

THE HISTORY OF THE STANDARD OIL COMPANY: PART TWO

BY

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CHAPTER ONE

THE WAR ON THE REBATE

THE apathy and inaction which naturally flow from a great defeat lay over the Oil Regions of Northwestern Pennsylvania long after the compromise with Mr. John D. Rockefeller in 1880. Not even the news of the formation of the \$70,000,000 trust in 1882 moved the country to more than hopeless grumbling. Eight years of War with a humiliating outcome had inspired them with the conviction that fighting was useless, that they were dealing with a power verging on the superhuman—a power carrying concealed weapons, fighting in the dark, and endowed with an altogether diabolic cleverness. Strange as the statement may appear, there is no disputing that by 1882 the Oil Regions as a whole looked on Mr. Rockefeller with superstitious awe. Their notion of him was very like that which the English common people had for Napoleon in the first part of the nineteenth century, which the peasants of Brittany have even to-day for the English—a dread power, cruel, omniscient, always ready to spring.

The Mystery of the Power

This attitude of mind, altogether abnormal in daring, impetuous and self-confident men, as those of the Oil Regions were, was based on something more than the series of bold and admirably executed attacks which had made Mr. Rockefeller master of the oil business. The first reason for it was the atmosphere of mystery in which Mr. Rockefeller had succeeded in enveloping

himself. He seems by nature to dislike the public eye. In his early years his home, his office, and the Baptist church were practically the only places which saw him. He did not frequent clubs, theaters, public meetings. When his manœuvres began to bring public criticism upon him, his dislike of the public eye seems to have increased. He took a residence in New York, but he was unknown there save to those who did business with him or were interested in his church and charities. By the time the trust was organized his was perhaps the least familiar face in the Standard Oil Company. He never went to the Oil Regions and the Oil Regions said he was afraid to come, which might or might not have been true. Certainly the Oil Regions never hesitated to express opinions about him calculated to make a discreet man keep his distance.

Even in Cleveland, his home for twenty-five years, Mr. Rockefeller was believed to conceal himself from his townsmen. It is certain that the operations of his great business were guarded with the most jealous care. When the news of the great Standard combination was first spread abroad in 1882, the New York *Sun* sent an "experienced observer" to Cleveland to write up the concern. He speaks with amazement in his letters of the atmosphere of secrecy and mystery which he found enveloping everything connected with Mr. Rockefeller. You could not get an interview with him, the "Observer" complained; even his home papers had ceased to go to the Standard offices to

inquire about the truth of rumors which reached them from the outside. The hundreds of employees of the trust in the town were as silent as their master in all that concerned the business, and if one talked—well, he was not long an employee of Mr. Rockefeller. There was between the Standard Oil Company and the town and press of Cleveland none of the *camaraderie*, the mutual good-will and pride and confidence which usually characterize the relations between great businesses and their environment.

In Cleveland, as in the Oil Regions, Mr. Rockefeller's careful effort to cover up his intentions and his tracks had been at first met with jeers and blunt rebuffs, but he had finally succeeded in silencing and awing the people. It is worth noting that while all of the members of the Standard Oil Company followed Mr. Rockefeller's policy of saying nothing, there was no such popular dread of any other one of them. In the Oil Regions, for instance, there was a bitter hatred of the Standard Oil Company as an organization, but for the most part the people liked the men who served it, and certainly had no awe of them, for these men circulated freely among their fellow-townsmen; they were active in all the pleasures and enterprises of the communities in which they lived; they were generous, able, cordial, and whatever the people said of the concern they served, they generally qualified it by expressing their personal likings for the men themselves.

Fear of the Rockefeller Omniscience

A second reason for the popular dread of Mr. Rockefeller was that this man whom nobody saw and who never talked, knew everything—even unexpected and trivial things—and those who saw the effect of this knowledge and did not see how he could obtain it, regarded him as little short of an omniscient being. There was really nothing in the least occult about Mr. Rockefeller's omniscience. He obtained part of his knowledge of these people's affairs by a most extensive and thoroughly organized system of news gathering, such as any bright business man of wide sweep might properly employ. But he combined, with this perfectly legitimate work, most sordid methods of securing confidential information. Take, for instance, the following case

recorded in the Federal trust investigation of 1888.

An Example of Standard Ethics

A Cleveland refiner, Mr. John Teagle, whose firm had had at one time a running arrangement with the Standard, testified in 1888 to a Congressional Committee, that one day in 1883 his bookkeeper came to him and told him that he had been approached by a brother of the secretary of the Standard Oil Company at Cleveland, who had asked him if he did not wish to make some money. The bookkeeper asked how, and after some talk he was informed that it would be by his giving information concerning the business of his firm to the Standard. The bookkeeper seems to have been a wary fellow, for he dismissed his interlocutor without arousing suspicion and then took the case to Mr. Teagle, who asked him to make some kind of an arrangement in order to find out just what information the Standard wanted. The man did this. For \$25 down and a small sum per year he was to make a transcript of Mr. Teagle's daily shipments with net price received for the same; he was to tell what the cost of manufacturing in the refinery was; the amount of gasoline and naphtha made and the net price received for them; what was done with the tar; and what percentage of different grades of oil was made; also how much oil was exported. This information was to be mailed regularly to Box 164 of the Cleveland post-office. Mr. Teagle, who at that moment was hot on the tracks of the Standard in the courts, got an affidavit from the bookkeeper. This he took with the money which the clerk had received to the secretary of the Standard Oil Company and charged him with bribery. At first the gentleman denied having any knowledge of the matter, but he finally confessed and even took back the money. Mr. Teagle then gave the whole story to the newspapers where it, of course, made much noise.

