, actually increased the cost of the products of petroleum to the American people in one case 39 and in another 65 per cent. Not one single Standard Oil official testified that they had reduced the price—the men in charge of their great marketing companies, the men in charge of their great manufactories, not one of them went upon the stand and testified that the American people have been given oil any cheaper on account of their large concern.

Again, it is generally claimed that by reason of these big combinations they introduced economies. Not one witness appeared to testify that the Standard could manufacture oil any cheaper than the independents; that there was any advantage by these great combinations whatever. The only advantage the testimony shows is the fact that they can hold a California corporation, which has no relation to any other, and reduce the price there while they are putting it up somewhere else in the United States.

But, said my brother Milburn: "Oil ought to be higher in the Mountain States than in the older parts of the country." The testimony shows that the profits are higher there. The actual profit per gallon, from selling oil, to the marketing company in the Denver territory (which includes five of the Mountain States), over and above the freight and the expenses of selling, is about five times as much as it is in the State of Ohio, where there is competition. In fact, as I said the other day, the only places where the American people have cheap oil is in those parts of the country where there is competition and where the independents are selling oil. For instance, in the entire Denver territory in 1899, the net profit averaged 4.36 cents per gallon to the selling company, while it was fifty-two hundredths of a cent (half a cent) in the Philadelphia marketing division. There was $18\frac{7}{10}$ per cent of competition in the Philadelphia district, and two-tenths of 1 per cent in the entire Denver district. This shows the beneficence of a monopoly. We have not left this to conjecture; we have not left it to generalities; we have actually proved in every State of the Union the prices actually charged to the retailer.

But, says counsel, "They ought to make more out there." The Continental Oil Co., which has the exclusive sale in those five inter-mountain States, in the years 1899 to 1906 made from 156 to 193 per cent on its capital stock, and on its net assets from 43 to 45 per cent; and those net assets over and above its capital stock, mind your honors, were earned from the profits of this company.

The counsel can not show any advantage to the American people, but only advantage to the stockholders of the Standard Oil Co. by this combination. I say by this combination the prices have been increased——

Mr. Justice McKenna. Which combination do you mean?

Mr. Kellogg. The Standard Oil Co.

Mr. Justice McKenna. The last combination?

Mr. Kellogg. The last combination and the preceding combination.

Mr. Justice McKenna. Do you attribute these effects that you have just described to that last combination; or did they exist prior to that combination?

Mr. Kellogg. They existed during the Standard Oil Trust.

Another evidence that they have increased prices is the increase in the profits per gallon of their product. Ordinarily it would seem that by a large and increasing production of the manufactured article, while they might make as much gross or net money in the corporation, they would be able to sell their oil cheaper or make less profit per gallon. On the contrary, their profits per gallon have increased. Taking their entire crude product, and figuring the profit upon a gallon of crude product to the refiners, we find their profit in 1893 was nine-tenths of 1 cent a gallon; in 1906 it was 3.05 cents a gallon.

Therefore they have increased their profits as the years go by. They have increased their dividends. They have enormously increased their surplus. They have increased their earnings in every way. They have absolutely cheapened nothing to the American people. Furthermore, one of the greatest advantages to the people is to keep open and free to every man the opportunity to engage in business. They have closed the door of opportunity to hundreds of energetic, able American people. An opportunity equally before the law to engage in occupations with the hope of succeeding has always been the guiding star of every civilization.

Now, there are two other things I wish to mention as briefly as possible.

I say that the evidence is clear that during the last 10 years, up to the time of the institution of the investigation by the Department of Commerce and Labor and of these suits against the Standard Oil they received from railroads—not in every district of the United States, but in substantially all of the principal States where they were shipping oil—concessions from the established rates, or preferential rates on the open published tariffs, which no independent could receive or could get; and that the rates they received all over this country in many instances equaled a fair profit npon the oil and made it impossible for their competitors to compete with them.

Now, let me give you a little picture of this. I can not go into details. It is stated in detail in volume 2 of this brief. The Standard's principal refining points were Whiting, Ind. (where there was no independent); Lima and Cleveland, Ohio; Pittsburg; Olean, N. Y.; and the seaboard towns. The principal independents were at Toledo, Cleveland, Findlay (I believe), Ohio, and the towns in western Pennsylvania.

Now, I say the testimony is clear that throughout New England, New York, the Central States, the great southwestern country reaching to Mexico, and south of the Ohio River the Standard received in some instances secret rates and concessions from the established tariffs, and in many instances rank discriminations in the open published tariffs, which no independent could get. They answer: "Why, we did not make the rates." But, is it not strange that it happened—just happened, that is all—that from every independent shipping point the rates were high while from nearly every Standard point the rates were low? How did this happen?

I am sure your honors appreciate the importance of railway transportation. It is a legitimate tax upon all industry. Everything now, in these days, that the farmer raises or the manufacturer produces pays its tribute to railway transportation. It is impossible, with the narrow margin of profit to-day in the manufactures of this country, or in other business, for any independent manufacturer to hope to compete with the great trusts and combinations if he can not receive open, equal rates of transportation. Transportation has always been in this country one of the greatest instruments of monopoly.

Mr. Justice McKenna. I do not understand you. You say they received secret concessions, and yet you say their reply was that they did not make the rates. I do not understand you exactly.

Mr. Kellogg. In those instances, of course, they can not deny it; but I mean generally speaking. I am speaking of the rates generally that were open to the public. They say, "The railroads make that rate; we are not to blame if the independents can not get as good rates as we."

Mr. Justice McKenna. Then your assertion is that the railroads made those rates at Standard places to confer a favor on the Standard Co.?

Mr. Kellogg. That is exactly my position.

