THE HISTORY OF THE STANDARD OIL COMPANY: PART TWO

BY

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CHAPTER V

THE BREAKING UP OF THE TRUST

THE most prolonged public catechizing Mr. John D. Rockefeller has ever submitted to was on February 27 and 28, 1888. The Senate of the State of New York, in response to public demand, had ordered an investigation of trusts. The subject was complicated enough. A list of more than a score of such organizations was in the hands of the committee, and, with the limited time at their disposal, it was certain that they could not look into more than a half dozen. There seems to have been no hesitation about including the Standard Oil Trust. "This is the original trust," wrote the committee. "Its success has been the incentive to the formation of all other trusts or combinations. It is the type of a system which has spread like a disease through the commercial system of this country."

There were several things the committee wanted to know about the Standard Oil Trust, and its president was summoned

EDWARD O. EMERSON

The close of the Civil War brought to the Oil Regions of Pennsylvania many men who had served from 1861 to the disbanding of the army. Among them was Mr. E. O. Emerson. He joined the ranks of the producers and has been active in every great producing field from Pithole to West Virginia. Mr. Emerson was a partner in what was called "the largest gas well in the world," the well from which Pittsburg received its first natural gas used as fuel. His home is in Titusville, Pa.

ALANSON A. SUMNER

One of the first successful producers on Oil Creek, Mr. Sumner took an active part in developing the crude facilities for handling oil, laying one of the first—if not the first—local pipe-lines. In 1878 he took a large amount of stock in the Tidewater Pipe Line, whose struggle for existence was described in this magazine for January. The money which Mr. Sumner put into the Tidewater at various times during its fight with the Standard contributed largely to its final success. He is still active in the company.

DAVID K. WATSON

Mr. Watson is an Ohioan, a graduate of Dickinson College and of the Law School of Boston University. In November, 1887, he was elected Attorney-General of Ohio, by the Republicans, an office he held for two terms. At the expiration of his second term he resumed the practice of law in Columbus. In 1894 he was elected to Congress. Since 1898 he has been a member of the Commission to Revise and Codify the Laws of the United States. Mr. Watson is the author of a "History of American Coinage" and various legal and miscellaneous essays.

FRANK S. MONNETT

Mr. Monnett was born in Ohio in 1857, of French Huguenot stock, and he was graduated from the Ohio Wesleyan University and the National Law School at Washington, D. C. He was elected Attorney-General of Ohio in 1895, an office he filled for two terms. Mr. Monnett has been active in the anti-trust agitation since its start, campaigning with the Ohio Republicans on that issue until they abandoned it, when he went over to the Democratic party. In 1903 he was the Democratic nominee for Attorney-General, and, although defeated, led his party by 9,000 votes.

for examination. (1) What was it? Was it an organization recognized by any law of the land? Long ago men had decided that partnerships, corporations, companies, in which men united to do business, must be regulated by law and subjected to a certain amount of publicity, if the public good was to be protected. Was the Standard Oil Trust within or without the law? (2) By the testimony of its own members in other years, the Standard combination controlled from eighty to ninety per cent. of the oil business of the country. Was this supremacy due in any measure to special privileges, such as discrimination in railroad rates? (3) Was its power used to manipulate production and prices, and to prevent men outside entering the oil business?

It was to learn these things that the commission summoned Mr. Rockefeller. Flanked by Mr. Joseph H. Choate, present Ambassador to the Court of King Edward and the most eminent lawyer of the day, and Mr. S. C. T. Dodd, a no less able if a less well-known lawyer, Mr. Rockefeller submitted himself to his questioners. In no case where he has appeared on the stand can his skill as a witness be studied to better advantage. With a wealth of polite phrases — "You are very good," "I beg with all respect" — Mr. Rockefeller bowed himself to the will of the committee. With an air of eager frankness, he told them nothing he did not wish them to know. The committee had a desire to begin at the beginning. It evidently had heard that a short-lived organization, called the South Improvement Company, had given Mr. Rockefeller his whip-hand in the oil business as far back as 1872, enabling him in three months' time to raise his daily capacity as a refiner from 1,500 to 10,000 barrels, and so they asked Mr. Rockefeller:

Q. There was such a company?

A. I have heard of such a company.

Q. Were you not in it?

A. I was not.

It is a perfectly well-known fact that Mr. Rockefeller owned 180 shares in the South

Group of Cleveland citizens who called on John D. Rockefeller at his residence, "Forest Hill," on July 25, 1896, to thank him for his gift of park lands to the city. Mr. Rockefeller is in the center of the group, the late Senator Mark Hanna in the right lower corner, and Governor Myron T. Herrick in the center of the top row.

Improvement Company, of which he was a director; that, when a public uprising caused the destruction of the company, he was one of the two men who tried to save it; also that the Standard Oil Company of Ohio was the only concern which profited by the short-lived conspiracy.

The Value of a "No"

Another staggering bit of testimony concerned railroad rates. Asked if there had been any arrangements by which the trust or the companies controlled by it got transportation at any cheaper rates than was allowed to the general public, Mr. Rockefeller answered: "No sir." As a matter of fact, the three great oil-carrying systems of the country — the Central, Erie, and Pennsylvania — had all of them, for much of the period between 1872 and 1888, granted to Mr. Rockefeller rebates calculated to keep freight rates down for the Standard Oil Company and up for its competitors. Contracts and agreements to this effect are easily accessible to any one caring to investigate the quality of Mr. Rockefeller's "no."

"No," said Mr. Rockefeller, we have had no better rates than our neighbors, and then, with that lack of the sense of humor which, ethical qualities aside, is his chief limitation, he hastened to add: "But, if I may be allowed, we have found repeated instances where other parties had secured lower rates than we had."

Testifying as a Fine Art

Later in the day the committee, which seems to have known something of Mr. Rockefeller's former contracts with the railroads, returned to the subject, and the following colloquy, worthy of the study of all witnesses interested in how not to tell what you know, took place:

Q. Has not some company or companies, embraced within this trust, enjoyed from railroads more favorable freight rates than those rates accorded to refineries not in the trust?