It would be idle to suppose that Mr. Rockefeller himself had anything to do with this specific case, but, flagrant as it is, it is in perfect harmony with Mr. Rockefeller's conception of business ethics, as demonstrated by his signing of the South Improvement Company contracts. Those contracts, it will be remembered, required the railroads to send full details of every oil shipment



JOHN D. ROCKEFELLER

A SKETCH FROM LIFE BY GEORGE VARIAN IN CLEVELAND, OCTOBER, 1903

made for outside concerns—quantity, quality, destination. It was equal to access to a company's private books. Certainly Mr. Rockefeller had all this information in 1877 when Mr. Cassatt revealed the relations between his road and the Standard—had to have it in order to collect the drawback he was getting on the oil shipments of outsiders. There is probably not an independent oil concern in the country today which does not fully believe that the Standard secures regular reports of its business by underhand methods.

Organized Espionage

Several gentlemen testified before the recent Industrial Commission to the belief that their business was under the constant espionage of the Standard Oil Company. Mr. Theodore Westgate, an oil refiner of Titusville, told the Commission that all of his shipments were watched. The inference from his testimony was that the Standard Oil Company received reports direct from the freight houses. Mr. Lewis Emery, of Bradford, a life-long contestant of the Standard, declared that he knew his business was followed now in the same way as it was in 1872 under the South Improvement Company contract. He gave one or two instances from his own business experience to justify his statements, and he added that he could give many others if necessary. Mr. Gall, of Montreal, Canada, declared that these same methods were in operation in Canada. "When our tank-cars come in," Mr. Gall told the Commission, "the Standard Oil Company have a habit of sending their men, opening a tank-car, and taking a sample out to see what it contains." Mr. Gall declared that he knew this a long time before he was able to get a proof of it. He declared that they knew the number of cars that he shipped and the place to which they went, and that it was their habit to send salesmen after every shipment. The writer has repeatedly been told by men now or in the past employed in the freight department of different oil-carrying roads that reports of the amount and the destination of independent oil went regularly from their offices to representatives of the Standard Oil Company.

The Supernatural Proves Human

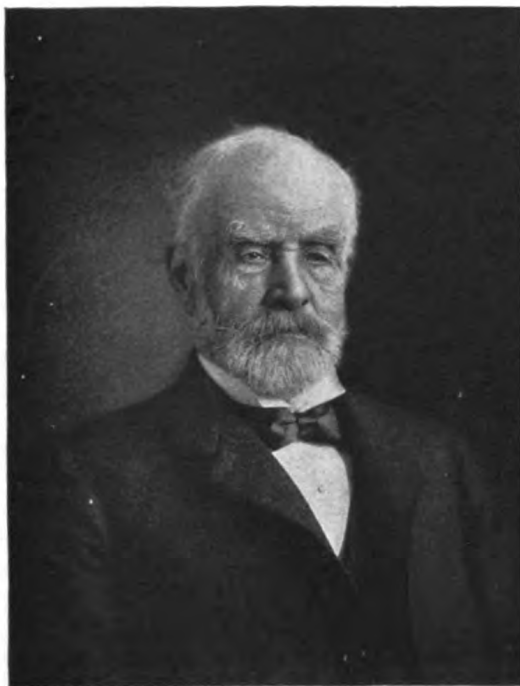
Certainly there is nothing of the transcendental in this kind of omniscience, and

the feeling of supernaturalism which Mr. Rockefeller had inspired by 1882 has entirely evaporated since, as evidence of his methods has been circulated. The source was, however, long secret, and when again and again men who could hardly suppose their existence known to Mr. Rockefeller saw movements anticipated which they believed known only to themselves and their confidential agents, they began to dread him and to invest him with mysterious qualities. If Mr. Rockefeller had been as great a psychologist as he was business manipulator he would have realized that he was awakening a terrible popular dread and he would have foreseen that one day with the inevitable coming to light of his methods there would spring up about his name a crop of scorn which would choke any crop of dollars and donations which the wealth of the earth could produce.

The effect of this dread was deplorable, for it intensified the feeling, now widespread in the Oil Regions, that it was useless to make further effort at a combined resistance. And yet these men who were now lying too supine in Mr. Rockefeller's steel glove even to squirm, had laid the foundation of freedom in the Oil Business. It has taken thirty years to demonstrate the inestimable value of the efforts which in 1882 they regarded as futile—thirty years to build even a small structure on the foundation they had laid, though that much has been done.

Two things the oil men had been working for—first, a sweeping judicial condemnation of the rebate system from the highest court. They believed the common law forbade the rebate system and that if a case could be fought through, the judgment would be so severe against the railroads that it would awe them into fair play. The railroad presidents knew as well as the oil men what the result of such a threshing-out of the question must be, and, as has been shown in the first part of this history, all their efforts were to prevent by compromise any case going through. So far they had been successful, the greatest of all the suits having been compromised in 1880.