Why, your honors, the Standard Oil officials are directors in most of the leading railroads of America. No such combination of wealthy capitalists ever existed in any one industry. They are directors in the Boston & Maine, the New York, New Haven & Hartford, the New York Central and all its allied corporations, the Union and Southern Pacific, the Chicago, Milwaukee & St. Paul, and others. It is said that there is no evidence that they have influenced rates. Of course there is not any evidence that they influenced rates. Does anybody expect them to come into court and testify that they had influenced rates? Does anybody imagine that rates are made in that way? Not at all. But is it not fairly to be presumed upon that state of facts when we show that the independents could not get the rates which the Standard Oil had?

The Chief Justice. I do not understand what you mean. Let me see what you mean, so that I can follow you. Do you mean that a rate was fixed from a point to some other point on the published schedule, and that there was a Standard Oil Co. at that place getting the published rates?

Mr. Kellogg. Yes.

The Chief Justice. And at some other place there was a rate fixed where there was an independent, and that considering the parity, the rate the Standard Oil paid was better than the rate the independent paid?

Mr. Kellogg. Yes.

The Chief Justice. Is there any proof in this record as to whether the railroad companies corrected those rates where complaints were made? [1]

Mr. Kellogg. There is proof that complaints were made to the Interstate Commerce Commission.

The Chief Justice. Did the Interstate Commerce Commission correct them?

Mr. Kellogg. Well, in a New England case the Interstate Commerce Commission made an order that the failure to pro rate into New England was illegal, but that the commission could not fix the rate under the law then in existence. [2]

The Chief Justice. Your argument, as I understand it on this branch, is this: That the wealth and power in this corporation gave them an influence which men who did not have wealth and power did not possess?

[1] See general withdrawal of rates in 1905 to 1907, stated in vol. 2 of brief, pp. 377 to 381.

[2] See Report and opinion of Commission, Record, vol. 10, pp. 1705, 1715.

Mr. KELLOGG. That is one argument. I will give your honor some cases of individual rates that were illegal.

The competitors of the Standard Oil at Whiting, Ind., were the independents in western Pennsylvania and Ohio. The Standard Oil shipped their product from Whiting into the several States in the territory south of the Ohio River, east of the Mississippi River, and west of the line of States along the Atlantic seaboard. That country was supplied principally from Whiting, Ind. Let me give you a few of the rates.

From Pittsburg to Chattanooga, a distance of 651 miles, where the independents shipped, the rate was 47 cents a hundred; from Whiting to Chattanooga, 849 miles, the rate was 25.9 cents a hundred.

Mr. Justice McKENNA. What are those rates again, please?

Mr. KELLOGG. Forty-seven cents for the independents, for a distance of 651 miles, and 25.9 cents to the Standard for 849 miles.

Pittsburg to Birmingham, a distance of 794 miles, 51.5 cents to the independents; and from Whiting to Birmingham, a distance of 820 miles, 29 cents.

The CHIEF JUSTICE. When you say, referring to those rates, that they were the rates for the independents, you mean that that was the rate for everybody in those places?

Mr. KELLOGG. Certainly; but, mind you, the Standard shipped its oil from Whiting. The independents must come from western Pennsylvania. Those rates were not only discriminatory, but they were secret and illegal, absolutely.

Mr. JUSTICE McKENNA. But those rates were public?

Mr. KELLOGG. Only partly public. Let me explain, as briefly as possible. The Standard had a public rate from Whiting, Ind., to Grand Junction, Tenn., of 13 cents a hundred. All rates, except that, were made to the Ohio River and from the Ohio River south. The Standard had a rate from Whiting, Ind., to Grand Junction, Tenn. From Grand Junction, Tenn., they delivered that oil all over the Southern States on the division sheet of another road, which was not published and filed with the commission. It was for the use of this rate that the Standard of Indiana was indicted in Tennessee, tried, but acquitted because the wrong company had been indicted. I have the opinion here and will file it with the court. Mr. Culp, the traffic manager of the Southern Railway, testified under subpœna before the examiner, that the Standard were not justified in distributing oil upon that rate. He said:

"Q. Did the division sheets in the Southern Railway tariffs authorize that division to your company unless it had already paid the Evansville proportion south of Evansville under that?

"A. No; the tariff showed both the proportion north of Grand Junction and south of Grand Junction.

"Q. And, in order for your company to apply the proportion east or south of Grand Junction, the oil shipped should have paid the proportion between Evansville and Grand Junction?

"A. Yes.

"Q. Suppose it had already paid only a 13-cent rate from Whiting to Grand Junction, did you have any tariff authorizing you to ship that oil under these proportions stated in these tariff sheets?

"A. No."

Does anyone believe that Mr. Culp would have testified to that fact if that division had been a justification for it? The Standard Oil of Indiana was indicted for shipping oil from Grand Junction into those Southern States on an unpublished and unfiled division sheet, which gave them these preferences from Whiting through Grand Junction into the Southern States.

Mr. MILBURN. But not from Grand Junction?

Mr. KELLOGG. It appeared in the evidence in that case: "Thus it appears that the specific charge is that the Standard Oil Co. of Indiana accepted and received concessions in relation to the transportation of freight from Evansville, Ind., to Birmingham, Ala."

Mr. MILBURN. That was through Grand Junction.

Mr. KELLOGG. The testimony, the court said, showed——

Mr. Justice LURTON. Is that Judge McCall's opinion?