A. I do not recall anything of that kind.

Q. You have heard of such things?

A. I have heard much in the papers about it.

Q. Was there not such an allegation as that in the litigation or controversy recently disposed of by the Interstate Commerce Commission; Mr. Rice's suit; was not there a charge in Mr. Rice's petition that companies embraced within your trust enjoyed from railroad companies more favorable freight rates?

A. I think Mr. Rice made such a claim; yes, sir.

Q. Did not the commission find that claim true?

A. I think the return of the commission is a matter of record; I could not give it.

Q. You don't know it; you haven't seen that they did so find?

A. It is a matter of record.

Q. Haven't you read that the Interstate Commerce Commission did find that charge to be true?

A. No, sir; I don't think I could say that. I read that they made a decision, but I am really unable to say what that decision was.

Q. You did not feel interested enough in the litigation to see what the decision was?

A. I felt an interest in the litigation; I don't mean to say that I did not feel an interest in it.

Q. Do you mean to say that you don't know what the decision was? That you did not read to see what the decision was?

A. I don't say that; I know that the Interstate Commerce Commission had made a decision; the decision is quite a comprehensive one, but it is questionable whether it could be said that that decision in all its features results as I understand you to claim.

Q. You don't so understand it? Will you say, as a matter of fact, that none of the companies embraced within this trust have enjoyed more favorable freight rates than the companies outside of your trust? Will you say, as a matter of fact, that it is not so?

A. I stated in my testimony this morning that I had known of instances where companies altogether outside of the trust had enjoyed more favorable freights than companies in this trust, and I am not able to state that there may not have been arrangements for freight on the part of companies within this trust as favorable as, or more favorable than, other freight arrangements; but, in reply to that, nothing peculiar in respect to the companies in this association; I suppose they make the best freight arrangements they can.

The committee had a vague idea that refineries outside of the Standard combination had had a hard time to live, and asked

if the trust had not sought in any way to make the operations of outsiders so unprofitable that they would either have to come in or go out of the business.

"They have not; no sir, they have not," replied Mr. Rockefeller.

"And they have lived on good terms with their competitors?"

"They have, and have to-day very pleasant relations with those gentlemen."

It would have been interesting to have heard the comments of a number of gentlemen trying to carry on an independent business in 1888, on that answer — of the refiners in Oil City and Titusville, at that time preparing to carry their troubles to the Interstate Commerce Commission — of Mr. George Rice and others at Marietta, Ohio; of H. H. Campbell, of the Bear Creek Refining Company at Pittsburg; of Scofield, Schurmer, and Teagle at Cleveland.

The Mysterious Organization at Last Brought to Light

If all of Mr. Rockefeller's testimony had been of the nature of the above, the investigation would have been worth little to the people who demanded it. But when it came to the questions which, after all, it was most essential to have answered at that moment, Mr. Rockefeller gave the committee as frank testimony as is on record from him. The information wanted was in regard to the organization of the Standard Oil Trust. As already pointed out, there had been some kind of an agreement adopted in 1882, binding together the varied interests which controlled the oil business. But what it was, where it was kept, by what authority it lived, nobody knew. For six years it had succeeded in hiding itself. Now, however, by order of the committee, it was produced. Like all great things, it was simplicity itself — an agreement which anybody could understand, by which some fifty persons holding controlling interests in corporations, joint stock associations, and partnerships of different states, placed all their stock in the hands of nine trustees; receiving in return trust certificates. These nine trustees themselves owned a majority of the stock and had complete control of all the property. Mr. Rockefeller, when questioned, stated that one of the trustees was a responsible officer in almost every refinery or organization in the trust — that the trustees, as a body, knew by reports and correspondence and by frequent consultation in New York with active promoters of each concern, just how the business was going on. "We all know how the business goes," said Mr. Rockefeller; "we get reports once in thirty days showing what it has cost for everything."

The trustees evidently ran the entire great combination under the agreement. But consider the anomaly of the situation. Thirty-nine corporations, each of them having a legal existence, obliged by the laws of the State creating it to limit its operations to certain lines and to make certain reports, had turned over their affairs to an organization having no legal existence, independent of all authority, able to do anything it wanted anywhere; and to this point working in absolute darkness. Under their agreement, which was unrecognized by the State, a few men had united to do things which no incorporated company could do. It was a situation as puzzling as it was new. The committee in reporting on what it discovered, did nothing to solve the puzzle. It simply sounded a warning.

The Committee's Report

The actual value of property in the trust control at the present time is not less than one hundred and forty-eight millions of dollars, according to the testimony of the trust's president before your committee. This sum in the hands of nine men, energetic, intelligent and aggressive — and the trustees themselves, as has been said, own a majority of the stock of the trust which absolutely controls the one hundred and forty-eight millions of dollars — is one of the most active, and possibly the most formidable moneyed power on this continent. Its influence reaches into every State and is felt in remote villages, and the products of its refineries seek a market in almost every seaport on the globe. When it is remembered that all this vast wealth is the growth of about twenty years, that this property has more than doubled in value in six years, and that with this increase the trust has made aggregate dividends during that period of over fifty millions of dollars, the people may well look with apprehension at such rapid development and centralization of wealth wholly independent of legal control, and anxiously seek out means to modify, if not to prevent, the natural consequence of the device producing it, a device of late invention, namely, the aggregation of great corporations into partnerships with unbounded resources and a field of operations quite as extended as its resources. So much for the nature of the Standard Oil Trust. The committee regrets that they are not able to make a more complete and satisfactory report as to the method of its operations and its effect upon public interests.

The brevity of the time within which the investigation was required to be made rendered it impossible for your committee to do more than examine the persons most prominent in the management of its affairs. Its cause was thus presented in the most favorable light possible, and it is only fair to conclude that nothing was left unsaid by them that could be said in its favor. No witness came forward to accuse it of the great offenses commonly laid to its charge. No proofs were made of its rapacity or of the greed with which it lays hold of every competitive industry, except such as might be drawn from the fact that it is the almost sole occupant of the field of oil operations from which it has driven nearly every competitor. No witness appeared to prove its power over railroad and transportation companies and to wring from already impoverished lines better terms than other shippers except such as might be drawn from the admission of its officers, made with hesitation, that this wealth and the amount of its business enabled it to obtain better terms than its poorer competitors.