The second object of the oil men was to obtain from Congress an enactment regulating interstate commerce. This was the only link lacking in the legal chain against unjust discrimination, they believed, and



Photograph by Edmondson

WILLIAM C. SCOFIELD



Photograph by Hayes

DANIEL SHURMER

Mr. Scofield and Mr. Shurmer were two of several young Englishmen who settled in Cleveland in the 40's and later became prominent in her business life. Both these men were among the first oil refiners of the town, Mr. Scofield belonging to the firm of Alexander Scofield & Company, and Mr. Shurmer to that of Clark, Shurmer & Company. In 1872 both these firms sold to the Standard Oil Company. Three years later Messrs. Scofield and Shurmer formed with John Teagle the firm whose experiences are related in this article. This firm continued in business for twenty-six years. In June, 1901, the business was sold for a cash consideration to parties who afterwards organized the Republic Oil Company of Cleveland, a business owned and controlled by the Standard Oil Company.

all their persistent and expensive efforts were to get evidence which would compel Congress to act. Indeed the Oil Regions' demand for Federal regulation of interstate commerce is almost contemporaneous with the Granger movement, generally regarded as the foundation of the Interstate Commerce Bill, and it was probably equally influential in securing it finally. The first movement was in 1872, when the Oil War broke out; the representatives of the Oil Regions in Congress introduced a resolution directing the Committee on Commerce to inquire into the South Improvement Company. Out of this grew an investigation and a report advising the regulation of interstate commerce.

The Windom Committee

Two years later a select committee of the United States Senate—the "Windom Committee"—was appointed to take testimony. It found an outrageous situation in interstate commerce and made sweeping recommendations. Among other things,

this committee recommended that all rates, drawbacks, etc., be published at every point and no changes allowed in them without proper notification. It recommended the Bureau of Commerce which, in 1902, twenty-eight years later, was created. So serious did the Windom Committee consider the situation in 1874, that it made the following radical recommendations:

The only means of securing and maintaining reliable and effective competition between railways is through national or State ownership or control of one or more lines which, being unable to enter into combinations, will serve as a regulation of other lines.

One or more double-track freight-railways honestly and thoroughly constructed, owned or controlled by the Government, and operated at a low rate of speed, would doubtless be able to carry at a much less cost than can be done under the present system of operating fast and slow trains on the same road; and, being incapable of entering into combinations, would no doubt serve as a very valuable regulator of existing railroads within the range of their influence.*

*This latter idea seems to have originated with an honored friend of this Magazine, the late Gardiner G. Hubbard, of Washington, who presented to the same Congress—the forty-third—a memorial, petitioning for the construction by the Federal Government of such a double-track freight-road with maximum freight fixed by a commission.

Playing with the House

The report increased the popular demand for some sort of restrictive Federal legislation and opened the way for a bill presented in April, 1876, in the House of Representatives, by James H. Hopkins, of Pittsburg. Mr. Hopkins had before his eyes the uncanny fate of the independent oil interests of Pittsburg, some twenty-five factories in that town having been reduced to one in three



JOHN TEAGLE

When John Teagle came to Cleveland from England in 1871, he knew but one person in America, John Alexander, of the firm of Alexander Scofield & Company, oil refiners, Cleveland. Mr. Teagle worked for this firm until it sold out to the Standard in 1872. He then helped to organize the firm of Squires & Teagle, oil refiners. In 1875 he became one of the members of the firm of Scofield, Shurmer & Teagle.

and one-half years. He had seen the oil-refining business of the State steadily reduced, and he thought it high time that something was done. In aid of his bill a House investigation was asked. It was soon evident that the Standard was an enemy of this investigation. Through the efforts of a good friend of the organization—Congressman H. B. Payne, of Cleveland—the matter was referred to the Committee on Commerce, where a member of the

Standard Oil Company, J. M. Camden, appeared as adviser of the chairman! Now the year before, 1875, as was shown in the first part of this history, Mr. Rockefeller had completed contracts with the three great oil-bearing roads, giving him rebates on his shipments, with rates designed to protect him from "injury by competition." What Mr. Hopkins wanted was to compel the railroads and the Standard to give up these contracts. The Committee summoned the proper railroad officers, Messrs. Cassatt, Devereux and Rutter, and O. H. Payne, treasurer of the Standard Oil Company. Of the railroad men, only Mr. Cassatt appeared, and he refused to answer the questions asked or to furnish the documents demanded. Mr. Payne refused also to furnish the Committee with information. The oil men were rash and bitter as usual, and began their testimony by making assertions they could not prove. Among other things, Frank Rockefeller, then at odds with his brother John, charged Colonel Scott, of Pennsylvania, of sharing the Standard spoils. Colonel Scott wired the Committee:

The papers of this morning publish that a man named Rockefeller stated before your committee that myself and other officers of this company were participants in rebates made to the Standard Oil Company. So far as the statement relates to myself and the officers of this company it is unqualifiedly false, and I have to ask that you will summon the officers of the Standard Oil Company, or any other parties that may have any knowledge of that subject, in order that such villainous and unwarranted statements may be corrected.

Inquiries Smothered

After this tilt the railroads were more obdurate than ever and they and the Standard soon succeeded in pigeon-holing the inquiry, and so ended the first Interstate Commerce Bill.

The second attempt to pass a bill like the first originated in the Oil Regions. When the Petroleum Producers' Union began their two years' campaign in December, 1877, they appointed a committee on transportation, of which E. G. Patterson was chairman. This committee immediately set about framing an Interstate Commerce Bill. Mr. George Hibbard, of Buffalo, was employed as counsel by the committee, and in conference with Mr. Patterson and Mr. Roger Sherman, the counsel of the Union, put their ideas into formal shape. This bill was introduced by a representative of the

Oil Regions, Hon. Lewis F. Watson, of Warren, early in 1878, and was first known as the Watson Bill, but later as the Reagan Bill. It was passed by the House of Representatives in December, 1878, and was smothered in the Senate.