Mr. KELLOGG. This is Judge McCall's opinion:

"The uncontradicted evidence in the case is that upon written orders from the Standard Oil Co. of Kentucky to the defendant, the Standard Oil Co. of Indiana, at Whiting, Ind., the defendant company shipped to the Kentucky Co. each carload of freight covered by each count in the indictment"——

And then the Kentucky Co. took it at Grand Junction and shipped it into the South, and paid the rate, instead of the Standard of Indiana. The court said:

"That there was no understanding, expressed or implied, direct or indirect, between the defendant, the Indiana Co., and the Kentucky Co. in regard to the rates to be paid on these shipments, but that the Kentucky Co. purchased the oil from the defendant company just as it would purchase any other commodity from any other person or company, and the shipments were made in the same way."

Of course there was not any understanding, because they were both owned by the Standard of New Jersey, and there did not need to be. The district attorney indicted the wrong Standard Oil Co., and the result was that it was acquitted; but there is no dispute about the fact that the rates were secret, unlawful, and enormously discriminatory.

It appeared in the case at bar that 60 per cent of the oil going into that territory south of the Ohio River went from Whiting, while the independents had to ship from Ohio and Pennsylvania, in most instances a shorter distance, and paid an average all over that territory of from 12 to 15 cents a hundred more than the Standard. Twelve to 15 cents a hundred is about 1 cent a gallon, and it is a large profit on oil, as appears in this case. No independent could stand that kind of discrimination.

Now, again: I can not go through one-tenth of the number of these cases, but the great southwestern country for many years was supplied from Whiting, and the rates per ton per mile from Chicago for the Standard Oil Co. to St. Louis (the great gateway for the southwestern country) were from 3½ mills to 4 mills per ton per mile; and from western Pennsylvania and Ohio to that great country, the rates per ton per mile were from 7.5 mills to 8 mills—more than double per ton per mile, for a longer haul, than the Standard's rates. The rate, admittedly, from Chicago over two of the roads was a secret, unpublished, and unfiled rate. It was 6 cents a hundred pounds, and they paid the terminal charges at one end of the haul. They were acquitted on a technicality. I suggest your honors read those decisions; they are cited in the brief. The 18-cent rate was an open, public, tariff rate, but the court said there was not sufficient evidence that the Standard had knowledge of it; and there was a defect in the classification. I have not time to go into that.

But there is one rate that I would like to mention, where the Standard has been convicted, and the Circuit Court of Appeals for the Second Circuit has sustained the conviction, and this court has refused a writ of certiorari.

The CHIEF JUSTICE. That is the Rochester case?

Mr. KELLOGG. Yes. I will merely mention that for years the Standard Oil had rates from Olean to northern New York and Vermont points which were about one-half the rates from the independent points just over the line in Pennsylvania, a distance not very materially greater, and it was a rate that on its face was marked "Not to be posted." Goods were blind billed at the direction of the Standard Oil Co., and the bills were settled through the auditor's office. It gave the Standard Oil, all over northern New York and Vermont, rates about one-half those which were paid by the independents. The rate from Olean to Burlington was 15.8, and from Warren (where the independent was) to Burlington 33 cents.

Mr. Justice HARLAN. Where is Olean?

Mr. KELLOGG. In western New York.

All over the northern part of New York the rate to the independents was 26½ cents and to the Standard 15.3 cents. Admittedly, those rates were in existence for years, but they were never filed with the commission nor made public. For using these rates the Standard was indicted, tried, and convicted, and the conviction sustained in 179 Federal, at page 617.

Another very radical discrimination was that into all of New England. The railroads prorated (your honors know what I mean by "prorated;" they joined in through rates) on commodities generally from all western territory into New England, except on oil. They refused to prorate on oil. Complaint was made to the Interstate Commerce Commission, and the commission held that it was a discrimination, and was wrong, but that at that time they had no power under the interstate-commerce act to make a rate. The rate from Oil City and Cleveland to Boston was 24 cents a hundred; but for the independents from the same place to Beecher Falls, Vt., it was 47 cents. The rates were almost double in the western part of New England what they were to Boston. The fact is that because the Standard could ship from New York by water to New London and Boston and distribute from those places, the rates to the western independents were built up so that for years they were practically prohibitive.

We have them in the Ohio Valley distributing into the south; we have them at Chicago distributing into the great southwestern country; we have them distributing from northern New York; we have them distributing from all of the New England points. Those are the instances that I have given you.

I must pass to another subject, and that is the evidence in this case of unfair methods of competition.

The Government proved in this case that the Standard Oil had a system all over this country of unfair methods of competition. For instance, cutting prices below cost where the independent was, while keeping them up or raising them in other parts of the country; the payment of secret rebates, so as to cut the price to the customers of the independent without sustaining the losses incident to a general open reduction of prices; the use of bogus independent companies—that is, a company which the Standard would hold out to the public as being independent, but which as a matter of fact was owned by the Standard and operated to attack the independent trade exclusively by cutting prices, without apparently reducing the Standard's going market prices to any customer.

Mr. Justice LURTON. Are there established cases of that kind in this record?

Mr. KELLOGG. There are literally hundreds of them. We took testimony for days and months upon that subject; and there is no question about the proof. We made up our minds to show how the Standard did their business. Why, counsel says that we only showed this in 37 towns. We proved it in 110 towns, and by more than 100 witnesses. We could have gone on taking testimony until the present time, but, your honors, there is a limit to human strength and a limit of time that one can spend upon this. The testimony is clear and convincing, and there is no question about it, and in many of the instances they do not dispute it at all. Some of it I will state to your honors.

Another system was to get a report on the competitors' shipments. That is, when a competitor shipped a carload they would get from the railroad employees a report as to where it was going, and then would telegraph to their agent; if the carload went to a number of the merchants in the town, they would endeavor to get one of the merchants to cancel his order and break up the contract.