A Federal Investigation Follows That of the State

The New York Senate made its investigation of trusts in February, 1888. In March the Committee on Manufactures of the House of Representatives began a similar inquiry. This committee, like the earlier one, made the Standard its principal subject. Fully 1,000 pages of a report of 1,500 pages are devoted to Mr. Rockefeller's creation — five times the space given to the Sugar Trust, ten times that given to the Whisky Trust. The testimony was wide in range. Indeed, from this volume alone, a pretty complete history of the Standard Oil Company up to 1888 could be written. Here are found the South Improvement Company charter and contracts in full. Here is Mr. Cassatt's testimony, taken in the case of the Commonwealth of Pennsylvania *vs.* the Pennsylvania Railroad, showing the character of the rebates the Standard combination was able to secure from the railroads at that time. Here is a partial history of the growth of the Standard pipe-lines. Many personal histories of refiners driven out of business by the conditions brought about by railroad discriminations; full accounts of the war of the producing element on the Standard; all of the testimony in the Buffalo case, where two refiners were found guilty of conspiring to ruin an independent refining concern; the reports of the Interstate Commerce Commission in the cases of George Rice; and much interesting explanation of various other matters by leading Standard Oil officials appear in the report.

A Discrepancy in Testimony

Mr. Rockefeller was on the stand, and one item of his testimony affords a curious comparison. On the 28th of February, when before the New York Senate committee, Mr. Rockefeller was asked if he was not a member of the South Improvement Company.

"I was not," he replied.

On the 30th of the April following, when before the House committee, the following colloquy took place:

Q. I want the names particularly of gentlemen who either now or in the past have been interested with you gentlemen who were in the South Improvement Company?

A. I think they were O. T. Waring, W. P. Logan, John Logan, W. G. Warden, O. H. Payne, H. M. Flagler, William Rockefeller, J. A. Bostwick, and — *myself*.

An Organization Too Subtle for the Law

Full as the testimony on the Standard Oil Trust gathered by the Federal committee of 1888 is, its report touched but one point, and that was its organization. To the committee it seemed that the agreement under which the trust operated was such as to make it exempt from the anti-trust legislation which was then contemplated by Congress. The legislation proposed was directed against "combinations to fix the price or regulate the production of merchandise or commerce." Now a mass of testimony had been presented showing that, from the starting point of the Standard's history with the South Improvement Company, its aim has been to regulate the output of refined oil so as to fix the price, but this testimony, the committee saw clearly enough, did not apply to the trust which it was investigating. For — so swore the trustees — they had nothing to do with the business operations of the separate concerns. They simply held the stock of the various corporations, exercised their right as stockholders, received and distributed the dividends. Each company did its own business in its own way. The trustees were not responsible for it. There was something humorous to those familiar with the oil world, in the idea of J. D. Rockefeller, William Rockefeller, J. D. Archbold, Henry H. Rogers,

Charles Pratt, H. M. Flagler, Benjamin Brewster, W. H. Tilford, and O. B. Jennings, having nothing to do, as trustees of the Standard Oil Trust, but to receive and divide dividends, engrossing and interesting a task as that undoubtedly was. But, as a matter of fact, nothing else could be settled on them by anything in the testimony. For instance, in 1887 there was an alliance formed between the Oil Producers' Protective Association and the Standard for limiting the production of crude oil (a movement of which we shall hear more later). This certainly was in restraint of trade. But, on examination, the committee found the contract had been signed by the Standard Oil Company of New York. The trustees had nothing to do with it! Taking up, point by point, the conditions of which the oil producers complained, not one of them could be fixed on the trust. It had made no agreements, signed no contracts, kept no books. It had no legal existence. It was a force powerful as gravitation and as intangible. You could argue its existence from its effects, but you could never prove it. You could no more grasp it than you could an eel. Certainly the Committee on Manufactures was justified in confining its report to pointing out the fact that the Standard Oil Trust agreement was a shrewd and slippery device for evading responsibility.

And there the investigations of 1888 ended. There had been much noise over them, and for what good? So asked the discontented oil public. It simply had secured the form of an agreement which could no more be touched by legislation than human greed. It was characteristic that the oil public, intent on immediate remedies, should be discouraged. If they had applied to their cause the same patience and foresight Mr. Rockefeller did to his, they would have realized that, as a matter of fact, a respectable first step had been taken towards their real goal, a goal which has not by any means been reached — that is, a legal form of organization for corporations doing interstate business which would forbid their accepting special privileges, would restrain their power to restrict trade, and would subject them to a system of inspection which would enable the public to know promptly if they were securing special privileges or were restricting trade. This first step was in securing the famous trust agreement. That was now in the hands of people given to thinking about things and something came of it, even more quickly than the philosophical observer of public events might expect, and in this wise:

A Good Public Servant's Discovery

In 1887, there was elected to the attorney-generalship of Ohio, a lawyer, something under forty years of age, named David K. Watson. Two years later Mr. Watson was a candidate for reëlection. One day, while busy with his campaign, he came out of his office in the State-house on the public square in Columbus, and crossing the street, stopped, as he often did, at a book-shop to look over new publications. He happened there on a small yellow leatherette volume entitled "Trusts." It was written by William W. Cook, of the New York bar, and cost fifty cents. Mr. Watson bought the book and spent the evening reading it. At the end he found the Standard Oil Trust agreement. It was the first time he had ever seen it. He read it carefully and saw at once that, if it was a bona fide agreement, the Standard Oil Company of Ohio was and had been for seven years violating the laws of the State of Ohio by taking the affairs of the company from the directors and placing them in the hands of trustees, nearly all of whom were non-residents of the State. Mr. Watson knew on the instant that, if this were a bona fide agreement and he were reëlected Attorney-General of Ohio, it would be his duty to bring an action against the Standard Oil Company of the State. He laid the little book away until he knew the result of the election.