Ebb of Independents' Hopes

The year of the disappearance of their bill was a trying one for the Producers' Union, the year of the conspiracy suit against Mr. Rockefeller resulting in the compromise of 1880. The Oil Region was left without heart for united effort, though an opportunity came at once, for no sooner was the compromise signed than General Benjamin F. Butler, incensed at the outcome of the oil men's fight, appeared before the House Committee on Commerce and made an eloquent plea for the investigation of the oil business and for legislation regulating transportation. General Butler knew something of the oil business. Four years before he had been employed by the Pennsylvania Transportation Company to take care of the legal side of their great undertaking—a seaboard pipe-line—and he had had a convincing experience of the Standard's power. He reviewed the history of the oil business—making a few minor mistakes in his historical facts—but never missing the big facts and leaving no doubt at all about his opinion of the Standard Oil Company. He presented the Committee with a pretty full collection of embarrassing testimony—calling particular attention to Mr. Cassatt's revelations in 1877, and demanded an investigation. He had no backing in the Oil Regions, however, and his appeal was the last made to Congress from the Oil Regions.

To the Charge Again

The situation was saved at this critical time by individuals scattered through the oil world who were resolved to test the validity of Mr. Rockefeller's claim that the coal oil business belonged to him. "We have a right to do an independent business," they said, "and we propose to do it." They began this effort by an attack on the weak spot in Mr. Rockefeller's armor.

The Weak Point in the Armor

The ten years just passed had taught them that the realization of Mr. Rockefeller's great purpose had been made possible by his remarkable manipulation of

the railroads. It was the rebate which had made the Standard Oil trust, the rebate, amplified, systematized, glorified into a power never equaled before or since by any business of the country. The rebate had made the trust and the rebate, in spite of ten years of combination, Petroleum Associations, Producers' Unions, resolutions, suits in equity, suits in quo warranto, appeals to Congress, legislative investigations—the rebate still was Mr. Rockefeller's most effective weapon. If they could wrest it from his hand, they could do business. They had learned something else in this period—that the railroads feared exposure of discrimination, and could be made to settle rather than have their practices made public. This much the hated compromise of 1880 had demonstrated. Therefore, said these individuals, we propose to sue for rebates and collect charges until we make it so harassing and dangerous for the railroads that they will shut down on Mr. Rockefeller.

The Scofield-Shurmer-Teagle Case

The most interesting and certainly the most influential of these private cases was that of Scofield, Shurmer and Teagle, of Cleveland, a firm whose members had gone through the entire gamut of experiences forced on independents by Mr. Rockefeller's manœuvres. They were all in refining concerns of Cleveland which in 1872 had handed over their works to Mr. Rockefeller, when he notified them of the South Improvement Company's contracts. Mr. Shurmer declared once in an affidavit that he alone lost \$20,000 by this manœuvre. The members of the firm had not stayed out of business, however. Recovering from the panic caused by the South Improvement Company, they had gone into business together in 1875, building a refinery worth \$65,000 with a yearly capacity of 180,000 barrels of crude. On the first year's business they made \$40,000. Now this was the period when Mr. Rockefeller began to make his famous running arrangements with independents, and early in July, 1876, he approached his Cleveland neighbors, Scofield, Shurmer and Teagle. He seems to have demonstrated to them that they could make more money under his plan than outside, and they signed a contract for a remarkable joint adventure. According to this document Scofield, Shurmer and Teagle put into the business a plant worth at that time

about \$73,000 and their entire time. Mr. Rockefeller put in \$10,000 and his rebates ! That is, he secured for the firm the same preferential rates on their shipments that the Standard Oil Company enjoyed. The firm bound itself not to refine over 85,000 barrels a year and neither jointly nor separately to engage in any other form of oil business for ten years — the life of the contract. Scofield, Shurmer and Teagle were guaranteed a profit of \$35,000 a year. Profits over \$35,000 went to Mr. Rockefeller up to \$70,000; any further profits were divided.

The Unholy Alliance

The making of this contract and its execution were attended by all the secret rites peculiar to Mr. Rockefeller's business ventures. It was signed at night at his house on Euclid Avenue in Cleveland, where Mr. Rockefeller told the gentlemen that they must not tell even their wives about the new arrangement, that if they made money they must conceal it—they were not to drive fast horses, "put on style," or do anything to let people suspect there were unusual profits in oil refining. That would invite competition. They were told that all accounts were to be kept secret. Fictitious names were to be used in corresponding, and a special box at the post-office was employed for these fictitious characters. Matters seem to have gone on very well at first. The profits were enormous. Scofield, Shurmer and Teagle had made 34 cents a barrel out of their refinery the year before the "adventure." With the same methods of manufacture, and enjoying simply Mr. Rockefeller's control of transportation rates and the enhanced prices caused by limiting output, they made \$2.52 a barrel the first year after. The dividends on 88,000 barrels this year were \$222,047, against \$41,000 in the year before. In four years Scofield, Shurmer and Teagle paid Mr. Rockefeller \$315,345 on his investment of \$10,000 — and rebates.

The Big Associate Wants More

After four years the Standard began to complain that their partners in the adventure were refining too much oil—the first year the books showed they had exceeded their 85,000 barrel limitation by nearly 3,000, the second year by 2,000, the third by 15,000, the fourth by 5,000. Dissatisfied, the Standard demanded that the firm

pay them the entire profit upon the excess refined; for, claimed Mr. Rockefeller, our monopoly is so perfect that we would have sold the excess if you had not broken the contract, consequently the profits belong to us. Scofield, Shurmer and Teagle paid half the profit on the excess, but refused more, and they persisted in exceeding their quota; then Mr. Rockefeller, controlling by this time the crude supply in Cleveland through ownership of the pipe-lines, shut down on their crude supply. If they would not obey the contract of their own will they could not do business. The firm seems not to have been frightened. "We are sorry that you refuse to furnish us crude oil as agreed," they wrote Mr. Rockefeller; "we do not regard the limitation of 85,000 barrels as binding upon us, and as we have a large number of orders for refined oil we must fill them, and if you refuse to furnish us crude oil on the same favorable terms as yourselves, we shall get it elsewhere as best we can and hold you responsible for its difference in cost."