We showed from the books of the Standard the discriminatory prices, tables of which are stated in the brief. Let me give you one or two instances. In Los Angeles, where there was 33 per cent of competition, the Standard's price was so low that it showed a loss of 3.16 cents a gallon. While at the same time in Spokane and Seattle, where there was no competition, the profits were 6.1 cents and 4.17 cents a gallon, respectively. All over the country, wherever there was competition, the prices were low, and where there was no competition the prices were high.

Now, as I said Friday, your honors can not regulate competition. The courts can not control it by injunction. It is only dangerous when in the hands of a concern so large that it can do this without injuring itself. If the Standard Oil of California was entirely separate such competition would ruin it. Is competition between merchants all over this country dangerous, where there are thousands and thousands of them, and hundreds of them in the same city? No.

Mr. Justice McKenna. Does the decree in this case make the separation that you say would produce this result?

Mr. Kellogg. I think it will. It will separate companies which have no interdependency whatever.

Let me give you a few specific instances of price cutting shown by the testimony.

Mr. W. D. Todd, of the Cornplanter Refining Co., started a marketing business in Boston in 1897. The Standard reduced the price from 10 to 6½ cents. After the independent had lost \$30,000 to \$35,000, it entered into an agreement with the Standard, whereby, instead of shipping 125 carloads per month into Boston and vicinity, it agreed to and did thereafter ship only 26 carloads, and further agreed not to ship any oil east of the Hudson River except to Boston. This agreement was in existence for three years, and was renewed for five years more. Immediately after the contract was entered into the price was raised to 10 cents again. That is an instance. This same man had the same tactics used against him in northern New York, and he protested to Mr. Jennings, a director of the Standard. What did Mr. Jennings say?

"We have got a policy to pursue, and that is to make it just as difficult for an independent to put out oil as we possibly can; in other words, we want to drive them out of business if we can; if we can't, why, sometimes we buy them out and sometimes we make a dicker; but our first move is to make it just as expensive as we can."

Mr. Jennings does not deny a word of it.

The Hisgen Bros. (you have heard of one of them; I think he ran for governor of Massachusetts) started business in Albany, and the Standard employed detective agencies to spy upon them. One of the men employed to spy upon their business testified to it. Reports were sent to the Standard Co. They put the price down to 6½ cents and kept it there for two years, and they had to abandon the business for that length of time.

In Atlanta, Ga., there were two concerns doing business—the Commercial Oil Co. and the People's Oil Co. The price of oil had been 13 cents a gallon. The Standard put it down to 6½ cents. They ran along for a year or two, losing money, and the Standard bought them out.

The same thing happened at Birmingham, Ala., and at many, many other places throughout this country.

Now, your honors, let me state another instance which is illegal. It was the custom of the Standard Oil Co. to get reports, as I said, of the shipments of independent oil. They got them through bribing employees and in other ways. The testimony is plenary that in many places when an independent would ship a carload of oil it would immediately be reported to the Standard, and that the Standard would send a man or would telegraph to their agent to break up that carload. There is any amount of testimony and letters in the record showing that to be a fact. Let me call your honors' attention to some of them, at pages 469 to 475, volume 2, of the brief. I wish to read one or two of those:

"Since I wired you last night I have received your letter of the 20th instant, and note you stopped the car at Union by agreeing to allow the Union cotton mills one-half cent off your open tank-wagon price."

Again:

"I feel reasonably sure if you will throw this on personal grounds and interview the merchants as you should, you will be successful in having a sufficient number of them to cancel their orders so it will be impossible for the Red 'C' representatives to ship in the car."

Again:

"No doubt there is some one merchant who has bought 15 or 20 barrels out of this car, and if we are successful in getting him to cancel his order with the Red 'C' by wire, we paying for the message, it would mean it would break up this carload shipment, and in consideration of said merchant canceling his order we would agree to deliver him the same quantity of oil that he bought in barrels from our tank-wagon," etc. * * *

"I think you can have that car canceled on personal grounds, if you give the merchants the right kind of talk."

Again:

"I will have to confess the way you have handled this matter is not at all satisfactory to me, and I certainly hope you will be able to have some one cancel their order to break up this carload arrangement. I regret to be compelled to say to you that if another car of Red 'C' oil comes into your territory and is not reported or looked after as I think it should be, especially when I advise you in advance to be on the lookout for their representative, it will be equivalent to your resignation."

And so on and so on.

Mr. Justice HOLMES. Who wrote that last letter?

Mr. KELLOGG. That last letter was written by an agent of the Standard Oil by the name of Mr. Reed, who had charge of that southern territory.

The CHIEF JUSTICE. What was the date of that letter?

Mr. KELLOGG. The date of that letter was January 27, 1904.

Now, for that sort of practice an employee of the Standard Oil was convicted in Tennessee and the Standard paid his fine; and the Standard Oil of Kentucky was ousted from that State under a writ of quo warranto.

But it is said that these cases were sporadic and unauthorized. I deny it. I say the evidence shows that there was a policy adopted and carried out all over this country, under the direction of the Standard Oil officials or the officials of these large selling companies.

Let me give you another instance. Scofield, Shurmer & Teagle, large merchants whom the Standard bought out in 1901, were doing business in seven or eight of the Western States, one of them being Missouri. They immediately organized the Republic Oil Co. and used it as a secret company.

The CHIEF JUSTICE. They organized what?

Mr. KELLOGG. The Republic Oil Co.

The CHIEF JUSTICE. When you say "they" whom do you mean?