A few weeks later Mr. Watson was reëlected Attorney-General. He at once began a search into the authenticity of the documents in Mr. Cook's little volume. He sent for the reports of the investigations by the committees of the New York Senate and of Congress. He read the testimony word for word. But he still doubted the correctness of the document, fearing that, even if it were in the main correct, there might be some loophole by which the Standard Oil Company could escape. Now, in reading the report of the House investigations, Mr. Watson had been particularly impressed with the clearness and directness of the questions put by one of the members of the investigating committee,

Mr. Buchanan, of New Jersey. He accordingly went to Washington, inquired from a friend if Mr. Buchanan could be relied upon, and, receiving the assurance of his high character, sought an interview with him. "Was the Standard trust agreement as published in the committee's report *bona fide?*" was the inquiry. "Yes," said Mr. Buchanan. "But why do you ask?" "Because if it is," replied Mr. Watson, "I believe the Standard Oil Company of Ohio has violated the laws of the State, and on my return to Columbus I shall file an action in *quo warranto* against it in the Supreme Court of the State."

"You would not *dare* do that, would you?" exclaimed Mr. Buchanan.

The Ingenuousness of Youth

"I was young then," Mr. Watson told the writer in describing this interview, "and I supposed it was expected of a public officer to perform his duty. So I explained to Mr. Buchanan that there was a statute in Ohio which required an attorney-general to bring suit against any corporation which he had reason to believe was violating the laws of the State; that I had no personal feeling against the Standard Oil Company, but I meant to enforce the law against it as I would against any other company which I believed to be violating the law."

"I admire your courage," said Mr. Buchanan, "but I would not do it."

On May 8, 1890, Mr. Watson filed his petition in the Supreme Court of Ohio.*

Mr. Watson's Attack

The petition averred that, in violation of the law of Ohio, the Standard Oil Company had entered into an agreement by which it had transferred 34,993 shares out of 35,000 to the trustees of the Standard Oil Trust, most of whom were non-residents of the State; that it was these trustees who chose the board of directors of the Standard Oil Company of Ohio, and directed its policy, and prayed that, on account of this violation of law, the company should be "adjudged to have forfeited and surrendered its corporate rights, privileges, powers, and franchises, and that it be ousted and excluded therefrom, and that it be dissolved."

* The full style of the case was: the State of Ohio on the relation of David K. Watson, attorney-general, plaintiff, against the Standard Oil Company, defendant.

The Standard Oil's Open Answer

The petition came on the trust like a thunderbolt. There had been already more or less erratic and ill-advised anti-trust legislation in various States, but it had been framed in ignorance of the actual organization of the trust, and carried out with a crude notion that the trust, in spite of the fact that it was already thoroughly intrenched in the business life of the country, could be destroyed by a hostile act of a legislature. Mr. Watson's suit was something very different. It was an application of recognized laws to admitted facts. It brought the Standard Oil Company face to face with several legal propositions it did not like to meet. After a long delay an answer was filed by the Standard. To Mr. Watson's joy, the one thing he feared — the denial of the correctness of the agreement — made no part of this answer. It admitted the agreement, but it denied that the Standard Oil Company of Ohio was a party to it. The agreement was signed by the individual stockholders of the Standard Oil Company, not by the company in its corporate capacity. The Standard Oil Company of Ohio had nothing to do with the Standard Oil Trust. True, certain of its stockholders had turned over their stock to the nine trustees, but the company did its business as before, discharging all its duties as its charter required. This was the essential point of the defendant's answer. This, and the claim that if the court should hold that the action of the stockholders, in becoming parties to the agreement in their individual capacity, was a corporate act of the Standard Oil Company, even then the charter should not be forfeited, since the law barred an act committed more than five years before a petition was filed.

Anticipating that the trust would get together a strong array of counsel to defend its attacked member, Mr. Watson retained his personal and professional friend, Hon. John W. Warrington, an eminent lawyer of Cincinnati, to assist him. They were opposed by Joseph H. Choate, S. C. T. Dodd, and Virgil P. Kline of Cleveland.

The Standard Oil's More Subtle Answer

But, while the preparation for the argument of the case was going on, the courageous young Attorney-General was beset

on all sides for an explanation. *Why* had he brought the suit? What was the influence which had controlled him? Men in power took him aside to question him, incapable, evidently, of believing that an attorney-general could be produced in Ohio who would bring a suit solely because he believed it was his duty. Some suggested that some big interest, hostile to the Standard, was behind him; others said the suit was suggested by Senator Sherman, then interested in his anti-trust bill. Along with this speculation came the strong and subtle restraining pressure a great corporation is sure to exert when its ambitions are interfered with. From all sides came powerful persuasion that the suit be dropped. Mr. Watson has never made public the details of this influence, and but one bit of documentary proof of its existence ever reached the public — that came out without the knowledge or consent of Mr. Watson, seven years after the suit was brought. It is interesting enough as evidence of the character of the pressure Mr. Rockefeller can set in motion when he will. Among Mr. Rockefeller's Ohio friends was the Hon. Marcus A. Hanna, who was even then a strong factor in the Republican party of the State. A few months after the suit was brought he wrote Mr. Watson a letter of remonstrance. This letter has never been published in an authentic form, but the answer to it was found by an energetic newspaper man in 1897, when Mr. Hanna was running for the United States Senate, and it shows sufficiently the character of Mr. Hanna's communication.

December 13, 1890.

Hon. MARK HANNA, Cleveland, Ohio.

My Dear Sir: — Your communication of the 21st ult. came to hand. The delay in answering it has been caused largely by my being ill for several days. I did not intend that bringing the action to which you refer in your letter should be an attack on my part on "organized capital," for I am aware that great business transactions require the union and concentration of moneyed interests and fully appreciate what has been done in that direction, yet I cannot but feel that I am justified in bringing the suit against the Standard Oil Company, and believe that there are many things relating to the case which, if you understand, would cause you to entertain different views concerning it and my relation to it. Let me impress one thing on you with special particularity, and you may depend absolutely on its truthfulness. Senator Sherman never suggested or encouraged this suit, either directly or indirectly. This must be understood in its broadest sense. The report probably arose from the fact that the action was brought shortly after the Senator made his great speech in support of his anti-trust bill. You will hardly receive my statement with favor, I fear, but I am alone responsible for the action. No one encouraged me to bring it or knew that it would be brought until I determined to do so, and it is unfair to other persons to charge them with suggesting it or encouraging it. With the highest appreciation of your personal friendship, I am, with great respect,

Truly yours,

DAVID K. WATSON.