Mr. Rockefeller's reply was a prayer for an injunction against the members of the firm, restraining them individually and collectively "from distilling at their said works at Cleveland, Ohio, more than 85,000 barrels of crude petroleum of forty-two gallons each in every year, and also from distilling any more than 42,500 barrels of crude petroleum of forty-two gallons each, each and every six months, and also from distilling any more crude petroleum until the expiration of six months from and after July 20, 1880, and also from directly and indirectly engaging in or being concerned in any business connected with petroleum or any of its products except in connection with the plaintiff under their said agreement *

* Mr. Rockefeller's petition contains this complaint: "The plaintiff further says that since the making of said agreement and within the past year, the said Daniel Shurmer and John Teagle have in violation of their said contract engaged and been connected in constructing a refinery at Buffalo, N. Y., for the purpose of distilling crude petroleum with others than the plaintiff under said agreement and are now so engaged. That within the past year the said Daniel Shurmer and John Teagle and each of them have invested money to the amount of \$10,000, and are now engaged and connected in constructing refineries for the purpose of distilling crude petroleum and its products with others in no way connected with the plaintiff or under said agreement, but intending thereby to establish and prosecute with others the same business as that contemplated and conducted under said agreement, and thereby establishing and conducting a rival business to the business of said adventure and tending to involve the plaintiff in loss by reason of its guaranty that the profits of said adventure should amount to the sum of thirty-five thousand dollars annually to defendants and have during the past year been at said Buffalo and other places giving the said business their time and personal attention, and have done so at times when their time and personal attention were needed and were requisite to properly conduct the business of said adventure under said agreement at Cleveland."

and that on the final hearing of this case the said defendants may in like manner be restrained and enjoined from doing any of said acts until the expiration of said agreement and for such other and further relief in the premises as equity can give."

The Little Associate Fights

Scofield, Shurmer and Teagle did not hesitate to take up the gauntlet, and a remarkable defense they made. It was planned along the line of the prosecution begun by the Producers' Union in Clarion County, Pennsylvania, in 1879, and dropped by the compromise of 1880. Judge Stanley Matthews argued the case for Scofield, Shurmer and Teagle, and his summing up of this amazing "adventure" made food for weeks for the daily press. Naturally, the Judge before whom this extraordinary case came refused to enforce the contract. It was a restraint of trade, contrary to the public good, he claimed.

The Rebate System in Court

Scofield, Shurmer and Teagle were now obliged to stand on their own feet. They could refine all the oil they wished but they must make their own freight contracts, and they found rates when you worked with Mr. Rockefeller were vastly different from rates when you competed with him. The agents of the Lake Shore Railroad, by which most of their shipments went, told them frankly that they could not have the rates of the Standard unless they give the same volume of business, and the firm finally took the matter into court.

This case, fought through all the courts of Ohio and in 1886 taken to the Supreme Court of the United States, is one of the clearest and cleanest in existence for studying all the factors in the rebate problem: the argument and pressure by which the big shipper secures and keeps his advantage, the theory and defense of the railroad in granting the discrimination, the theory on which the suffering small shipper protests, and finally the law's point of view. The first trial of the case was in the Court of Common Pleas and the refiners won. The railroad then appealed to the District Court (the present Circuit Court), where it was argued. So "important and difficult" did the judges of the District Court find the questions involved to be that on the plea



Photograph by Rockwood

GEORGE RICE

Several of the most important cases on record involving questions of discrimination by the railroads in oil freight, have been brought by Mr. Rice, a practical oil man since 1865. He has experienced every phase of the struggle of the independent effort and he has repeatedly taken what he regarded as his wrongs into court. Mr. Rice has also compiled several pamphlets of testimony setting forth the methods of the Standard Oil Company in dealing with competitors.

of the railroad they sent their findings of the facts in the case to the Supreme Court of the State for decision—a privilege they had under the law in force at that time.

In the Supreme Court

These findings are elaborate, including some twenty-three propositions. They have been confused by certain writers with the *opinion* on them given later by the Supreme Court; for instance, in an economic study recently published—"The Rise and Progress of the Standard Oil Company," by Gilbert Holland Montague—the twelfth and thirteenth and part of the fourteenth propositions which the District Court sent up to the Supreme Court in its "findings of facts" are quoted separately, and the inference from the context is that the writer supposed he was citing part of the court's *opinion*. As the reader will see from what follows, the paragraphs



Photograph from the collection of Robert Coster
BENJAMIN BUTLER

General Butler was employed in 1876 by the Pennsylvania Transportation Company as counsel in its seaboard pipe-line project, and he made full reports on the legal questions involved. From that time he was an aggressive champion of independent oil interests.

in question are important, for, taken as Mr. Montague quotes them, they seem to show that the rebate the Standard received and which Scofield, Shurmer and Teagle wanted was on account of facilities it gave which the other refiners could not give. The citation made by Mr. Montague reads as follows.