Mr. KELLOGG. I mean the Standard Oil. They organized that as a secret company, and made Mr. Teagle the manager of it. Mr. Teagle wrote a letter (which is in the record) in part as follows:

"Inclosed we attach a typewritten letter which we have been sending to some of the trade who have written us relative to newspaper reports, etc., that have appeared in the papers, stating that we have sold out to the Standard Oil Co. If you think it necessary to send out a letter of this kind to the trade from your station, please do so," etc.

Now, here is the letter, which was inclosed:

"You have undoubtedly seen reports in the papers that Scofield, Shurmer & Teagle and the Cleveland Refining Co. had sold out to the Standard Oil Co. These reports were not true," etc.

His statement was absolutely false, and he knew it to be false; and he intended it to deceive the public where they were using this company as a so-called independent to crush out other independent companies. For transactions connected with that company very largely, and other testimony in the record, the Supreme Court of Missouri excluded the Standard Oil Co. from that State. They advertised that company as "no trust," "no monopoly," "absolutely independent."

But, Mr. Johnson says, "This is the ordinary way of doing business, of competing." I deny it. I do not believe, your honors, that to maintain any great business in this country it is necessary to lie, steal, or commit fraud; and I say it was the policy of the Standard Oil Co. to do it, and that policy was dangerous in their hands.

Let me give you another instance—a most radical instance of fraud. The Tiona Oil Co. was selling oil in Oneonta, N. Y. The Standard wished to crush it out, and so they employed a man by the name of Farrell and told him to go to Binghamton and buy some Tiona oil and ship it to Worcester, and from Worcester back to Oneonta, so that they could not trace where it was purchased; and then to start out and advertise that he was selling Tiona oil, and cut under the merchants who were buying of the Tiona Co.—a scheme so cunning as to ruin the Tiona Oil Co. in that district. They wrote letters, directing how this was to be done, and telling Farrell to burn up the letters. They required him to send his correspondence to an address other than that of the Standard Oil Company. Mr. Mason, who had charge of that part of the country, says in one of his letters to Farrell:

"Our salesman who visits Oneonta knows nothing whatever of who you are, nor does anyone except those you saw in our office, and under no circumstances whatever do we want anyone to get the slightest hint that we are in any way concerned in this matter. The Tiona people are denying that they have anything to do with it, and claiming that we started you there. Of course we are denying this, and you must be very cautious and not allow anyone to try to pump you to draw out any facts. Don't allow anyone to tell you that they come from the Standard Oil Co., and try and learn anything from you.

"In regard to your saying that you think you 'had better come up and see how the feeling is,' I would say that I have been up there and know just what the situation is. Of course, I did not come near you, but so far the whole plan is working all right; but it must be kept a strict secret. You are doing first-rate, and carrying out the plan excellently, and very much to my satisfaction. * * *

"As soon as you have read this, set a match to it and burn it up, so that there can be no possible chance of it being seen by anyone. Write me through Mr. Craven that you have received this letter and that you have destroyed it after reading the same. Don't tear it up, for some person might get hold of the pieces of paper and put them together, but if you burn it with a match then it is out of the way wholly."

There are any number of such letters as this—kindred letters.

Again, in another place, they started one of these so-called independent companies by the name of Home Safety Oil Co. They put out circulars, "Down with monopolies. Up with honest prices. Here we are with them. All we want is 10 per cent on our investment." (I suppose this is the kind of 10 per cent that Mr. Rockefeller got out of the Standard of Indiana—10 hundred per cent.) Now, those sort of things were sent out by so-called independent companies all over this country.

Again, let me call your honors' attention to an instance where C. M. Lines was started out as an independent in Ohio; and he advertised:

"I am one of the 'independent oil dealers' doing business on the theory of 'live and let live,' and giving the working people of this town a chance to buy oil and gasoline at a price which still leaves a small margin of profit."

Again, one Blaustein ran the Southern Oil Co. in a large number of places, notably in the valley of Virginia, advertising: "We are strictly independent of trusts," cutting the prices of the merchants there. When asked on the stand in this case what he meant by that statement, he said he meant the Standard Oil was strictly independent of the trusts.

Now, as I have stated, this record shows that for this class of unfair competition, for these methods, the Standard Oil has been excluded by the highest judgment of the State of Minnesota.

Mr. MILBURN. No; that is a mistake in your brief. That is a mistake. There was a demurrer, and it was overruled, and the case is now at issue.

Mr. KELLOGG. Well, the judgment was that on the demurrer——

Mr. MILBURN. They demurred to raise the question.

Mr. KELLOGG. Anyhow, the court held that the bill stated a cause of action, and that the law was constitutional There is a statute in Minnesota controlling that kind of practice for the purpose of obtaining a monopoly.

The testimony taken in the Missouri case was stipulated into the case at bar; and the facts (or at least those bearing on these practices in the State of Missouri) on which the Standard Oil was excluded from that State are submitted to your honors. The facts on which they were excluded from Tennessee are in the case at bar. We have then not only indisputable evidence in this case that they had engaged in this practice all over this country, but that for so doing they have been excluded from two States by the judgment of the highest State courts.

But it is said: "This is competition." It is competition. It is fierce competition. It is not the mere tittle-tattle of corner grocerymen, as has been said in this case. It is a policy which the Standard adopted and carried out, and which, if it had not been stopped, would have ruined every independent in this country. And as I have said before I say again: Give them the judgment of this court that their organization is legal, give them the power which that organization possesses, and they can exclude every independent from this country without losing a dollar themselves.

The CHIEF JUSTICE. Why do you say that? Is there any judgment of this court which will deprive every other State in this Union of the right to exert the authority which you say Missouri and Tennessee have exerted?

Mr. KELLOGG. No.

The CHIEF JUSTICE. Then why do you say that any judgment of this court will give them the power to drive everybody out of business in the United States?