Mr. Watson Undismayed

Whatever the pressure Mr. Watson encountered, it had no effect on his purpose. He quietly went ahead, presented his brief, and, when the time came, he and Mr. Warrington argued the case.* Mr. Joseph H. Choate appeared for the defense. The most eminent lawyer in the country, his argument must have been anxiously awaited by Mr. Watson. Curiously enough, as it seems to the non-legal mind, Mr. Choate began his plea by a *prayer for mercy*. Whatever the sins of the Standard Oil Company of Ohio, pleaded Mr. Choate, do not take away its charter. Mr. Choate then proceeded with a strong argument in which he claimed "absolute innocence and absolute merit for everything we have done within the scope of the matters brought before the court by these pleadings."

* The following propositions from the brief presented by Mr. Watson and Mr. Warrington show tersely the line of their argument:

Where the manifest object of an agreement is to unite corporations, partnerships and individuals into, or include them in a common enterprise, and control them through an agency unknown to the law of their creation, and all the officers, directors, and stockholders of such corporations sign the agreement, and, in furtherance of its provisions, transfer their stock to such agency, permit the corporate executive agencies to make such transfers on the corporate books, submit without objection to the domination of the agency to which the stock is so transferred in the selection of directors and officers, and in the management of the corporate affairs and business, suffer the corporate earnings to go to such agency and be placed and mingled with the earnings of the other parties in the combination so created, and, after deductions for uses of the combination, be divided as part of such common earnings among the persons interested, in such case the corporations become and are — or at least will be treated by the courts as — parties to such agreement and actors in its performance, although their corporate names are withheld therefrom. "Such proceedings constitute actual corporate conduct, if not formal corporate action, on the part of each corporation."

An agreement is in violation of law and void, which in effect creates a partnership between corporations, or where its probable operation and effect — much more where its inevitable tendency — is to create a substantial monopoly, or is in restraint of trade or otherwise injurious to the public.

Where a corporation, either directly or indirectly, submits to the domination of an agency unknown to the statute, or identifies itself with and unites in carrying out an agreement whose performance is injurious to the public, it thereby offends against the law of its creation and forfeits all rights to its franchises, and judgment of ouster should be entered against it.

Even if the statute which prescribes a time within which an action against a corporation for forfeiture of its charter shall be commenced, be applicable to a case of this kind, yet, where the offenses or acts committed or omitted by a corporation for which forfeiture of its charter is sought at the suit of the State, are concealed, or are of such character as to conceal themselves, such offenses and acts as against the State are frauds, and such statute does not begin to run until the frauds are discovered.

The Court Decides Against the Standard

The argument did not convince the court of the innocence of the Standard in the questions at issue. The court showed, out of the mouth of the trust agreement itself, that the Standard Oil Company of Ohio was "managed in the interest of the Standard Oil Trust — irrespective of what might be its duties to the people of the State from which it derives its corporate life." The court gave as its opinion that an act of a majority of the stockholders of a corporation affects the property of a company in the same way that a resolution by the board of directors affects it. "By this agreement," said the court, "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.

. . . . . .

"Much has been said in favor of the objects of the Standard Oil Trust and what it has accomplished. It may be true that it has improved the quality and cheapened the costs of petroleum and its products to the consumer. But such is not one of the usual or general results of a monopoly; and it is the policy of the law to regard, not what may, but what usually happens. Experience shows that it is not wise to trust human cupidity where it has the opportunity to aggrandize itself at the expense of others. The claim of having cheapened the price to the consumer is the usual pretext on which monopolies of this kind are defended."

The Company Enjoined from Merging into the Trust

From all this the court decided the Standard Oil Company deserved punishment. The charter was not taken away — the statute of limitations being advanced as a reason for this leniency, although, as Mr. Watson and Mr. Warrington showed, the statute of limitations could hardly be pleaded in this case, when the State had been kept in ignorance by the concealment of the agreement. The company was allowed to live, but it was ousted from the privilege of entering into the trust agreement, from the power of recognizing the transfer of the stock, and from the power of permitting the trustees to control its affairs. It was also ordered to pay the costs of the action.

The judgment of the court was not rendered until March 2, 1892, almost two years after the filing of the petition. As soon as it was received Virgil P. Kline, the chief counsel of the Standard Oil Company of Ohio, went to New York for consultation with the trustees. Five days later he wrote to Judge Spear, the Chief Justice of the Ohio Supreme Court, saying:

Good Intentions with a But

"Decisive steps will be taken at once, not only to release the Standard Oil Company from any relations to the trust, but to terminate the entire trust." But there were "practical difficulties" in the task. The company pleaded for a "temporary recognition," and he asked an interview where he could explain the situation. This was granted, and, on the 16th of March, Mr. Kline explained to the Judges in Chambers, to Mr. Watson, and to his successor in office, the situation of the company. The trustees had all but seven shares of its stock. Trust certificates had been issued for these ten years before. The Standard Oil Company did not know who held these certificates, and could only know through the trustees, therefore the trust certificates must be transferred back, the owners hunted up, and each one induced to make an exchange. A system must be devised for doing this. Anybody could see this would take time. The court was friendly in the matter, and Chief Justice Spear gave to Mr. Kline an informal note granting an extension. "The court is not disposed to change its order at this time," the Chief Justice wrote, "but, so long as those in control appear to be engaged, as now, in an honest effort to dissever the relations of the company with the trust, and liquidate and wind up the affairs of the trust, the court will not be disposed to interfere." Thus time was gained.

While Mr. Kline was securing time, the trustees were pushing a liquidation scheme. On March 11th the following notice was mailed to all holders of Standard Oil Trust certificates, and was published in a newspaper in each State where a Standard Oil Company had been organized:

NOTICE.