"The Court further find, that prior to 1875 it was a question whether the Standard Oil Company would remain in Cleveland or remove its works to the oil-producing country, and such question depended mainly upon rates of transportation from Cleveland to market; that prior thereto said Standard Company did ship large quantities of its products by water to Chicago and other lake points, and from thence distributed the same by rail to inland markets; that it then represented to defendant the probability of such removal; that water transportation was very low during the season of navigation; that unless some arrangement was made for rates at which it could ship the year round as an inducement it would ship by water and store for winter distribution; that it owned its tank-cars and had tank stations and switches, or would have at Chicago, Toledo, Detroit and Grand Rapids, on and into which the

cars and oil in bulk could be delivered and unloaded without expense and annoyance to defendant; that it had switches at Cleveland leading to its works at which to load cars, and would load and unload all cars; that the quantity of oil to be shipped by the company was very large, and amounted to 90 per cent. or more of all the oil manufactured or shipped from Cleveland, and that if satisfactory rates could be agreed upon it would ship over defendant's road all its oil products for territory and markets west and northwest of Cleveland, and agree that the quantity for each year should be equal to the amount shipped the preceding year; that upon the faith of these representations the defendant did enter into the contract and arrangement substantially as set forth in defendant's answer; that the rates were not fixed rates, but depended upon the general card tariff rates as charged from time to time, but substantially to be carried from time to time for about ten cents per barrel less than tariff rates, and, in consideration of such reduced rates as to bulk oil, the Standard Company agreed to furnish its own cars and tanks, load them on switches at distributing points, and unload them into distributing tanks, and was also to load and unload oil shipped in barrels, and without expense to defendant, and with, by reason thereof, less risk to defendant, which entered into the consideration, and was also to ship all its freight to points west and northwest of Cleveland, except small quantities, to lake ports not reached by rail, and to so manage the shipments, as to cars and times, as would be most favorable to defendant; that defendant then agreed to said terms; that said agreement so made in 1875 has remained in force ever since.

"That, at a cost exceeding \$100,000, said Standard Company had and constructed the terminal facilities promised and herein found; that, in fact, the risk of danger from fire to defendant, the expense of handling, in loading and unloading, and in the use of the Standard tank-cars is less (but how much the testimony does not show) than upon oil shipped without the use of such or similar terminal facilities; that said Standard Company commenced by shipping about 450,000 barrels a year over defendant's road, which increased from year to year until, in 1882, the year before filing the petition in this action, the quantity so shipped on defendant's road amounted to 742,000 barrels, equal to 2,000 barrels or one full train-load per day.

"That said arrangement was not exclusive but was at all times open to others shipping a like quantity and furnishing like service and facilities; that it was not made or continued with any intention on the part of the defendant to injure the plaintiffs in any manner."

Rebate Is Discrimination, Says Court

Now, as a matter of fact, other propositions in this same set from which the above are quoted, find that Scofield, Shurmer and Teagle offered the railroad exactly the same facilities as the Standard, a switch, loading racks, exemption from loss by fire or accident. "The only thing to distinguish the business of the one from the other was the aggregate yearly amounts of freight

shipped," said Judge Atherton, of the Supreme Court, who gave the decision on the findings of fact, and he held in common with his predecessors that a rebate on account of volume of business only, was "a discrimination in favor of capital," and "contrary to a sound public policy, violation of that equality of right guaranteed to every citizen and a wrong to the disfavored person." Judge Atherton was scathing enough in his opinion of the contract between the Lake Shore and the Standard. "Look at it," he said, "and see just what is shown. In consideration of the company giving to the railroad its entire freight business in oil, they transport this freight about ten cents a barrel cheaper than for any other customer. This understanding was to keep the price *down* for the favored customer, but *up* for all others, and the inevitable tendency and effect of this contract was, to enable the Standard Oil Company to establish and maintain an overshadowing monopoly, to ruin all other operators and drive them out of business in all the region supplied by the defendant's road, its branches and connecting lines."

Judge Atherton's Scathing Opinion

Judge Atherton was particularly hard on the portion of the contract which pledged the Standard to give the Lake Shore *all* its freight in return for the rebates, and for this reason: In 1883 a new road westward was opened from Cleveland, the New York, Cincinnati and St. Louis. It might become an active competitor in transporting petroleum for customers other than the Standard Oil Company. It might establish such a tariff of rates that other operators in oil might successfully compete with the Standard Oil Company. To prevent this, the Lake Shore road, on the completion of the new road, entered into a tariff arrangement giving to it a portion of the westward shipments of the Standard Oil Company, on condition of its uniting in carrying out the understanding in regard to rebates to the Standard Oil Company. "How peculiar!" exclaimed Judge Atherton. "The defendant by a contract made in 1875 was entitled to all the freights of the Standard Oil Company, and yet, say the District Court, 'for the purpose of securing the *greater part* of said trade,' they entered into a contract to divide with the new railroad, if the latter would only

help to keep the rates *down* for the Standard and *up* for everybody else."

"Rebate Contracts Contrary to Honesty"

Such a contract so carried out was, in the opinion of this Court, "not only contrary to a sound public policy, but to the lax demands of the commercial honesty and ordinary methods of business."

Another fact found by the District Court incensed Judge Atherton. This was that the contract "was not made or continued with any intention on the part of the defendant to injure the plaintiffs in any manner." It does not "make any difference in the case," he declared. "The plaintiffs were not doing business in 1875, when the contract was entered into, and, of course, it was not made to injure them in particular. If a man rides a dangerous horse into a crowd of people, or discharges loaded firearms among them, he might, with the same propriety, select the man he injures, and say he had no intention of wounding him. And yet the law holds him to have intended the probable consequences of his unlawful act as fully as if purposely directed against the innocent victim, and punishes him accordingly. And this contract, made to build up a monopoly for the Standard Oil Company and drive its competitors from the field, is just as unlawful as if its provisions had been aimed directly against the interests of the plaintiffs."