Mr. KELLOGG. I will tell you why I say that. The States can only exclude them, and have only excluded them, from doing an intrastate business. They can still ship into those States and sell their products in interstate commerce; and it stands in this record undisputed that the Standard Oil has been excluded on that and other grounds from Texas, Missouri, and Tennessee.

Mr. Justice LURTON. Do you mean this Standard Oil Co. of New Jersey, or do you mean one of these branch organizations?

Mr. KELLOGG. That is what I mean.

Mr. Justice LURTON. In Tennessee is a single one of these organizations excluded?

Mr. KELLOGG. One of them.

Mr. Justice LURTON. Is there any difficulty about the other companies doing business in Tennessee?

Mr. KELLOGG. There were no others selling there except the Kentucky.

Mr. Justice LURTON. But I am speaking of the number of companies which are supposed to be collateral to the principal company here. The Kentucky Standard Oil Co., I understood, was doing business in Tennessee.

Mr. KELLOGG. Yes.

Mr. Justice LURTON. Its methods were condemned, and it has been expelled?

Mr. KELLOGG. Yes, sir.

Mr. Justice LURTON. And I understand the Indiana oil company is there, and that it has taken over that business.

Mr. KELLOGG. I presume it has. In Minnesota I think the proceeding was against the Standard of Indiana. If they be excluded, some other will be substituted in its place. In Missouri the Standard of Indiana and the Waters-Pierce were first excluded. I believe the Waters-Pierce were permitted to go on with the business under certain conditions; but if excluded some other company would take its place. In Texas the Waters-Pierce was excluded, and some other company is doing the business.

The CHIEF JUSTICE. Some other company in which the Standard of New Jersey owns stock?

Mr. KELLOGG. Yes. I say it is impossible for the States to regulate this.

Mr. Justice McKENNA. In your brief do you analyze the decree of the court in this case and show its necessary effect?

Mr. KELLOGG. We do.

Mr. Justice McKENNA. The other side say that it does not give any essential power and takes away no essential power, and that all these things that you read will still exist.

Mr. KELLOGG. The court below did not enter an injunction against their using these methods of competition, and I do not think it is practical for any court to do it. I do not think competition can be regulated by the courts.

Mr. MILBURN. The court did not make any finding on that.

Mr. KELLOGG. It did not find it, and did not think it necessary. I do not know how far the court went in considering the facts, but they are in this record, and they are material facts, and it is our duty, however much of a burden it may be, to state them.

Mr. Justice McKENNA. I am trying to find out what the substantial relief in the decree is. The decree only dissolved the Standard Oil of New Jersey?

Mr. KELLOGG. Yes.

The COURT. Using the word "dissolved." It only affected the Standard Oil of New Jersey?

Mr. KELLOGG. Quite right.

Mr. Justice McKENNA. And it left everything else as it found it before the Standard Oil Co. of New Jersey was created?

Mr. KELLOGG. Yes.

Mr. Justice McKENNA. As all these effects that you have described existed prior to the organization of the Standard Oil Co. of New Jersey, how can they be destroyed by the dissolution of the Standard Oil Co. of New Jersey?

Mr. KELLOGG. Your honor, you can separate the companies which the Standard Oil Co. of New Jersey controls by stock ownership; and no one of them is big enough or covers territory enough to enable it to carry on this sort of predatory competition. It can not do it.

Mr. Justice McKENNA. Did they not carry it on before the Standard Oil Co. of New Jersey was created?

Mr. KELLOGG. Under the Standard Oil Trust, perhaps, they did; but there they were held together by the trust in the same way as they are held together now by the Standard Oil Co. of New Jersey. The relief the court granted, and the relief we ask, is that these companies, which are not interdependent, but which are independent, separate, corporate entities, and potentially competitive with each other, should be separated, and their power of monopoly should be destroyed thereby. I have not time to go into the details of the decree, but the Attorney General will.

Mr. Justice McKENNA. Take the instant of time before the Standard Oil Co. of New Jersey was formed. This decree puts things back to that instant of time. What power existed at that instant of time?

Mr. KELLOGG. At the instant of time before the Standard Co. was formed the 37 corporations which are separated by this decree were of course separate and independent corporate entities engaged in business and having two or three thousand stockholders; but before that they had been held together by the Standard Oil trustees, exactly in the same way as they are now held together by the Standard Oil Co. of New Jersey.

Mr. Justice McKENNA. How long before that?

Mr. MILBURN. 1892.

Mr. KELLOGG. The Standard Oil Trust was dissolved in 1892, but only partly dissolved; that is, it was dissolved by declaring that they would distribute all the stocks in the subcompanies to the certificate holders; but as a matter of fact, they distributed just a bare majority to Mr. Rockefeller and 15 or 20 of his associates, and during the seven years from 1892 to 1899 those 15 or 20 men voted the majority of the stock in the subcompanies, and the balance of two or three thousand certificate holders did not liquidate.

Mr. Justice McKENNA. And exerted exactly the same power that you say was exerted under the Standard Oil of New Jersey.

Mr. KELLOGG. Certainly; by continuing the combination which we say was illegal.

Mr. Justice McKENNA. And which this decree does not affect?