A special meeting of the holders of Standard Oil Trust Certificates will be held at the office of the trust, No. 26 Broadway, in the City of New York, on Monday, March 21, 1892, at 11 o'clock A.M., for the purpose of voting upon a resolution to terminate the trust agreement, in accordance with the terms of said agreement, and to take such further action as may be thereby rendered necessary.

H. M. FLAGLER, *Secretary*.

The Plan for Liquidation

The meeting was held as called. Mr. Rockefeller was in the chair, and Mr. Dodd, who had drawn the trust agreement, now presented the resolution which was to dissolve it. The remarks with which Mr. Dodd introduced his resolution denied every point which the courts had charged against the combination.*

It is probable that Mr. Dodd had foreseen from the first just such an attack on his agreement as had come, for he had put in the instrument a paragraph providing for a dissolution, and it was in accordance with that article that the trust was now dissolved. The trustees were to continue to exist — under a new name: "liquidating trustees." The property they had to take care of was vastly in excess of what it had been ten years before. Then the capital of the 39 constituent companies was $70,000,000. These companies had been combined until they had been reduced to 20, and their combined capital was now $102,233,700. Property of about $20,000,000 in excess of the capital was held by the trustees. Mr. Dodd's resolution provided for the division of this property, and for the transfer of the trust certificates back to the corporations to which they belonged. The individual holders of the trust certificates were to get in exchange a proportionate share in each of the 20 companies. "*A* will not get stock in one corporation and *B* in another, each will get his due proportion in the stocks of all," said Mr. Dodd. All of this change would make no difference with the management of affairs. Mr. Dodd assured the stockholders: "Your interests will be the same as now. The various corporations will continue to do the same business as heretofore, and your proportions of the earnings will not be changed."

A Dissolution that Does Not Dissolve

The trustees went about liquidation at once, but it was not until the following November that the immense number of certificates held by them were exchanged. The process followed can be easily illustrated by Mr. Rockefeller's case. When the trust was ordered dissolved Mr. Rockefeller held 256,854 of the 972,500 shares of Standard Oil Trust which were out. He turned over to an attorney an assignment of this amount, with instructions to secure from each of 20 companies in the trust stock certificates for the portion belonging to him. The corporate stocks were turned over to Mr. Rockefeller, and the assignment

* "Something over ten years ago a few individuals owning stocks in a number of corporations, engaged in transporting and refining oil, entered into an agreement by which their stocks were placed in the hands of trustees, and certificates were issued by said trustees showing the amount of each owner's equitable interest in the stocks so held in trust. This was not done in order to vest the voting power in the hands of a few persons, because the persons chosen as trustees then held, and always have held, the voting power by virtue of their absolute ownership of a majority of the stocks. It was not done to reduce competition, because the companies whose stocks were placed in trust were not competing companies, and could not be so long as their stocks were owned by these few persons. It was not done to limit production or to increase prices, but, on the contrary, was done to increase production, cheapen cost of manufacture, and to lower prices, and it has been successful in that object far beyond the anticipations of those who originated the plan. It was called a trust, because it was a trust in the sense in which the word was then understood. It vested a fiduciary obligation in a few for the benefit of many, and the trustees thus created have faithfully observed the trust confided in them.

"Other persons, however, found this trust plan a convenient one, and it is alleged that it has been adopted for and adapted to purposes quite different from those which actuated the framers of this trust. Whether these allegations be true or false, it is true that a trust is now defined to be a combination to suppress competition, and to reduce production, and to increase prices. Public opinion has not unwisely been aroused against combinations for such purposes, and legislation of more or less severity, and rather more or less peculiarity, has been directed against them in seventeen or eighteen States of the Union. All such arrangements are now miscalled trusts, and all trusts are popularly supposed to partake of the same nature. For this reason, if for no other, it should be seriously considered whether this trust should not be terminated. So long as it exists, misconception of its purposes will exist.

"But another reason exists which seems to make it desirable to dissolve this trust. Some two years ago a *quo warranto*, issued in the name of the State of Ohio against the Standard Oil Company, a corporation of the State of Ohio, setting forth this trust agreement and alleging that that corporation, by becoming a party thereto, had done an act beyond its power, and thereby had forfeited its charter. The defendant corporation denied that it was a party to the agreement, and alleged that the agreement was on its face, and plainly, an agreement only between individuals, owners of corporate stocks, relating to their personal property, and was neither made by the corporation nor for the corporation. The court, however, held that the agreement was a corporate agreement, and decreed, among other things, that the corporation must cease to permit trustees to vote upon stocks held in trust.

"As this agreement was not entered into as a corporate agreement, and as this decision gives it an effect quite different from the intent of the parties who entered into it, it seems better to end it."

of certificate, a properly framed and numbered document, was turned over to the liquidating trustees. This assignment of legal title, for all practical purposes, was the same thing as the trust certificate. It enabled the trustees to collect dividends from the various companies and pay them just as they had before.

At the end of the first year after the dissolution of the trust, 477,881 shares were uncancelled. At the end of the second year it was the same; at the end of the third 477,881 were still out. At the end of the fourth 477,881. The dissolution of the trust seemed to have come to a standstill. Mr. Dodd was right; things were going on as they did before dividends were issued, exactly as before. Nor was there any indication of an intention on the part of the liquidating trustees to change this state of things.

Some of the Humor of the Situation

There began to be comments on it, for curious complications rose — one over taxes. In 1893 an auditor in Ohio tried to collect taxes on 225 shares in the Standard Oil Trust. The owner refused to pay and took the case into court. He won it. The Standard Oil Trust is an unlawful organization, said the court. Its certificates have no validity. It would seem strange that a certificate which was void to all purpose would still be valid as to taxable purposes. Here was an anomaly indeed. The certificates were drawing big quarterly dividends, had a big market value, but were illegal.