Having lost their case in the Supreme Court of the State, the Lake Shore now appealed to the Supreme Court of the United States and the record was filed in November, 1886. It was never heard; the railroad evidently concluded it was useless and finally withdrew its petition, thereby accepting the decision of the Supreme Court of Ohio restraining it from further discrimination against Scofield, Shurmer and Teagle.

Feeling for Drastic Legislation

This case which was before the public constantly during the six or seven years following the breaking up of the Producers' Union, in which the Oil Regions presented no united front to Mr. Rockefeller, served to keep public attention on the ruinous effect of the rebate and to strengthen the feeling that drastic legislation must be taken if Mr. Rockefeller's exploit was to be prevented in other industries.

One other case came out in this war of individuals on the rebate system which heightened the popular indignation against the Standard. It was a case showing that the Standard Oil Company had not yet abandoned that unique feature of its railroad contracts by which a portion of the money which other people paid for their freight was handed over to them! This peculiar development of the rebate system seems to have belonged exclusively to Mr. Rockefeller. Indeed, a careful search of all the tremendous mass of materials which the various investigations of railroads have produced shows no other case—so far as the writer knows—of this practice. It was the clause of the South Improvement contracts which provoked the greatest outcry. It was the feature of Mr. Cassatt's revelations in 1877 which dumfounded the public and which no one would believe until they saw the actual agreements Mr. Cassatt presented. The Oil Regions as a whole did not hesitate to say that they believed this practice was still in operation, but, naturally, proof was most difficult to secure. The demonstration came in 1885, through one of the most aggressive and violent independents which the war in oil has produced, Mr. George Rice, of Marietta, Ohio. Mr. Rice, an oil producer, had built a refinery at Marietta in 1873. He sold his oil in the State, the West, and South. Six years later his business was practically stopped by a sudden raise in rates on the Ohio roads—an advance of fully 100 per cent. being made on freights from Marietta, where there were several independent refineries, although no similar advance was made from Wheeling and Cleveland, where the Standard refineries were located. These discriminations were fully shown in an investigation by the Ohio State Legislature in 1879. From that time on Mr. Rice was in constant difficulty about rates. He seems to have taken rebates when he could get them, but he could never get anything like what his big competitors got.

To What Point the Railroads "Worked In"

In 1883 Mr. Rice began to draw the crude supply for his refinery from his own production in the Macksburg field of South-eastern Ohio, not far from Marietta. The Standard had not at that time taken its pipe-lines into the Macksburg field and the

oil was gathered by a line owned by a Mr. A. J. Brundred, and carried to the Cincinnati and Marietta Railroad. Now, Mr. Brundred had made a contract with this railroad by which his oil was to be carried for fifteen cents a barrel and all other shippers were to pay thirty cents. Rice, who conveyed his oil to the railroad by his own pipe-line, got a rate of twenty-five cents by using his own tank-car. Later he succeeded in getting a rate of seventeen and one-half cents. Thus the rebate system was established on this road from the opening of the Macksburg field. In 1883 the Standard Oil Company took their line into the field and soon after Brundred retired from the pipe-line business there. When he went out he tried to sell the Standard people his contract with the railroad but they refused it. They describe this contract as the worst they ever saw, but they seem to have gone Mr. Brundred one better, for they immediately contracted with the road for a rate of ten cents on their own oil, instead of the fifteen cents he was getting, and a rate of thirty-five on independent oil. And in addition they asked that the extra twenty-five cents the independent paid *be turned over to them!* If this was not done the Standard would be under the painful necessity of taking away its shipments and building pipe-lines to Marietta. The Cincinnati and Marietta Railroad at that time was in the hands of a receiver—described as a "fussy old gentleman proud of his position and fond of riding up and down the road in his private car." It is probably a good description. Certainly it is evident from what follows that the receiver was much "fussed up" ethically. Anxious to keep up the income of his road, he finally consented to the arrangement the Standard demanded. But he was worried lest his immoral arrangement be dragged into court, and wrote to his counsel asking if there was any way of evading conviction in case of discovery.

Touching Scruples of a Receiver

"Upon my taking possession of this road," the receiver wrote, "the question came up as to whether I would agree to carry the Standard Company's oil to Marietta for ten cents per barrel, in lieu of their laying a pipe-line and piping their oil. I, of course, assented to this, as the matter had been fully talked over with the Western and Lake Erie Railroad Company before my taking possession of the road, and I wanted all the revenue that could be had in this trade.

"Mr. O'Day, manager of the Standard Oil Company, met the general freight agent of the W. and L. E. Railroad and our Mr. Terry, at Toledo, about February 12th, and made an agreement (verbal) to carry their oil at ten cents per barrel. But Mr. O'Day compelled Mr. Terry to make a thirty-five cents rate on all other oil going to Marietta, and that we should make the rebate twenty-five cents per barrel on all oil shipped by other parties, and that the rebate should be paid over to them (the Standard Oil Company), thus giving us ten cents per barrel for all oil shipped to Marietta, and the rebate of twenty-five cents per barrel going to the Standard Oil Company, making that company, say \$25 per day, clear money on Mr. George Rice's oil alone.

"In order to save the oil trade along our line, and especially to save the Standard oil trade, which would amount to seven times as much as Mr. Rice's, Mr. Terry verbally agreed to the arrangement, which, upon his report to me, I reluctantly acquiesced in, feeling that I could not afford to lose the shipment of seven hundred barrels per day from the Standard Oil Company. But when Mr. Terry issued instructions that on and after February 23d the rate of oil would be thirty-five cents per barrel to Marietta, Mr. George Rice, who has a refinery in Marietta, very naturally called on me yesterday and notified me that he would not submit to the advance, because the business would not justify it, and that the move was made by the Standard Oil Company to crush him out. (Too true.) Mr. Rice said: 'I am willing to continue the seventeen and a half cents rate which I have been paying from December to this date.'