Mr. KELLOGG. This decree does not affect the Standard Oil Trust; but it does affect the renewal of this combination by any like means. I call your honors' attention to page 529 of Volume A, to the following portion of the decree:

"That the defendants named in section 2 of this decree, their officers, directors, agents, servants, and employees are enjoined and prohibited from continuing or carrying into further effect the combination adjudged illegal hereby and from entering or performing any like combination or conspiracy the effect of which is, or will be, to restrain commerce in petroleum or its products among the States, or in the Territories, or with foreign nations, or to prolong the unlawful monopoly of such commerce obtained and possessed by defendants as before stated, in violation of the act of July 2, 1890, either (1) by the use of liquidating certificates, or other written evidences, of a stock interest in two or more potentially competitive parties to the illegal combination, by causing the conveyance of the physical property and business of any of said parties to a potentially competitive party to this combination, by causing the conveyance of the property and business of two or more of the potentially competitive parties to this combination to any party thereto, by placing the control of any of said corporations in a trustee, or group of trustees, by causing its stock or property to be held by others than its equitable owners, or by any similar device," etc.

Now, that was simply a decree to prevent these gentlemen from making another like combination when this combination was dissolved; and I wish to say right here that no witness for the Standard Oil testified that it was not practicable to separate these companies. Much has been said in this court about the injury to the small stockholder. Judging by the dividends he has had, he can stand the injury. But no one of those officials testified that it was not entirely practicable to separate the Standard of California from the Standard of Texas, the Standard of Texas from the Standard of Indiana, or the Standard of Indiana from the Standard of New York or the Standard of New Jersey, and to manage them separately. That would deprive them of their power of monopoly.

Mr. Justice McKENNA. Of course, the other side say that is not true. They say that the same individuals have controlled all along, and still remain in control; and that they only took them in to facilitate matters, and as a means of economy, and things of that sort. I would like to have your view on that.

Mr. KELLOGG. I will answer it right now. They say that if this is dissolved, with the stock of those separate corporations left in the hands of three or four thousand stockholders, they, as stockholders, can manage the properties the same as the Northern Pacific and the Great Northern properties are managed; and they say further that this case is distinguished from the Northern Pacific and Great Northern cases because here there is a body of stockholders who own the same amount of stock in each one of these companies. I say they are mistaken in both propositions. I took a good deal of the testimony in the Northern Securities case, and I know the facts. In 1896 Mr. Hill and his associates, seven or eight men, bought $26,000,000 of the common stock of the Northern Pacific road. Later they bought $10,000,000 more; and your honors will remember that the common stock controlled that road. They were stockholders in the Great Northern road also. So that the Great Northern and the Northern Pacific had a body of common stockholders, a body which undertook to and did control both roads. The names of those men were given and they are in the brief. They are John S. Kennedy, D. Willis James, Samuel Thorne, J. W. Sterling, Oliver Payne, Jacob Schiff, Henry W. Cannon, Lord Strathcona, Lord Mount Stephen, and Mr. Hill.

So that they had in the Northern Pacific and Great Northern roads a body of common stockholders, owning and controlling enough stock to control both railroads. To be sure, there were outside stockholders, and there are here. Six or seven of the companies in this combination have outside stockholders. In the Waters-Pierce Co. about 31 per cent belongs to outside parties. The Galena-Signal Oil Co., one of the greatest of its companies, which furnishes the lubricating oil to all of the railroads of the United States, has 30 per cent of its stock in the hands of outside stockholders. So I say in the Northern Securities case the same fact existed which exists here, that there were bodies of common stockholders owning stocks in both roads, and they put those stocks together in a holding company, and this court held that the sale of those stocks to the holding company (the Northern Securities Co.) from this body of common stockholders—although they did not use that term, because I suppose this court thought it was immaterial; but the fact existed just the same—enabled the corporation to take the place of a large number of stockholders, who might sell out or whose power might be destroyed by death, and perpetuate in a Jersey corporation the power to control those two lines of railroads. Why, does it make any difference that two or three thousand men held stock in all the corporations in a given branch of commerce in the country? When the Securities Co. was dissolved the stockholders of the two railroads became identically the same. The stock of the two railroads was distributed to all the shareholders in the Securities Co.; and if it is true that because they were a body of common stockholders they had a right to get together and combine, then the common stockholders in the Northern Pacific and Great Northern could have turned around and combined in a new Securities Co., although they became common stockholders in dissolving (pursuant to the judgment of this court) the previously illegal combination.

Now, I say that the Northern Securities case settled some things. It settled the fact that the purchase, by a holding company, of the stocks of two naturally competing railroads was a suppression of competition. It is not true, as I read your honor's decisions, that it was put upon the ground simply that it was a scheme to combine the railroads, because in the Harriman case this court said:

"Some of our number thought that as the Securities Co. owned the stock the relief sought could not be granted, but the conclusion was that the possession of the power, which, if exercised, would prevent competition, brought the case within the statute, no matter what the tenure of title was."

Again, this court said in that case of that purchase and acquisition:

"No scheme or device could more certainly come within the words of the act, 'combination in the form of trust or otherwise * * * in restraint of commerce among the several States.'"

In other words, we understand that this court has held that a body of stockholders (or a body of stockholders common to both) in two competitive railroads, or two or a hundred competitive corporations, putting their stock into a holding company, though it is a sale, is a combination in the form of trust or otherwise. The only defense made here, as I understand it, is that it is the same body of common owners. Why, Mr. Morgan testified as to what community of interest was in the Northern Securities case. Let me read Mr. Morgan's definition. It is so like Mr. Watson's as to be startling in its similarity. Mr. Watson says time and again in his brief that these common stockholders can do what they please with their stock. This is what Mr. Morgan said:

"Q. What is community of interest?

"A. The community of interests is that principle that a certain number of men who own property can do what they like with it."

That is it. That is Mr. Morgan's definition, but this court held that they could not do it, and we ask your honors to so hold again.

Now for just a moment let me call the court's attention, as we have done in the reply brief, to some of the decisions of the State courts bearing on this identical combination. I have shown your honors already that the Standard Oil Trust and similar trusts have been declared illegal in many of the States, but I will go further now.