Owners of small certificates naturally refused to exchange. In 1897 it took 194½ shares in the Standard Oil Trust to bring back one share in each of the 20 companies. Thus one share in the Standard Oil Company of Ohio was worth 27 shares in the Standard Oil Trust. If a man owned 25 shares he got only fractional parts of a share in each company. On these fractional parts he received no dividends, it not being considered practical to consider such small sums. To raise his 25 shares to 194, and so secure dividends, took a good sum of money, since Standard Oil Trust shares were worth at least 340 then. But why should he trouble? He received his quarterly dividends promptly, and they were large! The trustees were not pushing him to liquidate. Besides, it was doubtful if they could do anything. Mr. Joseph Choate said they could not. On May 3, 1894, before the Attorney-General of New York, in an application for the forfeiture of the charter of the Standard Oil Company of New York, Mr. Choate said:

"I happen to own 100 shares in the Standard Oil Trust, and I have never gone forward and claimed my aliquot share. Why not? Because I would get ten in one company and ten in another company, and two and three-fifths in another company.

"There is no power that this company can exercise to compel me and other indifferent certificate holders, if you please, to come forward and convert our trust certificates."

George Rice Again to the Fore

If there was a way, the trustees were indifferent to it. They evidently were contented to let things alone. It is quite possible that they would have been holding to-day 477,881 uncancelled shares of Standard Oil Trust if it had not been for the irrepressible Mr. George Rice. Since October, 1892, Mr. Rice had held a Standard Oil Trust certificate for six shares. He had never cancelled it. He had received no invitation to do so. He received his dividends regularly on it. Later, he purchased one share, called "assignment of legal title" — the new form given the trust certificate — and on this he received dividends, exactly as on the original trust certificate. Finally Mr. Rice made up his mind, without knowing any of the facts of the liquidation outlined above, that there was no intention to carry out the dissolution, that some means of evasion had been devised, and he proposed to find out what it was.

To do this he transferred his assignment of legal title to an agent with the order to liquidate it. A long correspondence followed between Mr. Kemper, Mr. Rice's agent, and Mr. Dodd, who objected to making the transfer on the ground that it cut the share into a "multitude of almost infinitesimal fractions of corporate shares." They were obviating this difficulty, Mr. Dodd said, by purchasing certificates calling for one or a few shares and uniting them until sufficient were had by one party to call for the issue of full corporate shares. Mr. Kemper insisted, however, and finally

received scrip for his share. "Infinitesimal" it was, indeed, $\frac{50000}{972500}$ of one share in one company, $\frac{100000}{972500}$ of one share in another, and so on through nineteen constituent companies.

The Dissolution Takes on Aspect of Long-Headed Reorganization

Arguing from these experiences and what else he could gather, Mr. Rice decided that the trust was not dissolved and had no intention of it. Furthermore, he argued that the scheme was one to entice the small shareholders to sell their shares and thus enable the trustees to increase their holdings! And he sought legal counsel in Ohio as to the possibility of bringing suit against the Standard Oil Company of Ohio for failing to obey the court's orders in March, 1892. The attorneys, one of whom was Mr. Watson, advised Mr. Rice to lay his facts before the Attorney-General of the State, Frank S. Monnett. Like Mr. Watson, when he brought his suit, Mr. Monnett was young and held firmly to the belief that the business of an attorney-general is to enforce the laws. The facts Mr. Rice and his counsel laid before him seemed to him to indicate that the Standard Oil Company of Ohio had taken advantage of the leniency of the court in allowing it time to disentangle itself from the trust and had devised a skilful plan to evade the judgment pronounced against it five years before. He asked Mr. Rice and his attorneys to go with him and lay the case before the judges of the Supreme Court in Chambers and ask if it did not justify proceedings against the company. The judges agreed with the Attorney-General and ordered him to bring the company before the court for contempt. Information was filed in November, 1897. The suit which followed proved one of the most sensational ever instituted against the Standard Oil combination.

A Sudden and Wonderful Alacrity in Liquidation

The first substantial point gained by the Attorney-General in the proceedings, was securing answers to a long series of questions concerning the history of the operations of the Standard Oil Company of Ohio, both within and without the trust. These answers were made by the president of that company, who was at the same time the president of the trust, Mr. J. D. Rockefeller. They furnish a mass of facts of value and interest, and they include the minutes of the meeting at which the trust was dissolved on March 11, 1892, as well as the minutes of all the quarterly meetings the liquidating trustees held from 1892 to October, 1897. It was from the information obtained from this set of questions that Mr. Monnett secured proof that the liquidation scheme had been held up, as Mr. Rice claimed. The minutes showed, as related above, that from November, 1892, to March, 1896, 477,881 shares were reported every three months to the trustees as uncancelled. In July, 1896, the number fell suddenly to 477,880. Mr. George Rice had succeeded in having his assignment of legal title liquidated! Mr. Monnett learned from the result of this inquiry another suggestive fact that, while only one share was cancelled in the five years *before* the contempt proceedings were brought, that in the first three months *after*, 100,583 shares were cancelled!

A Thorough Examination Begun

It took Mr. Monnett some six months to secure the answers from Mr. Rockefeller, but his information was still incomplete, and he asked the court to appoint a Master Commissioner, with power to examine the officers, affairs, and books of the Standard, to take testimony within or without the State, and to report. This was done, the commissioner holding his first court at the New Amsterdam Hotel, in New York, on October 11 and 12, 1898. Mr. Rockefeller was the only witness examined at the sessions, and his deliberation and self-control, his almost detached attitude, as a witness, were the subject of remark by more than one observer. He answered no question promptly. He had the air of reflecting always before he spoke. He consulted frequently with his counsel. His counsel, his colleagues who were present, the counsel of the prosecution, were sometimes irate, never Mr. Rockefeller. From beginning to end he was the soul of self-possession. His only sign of impatience—if it was impatience—was an incessant slight tapping of the arm of his chair with his white slender fingers.

The outcome of this examination of Mr. Rockefeller was, that Mr. Monnett and his colleagues called for those books of the trust which would show exactly how the

original trust certificates had been liquidated. It was then that the copies of the transfers of Mr. Rockefeller's trust certificates and of his assignments of legal title referred to above were obtained. Although Mr. Monnett had added to his knowledge of the Standard's operations between 1892 and 1898, he was not yet convinced that the Standard Oil Company of Ohio was conducting its own business. He had found that, in spite of the order of the court in 1892, 13,593 shares of that company's stock were still outstanding in trust certificates. He knew these certificates drew dividends. Was the company paying money directly or indirectly to the liquidating trustees? They said no, that they had been paying no dividends since 1892, that the money paid the holders of trust certificates came from the other 19 companies, that all their earnings had been used in improving their plant, or were invested in Government bonds. Besides, said they, we are not the thrifty concern we used to be. Mr. Monnett demanded proof from their books. The secretary of the company, on advice of his counsel, Virgil P. Kline, refused to produce the books asked for, on the ground that they would incriminate the company. The court supported Mr. Monnett, and ordered the company to produce those of their records showing the gross earnings since 1892, and what had been done with them. The order met with a second refusal.

Burned Books Tell No Tale

Such was the status of the proceedings when Mr. Monnett received an anonymous communication stating that, about the time the company was ordered by the court to produce its records, a great quantity of books had been taken from the Standard's office in Cleveland and burned. An investigation was at once made by the Attorney-General, and a number of witnesses examined. The fact of the burning of sixteen boxes of books from the Standard offices in Cleveland was established, but these books, the officers of the company contended, were not the ones wanted by Mr. Monnett. "Then produce the ones we want," ordered the court. But, on the ground that such records might incriminate them, the officers still refused.

The fact was, the Standard Oil Company of Ohio was in a very tight place, and it is difficult to see how an examination of their books could have failed to incriminate, not only them but three other of the constituent companies of the trust which held charters from the State. These three companies were the Ohio Oil Company, which produced oil; the Buckeye Pipe Line, which transported it; and the Solar Refining Company, which refined it. Mr. Monnett had learned enough about these organizations in course of his investigations since November, 1897, to convince him that these companies — all of them enormously profitable — were, for all practical purposes, one and the same combination, and that they were all working with the Standard Oil Company of Ohio, and that their operations were in direct violation of a State anti-trust law recently passed. As soon as he had sufficient evidence he had filed petitions against all four of them. Now, these petitions were filed about the time he demanded the books showing the earnings of the Standard Oil Company of Ohio, for use in his contempt case. It was the old story of one suit being used as a shield in another. A witness cannot be made to incriminate himself.*

Out of a Tight Place

All through the winter of 1898 and 1899 up to the end of March, when the commission declared the taking of testimony closed, the wrangle over the production of the books went on. Depositions had begun to be taken at the same time in the cases against the constituent companies for violation of the anti-trust laws, and by the time the contempt case was closed in March, 1899, the exasperation of both sides had reached fever pitch. Nor did the judgment of the court quiet it, for three judges voted for finding the company guilty of contempt and three for clearing them.

* The reasons F. B. Squire, the secretary of the Standard Oil Company of Ohio, gave for refusing to produce the books as ordered by the court were as follows:

1st. Because they are demanded in an action instituted against the Standard Oil Company for contempt of court, and for the purpose of proving said company guilty of contempt in order that the penalties for contempt may be inflicted upon it and its officers; and I am informed that, to enforce their production in such a case and for such a purpose, is an unreasonable search and seizure.

2nd. Because the books disclose facts and circumstances which may be used against the Standard Oil Company, tending to prove it guilty of offenses made criminal by an act of the Legislature of Ohio, passed April 19, 1898, entitled "An act to define trusts and to provide for criminal penalties, civil damages, and the punishment of corporations," etc.

3rd. Because they disclose facts and circumstances which may be used against myself personally as an officer of said company, tending to prove me guilty of offenses made criminal by the act aforesaid.

Unsatisfactory as this was, Mr. Monnett still had his anti-trust suits, through which he expected and through which he did secure much further evidence that the four Standard Companies in Ohio were practically one concern so shrewdly and secretly handled that they were evading not only the laws of the State, but that policy of all States which decrees that it is unsafe to allow men to work together in industrial combinations without charters defining their privileges and subjecting them to reasonable examinations and publicity.

The Net Gain

Mr. Monnett's work on these suits came to an end with the expiration of his term in January, 1900, and the suits were dropped by his successor. Unfinished as they were, they were of the greatest value in dragging into the light information concerning the methods and operations of the Standard Oil combination to which the public has the right and which it must digest if it is to succeed in working out a legal harness for combinations which, like the Standard, demand freedom to do what they like and do it secretly. Light and knowledge, then, were the chief public gains from the investigations of 1888 and the Ohio suits which were the logical outcome of those investigations. But definite practical gains resulted. Mr. Watson's suit drove the trust to begin liquidation — Mr. Monnett's suit drove it to continue liquidation and to seek the new form under which it now professes to be operating. The investigations and the suits did something more. They gave the independent oil men of Northwestern Pennsylvania information and encouragement to aid them in a struggle they were carrying on against the Standard during the whole period of the litigation described in this article, and it is to this struggle we must now turn our attention.

(*To be continued*)

THE LITTLE FAT FIDDLER

BY

SAMUEL HOPKINS ADAMS

AUTHOR OF "SUCH AS WALK IN DARKNESS"

DOLPH was his name. By night he played second violin in the Charivari Theater. By day he carved delicate fantasies in miniature from wood or bone. These he sold at satisfactory prices, for his thick fingers held the cunning of the genuine artist. He possessed a pair of twinkling blue eyes, a sturdy and graceless figure, and an imperishable enthusiasm for all things and people of the stage. The passion of his life was "the profession." Ambition had, for him, no other meaning.

"But it iss not for me, the actor's life," he would sigh, in his careful German-English, which, in moments of excitement, was prone to revert to ill-Anglicized German. "I have tried it all. Tragedy — and they laugh. Comedy — and they look, oh, so sad! Even the acrobatics — for I have been a performer of my Turn Verein. The tumble-tricks I could do, yes. But I am clumsy. No engagement anywhere. So I play in the orchestra. It iss next-best."

On his principle of "next-best," Dolph lived in a theatrical boarding-house, though his means and his friends called him to one of the lesser German clubs. To this house, at the opening of the holiday season, came certain members of Benny Hughes's "Gus and the Goblin" company. Then and there Dolph ceased to diffuse the romance of his nature abroad through the dramatic firma-