We cite some cases that have been decided since the last argument, or about the same time, in which the States have held on the facts existing in this case, that this Standard combination is an illegal combination under State statutes which do not materially differ from this act.

In the Supreme Court of Missouri they held that the Standard of Indiana and the Waters-Pierce were unlawfully parties to this Standard combination under the same state of facts existing here and in violation of the State statute as to intrastate commerce.

In the State of Texas the same holding was made.

Like decisions have been rendered, which we cite in the brief, as to a number of other combinations existing in this country, notably the Armour Packing Co.; the Creamery Package Manufacturing Co., by the Supreme Court of Minnesota; the International Harvester Co. in Kentucky and in Kansas; and what is the result? If it be true that the Standard Oil combination and these like combinations are in violation of the laws of the States—which laws are substantially, when applied to intrastate commerce, what this statute is when applied to interstate commerce—and they are excluded from doing intrastate commerce by reason of the illegal combination, the result will be that one by one they will be driven from the States and will have protection to go on with their combination under the laws of Congress. I say those decisions are entitled to grave consideration by this court. Why, your honors, since the Sherman Act was passed like statutes have been adopted in nearly every State. At about that time, or since, thirty-six States of the Union have adopted statutes in effect in intrastate commerce what the Sherman Act is as to interstate commerce—many of them more drastic. They have been passed in pursuance of a public policy, of a common public demand in this country, that evinces a desire of the American people to end these combinations and monopolies. These considerations are entitled to great weight with this court. They show the public policy in this country. But it may be said, your honors, that it is the province of the Congress to declare the public policy of the Nation. Congress has announced in the Sherman Act the general policy in relation to combinations and trusts. It remains for this court to say whether that policy shall be effectuated, and whether those combinations shall or shall not continue. This court is the ultimate judge of what is the policy of this Nation, as Lord Coke was 300 years ago when he declared monopolies illegal on the ground of public policy. Did he go outside the judicial perogative, or did he earn the everlasting gratitude of his countrymen, when he set the bounds to human greed?

What was it that the able gentlemen who considered and who were instrumental in passing this statute meant by "a combination" in Congress, in 1890? Congress must have been legislating against something. Now, as I think Mr. Justice Day suggested the other day, let us put ourselves in the position of Congress; let us see what Congress was legislating against. And what is the best evidence of that? I believe this court the other day held that your honors would look to the declarations of Mr. Justice Story, who drew an act in relation to crimes committed upon Government reservations, in order that you might be informed of the condition of the times when the act was passed, and the objects to be attained by its passage. This court held in the Union Pacific case that it would refer to the debates in Congress for the history of the times, which is the best guide to the meaning of a statute. Go back to 1890 and read the investigations of the committees in Congress which had preceded that notable session. Read the debates of such men as Senators Hoar, Edmunds, Sherman, Davis, Vest, Morgan, Spooner, and Representative Wilson of West Virginia. What do they point to? Mr. Sherman read to the Senate the decision in the North River Sugar Refining case, deciding the Sugar Trust (which was a copy of the Standard Oil Trust) to be illegal; he read the Chicago Gas case and Richardson *v.* Buhl. He cited the Standard Oil Trust, then well known as an instance of a combination in restraint of trade, against which Congress should legislate. Furthermore, Mr. Edmunds did the same. These are not expressions of unlearned men trying to demonstrate their usefulness in Congress, as it has been intimated; they are the expressions of statesmen who knew the condition of the country and knew what they were legislating against. I wish to call your honors' attention to a very brief statement by Representative Wilson of West Virginia.

The CHIEF JUSTICE. Who?

Mr. KELLOGG. Representative Wilson, of West Virginia, in which he discussed this very bill, and discussed the condition of the trusts in this country. He said:

"A trust is a legal consolidation of properties, a legal concentration of control.

"Historically it grew out of the greatness and the necessities of the Standard Oil combination. When that combination in its triumphal progress found itself practically the sole producer of refined oil in this country, it had its properties in many States, vested in and controlled, as the case might be, by corporations, partnerships, and individually, and including many separate lines of business. It had its refineries, its pipe lines, its terminal facilities, its manufactures of barrels and cans and lamp wicks and other articles. * * *

"Accordingly the able solicitor of the Standard alliance worked out for that alliance the trust scheme of combination, which has subsequently swept over the field of American industry and has been adopted, with greater or less success by so many other would-be monopolies.

* * * * * * *

"Combinations very effective for some temporary purpose or within a limited area may be formed by individuals or partnership, but they will be subject to all the contingencies of death, bankruptcy, bad faith, and voluntary withdrawal.

"Those which are to become a menace to the public can not be built upon a foundation so shifting. Moreover, Mr. Speaker, we all know that the individual has disappeared in the corporation, which alone offers the aggregation of means, the exemption from physical death, and the unity of control that are indispensable for the gigantic enterprises of modern production and trade."

And he knew what he was legislating against. What is the difference between the Standard Oil of New Jersey, a holding company, and the Standard Oil Trust which has met the condemnation of the courts of this country? The difference is simply that while trustees may die the Standard Oil Co. never dies. It can go on increasing its surplus, increasing its holdings, its control, through all time. The Legislature of New Jersey has given it perpetual life; and while there is no law in this country against a man getting rich, thank God, I believe there is a law and a public policy against unlimited control in corporate form.

I had intended, your honors, to say something about the question of monopoly, but my time is up, and I must leave this to the Attorney General.

I desire, in submitting this case, which has taxed my strength for four years, to thank the court for its extreme indulgence, and the counsel for their uniform courtesy.

(The court thereupon took a recess until 2.30 o'clock p. m.)

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