"Now, the question naturally presents itself to my mind, if Mr. George Rice should see fit to prosecute the case on the ground of unjust discrimination, would the receiver be held, as the manager of property, for violation of the law? While I am determined to use all honorable means to secure traffic for the company, I am not willing to do an illegal act (if this can be called illegal), and lay this company liable for damages. Mr. Terry is able to explain all minor questions relative to this matter."

The Scruples Quieted

The counsel "fixed it" for the receiver in the following amazing decision:

You may, with propriety, allow the Standard Oil Company to charge twenty-five cents per barrel for all oil transported through their pipes to your road; and I understand from Mr. Terry that it is practicable to so arrange the details that the company can, in effect, collect this direct without its passing through your hands. You may agree to carry all such oil of the Standard Oil Company, or of others, delivered to your road through their pipes, at ten cents per barrel. You may also charge all other shippers thirty-five cents per barrel freight, *even though they deliver oil to your road through their own pipes*; and this, I gather from your letter and from Mr. Terry, would include Mr. Rice.

The Arrangement Resulting

Now how was this to be done "with propriety"?—Simply enough. The Standard Oil Company was to be charged ten

cents per barrel, less an amount equivalent to twenty-five cents per barrel upon all oil shipped by Rice. "Provided your accounts, bills, vouchers, etc., are consistent with the real arrangement actually made, you will incur no personal responsibility by carrying out such an arrangement as I suggest."

Even in case the receiver was discovered nothing would happen to *him*, so decided the counsel. "It is possible that, by a proper application to the court, some person may prevent you, in future, from permitting any discrimination. Even if Mr. Rice should compel you, subsequently, to refund to him the excess charge over the Standard Oil Company, the result would not be a loss to your road, taking into consideration the receipts from the Standard Oil Company."

What the Courts Thought of It

When Mr. Rice found that the rate of thirty-five cents was really to be enforced, he stored his oil at Macksburg and built a pipe-line of his own from his wells to the Muskegon River, whence he shipped it by barge to Marietta. Some time later, through the continued agitation of Mr. Rice, the case got into court and the correspondence quoted from above was made public. The judge before whom the case was tried, held it to be such a gross and wanton discrimination on the part of the receiver as to require his removal. A master was also appointed by the court to inquire into the sums collected from Rice and paid to the Standard, and the money was ordered refunded. The sum refunded was small, less than \$300, for Mr. Rice has always been too belligerent a gentleman to submit long to an extortion. The smallness of the sum has of course nothing to do with the matter. The vital thing is that the Standard Oil Company at that period, 1885, still included in its policy the outrageous demand that railroads should pay it drawbacks on oil shipped for a competitor. How general this practice was in 1885 there is no documentary proof. It is certain that in 1877 it prevailed on the Central, Erie, and Pennsylvania roads. It is certain that the policy continued in 1885—how long afterwards there is no evidence to show. In this case the Standard has explained the thirty-five cents charge on all oil except their own, made by the railroads, as a through charge from the wells covering

both pipage and rail and the twenty-five cents paid them as not a rebate but a pipage charge. Of course this explanation cannot apply to Mr. Rice's case, for his oil, as has been admitted by Mr. O'Day in his testimony before the Federal Committee in 1888 on this case, was not run through the Standard pipes.

A Bit of Damning Testimony

Q. But did that other oil which was in competition with you pass through your pipe?

A. No, sir.

Q. Did not they, therefore, on that oil which only passed over their railroad and not through your pipe-line, pay to you the same allowance or rebate that they did on your oil which did pass?

A. They did, but we returned it through the advice of our counsel, Mr. Dodd.

Q. Now, out of that sum how much did you get from the railroad out of what they had received from Mr. Rice?

A. We did not get any; that is, we did not retain any. The railroad company agreed to account to us for the oil that went over its lines, and they did make an accounting to my recollection of about \$200, or something like that, on oil other than that which passed through our lines. Our counsel, Mr. Dodd, advised me that we could not do that business, and we refunded the money.

The Cullom Committee

It was such cases as these of Scofield, Shurmer and Teagle, and of George Rice, amply reported and commented on by the press, that kept Mr. Rockefeller's peculiar relations to the railroads before the public and helped emphasize the necessity for some Federal restrictions in interstate commerce. Reiterated demands for relief had been coming to Congress for many years now—East, West, North, South sought help from the injustice of the railroads. The Granger movement had had tremendous effect—the fate of the independent oil men was familiar the country over. In March, 1885, the Senate of the United States at last responded

to the people's appeal and appointed a select committee of five—the Cullom Committee—to investigate the subject of interstate commerce. There was no question in anybody's mind that this investigation would result in some sort of Federal regulation. What did Mr. Rockefeller do in this emergency? Only what he could safely and easily do through the political department of the Standard Oil Company. It was not necessary for him to make a big fight on the Interstate Commerce Bill. He could afford to see it pass undismayed. He was ready for it.

Rockefeller's Audacious Change of Base

By one of those audacious and splendid strokes which characterize his career he had practically freed himself from the railroads which had made him, and by the time the Interstate Commerce Bill was passed and the railroads ordered to desist discrimination, Mr. Rockefeller was using another kind of oil transportation. The legislation which the Oil Regions of Pennsylvania had demanded for fifteen years in hope of securing an equal chance in transportation had come too late. The pipe had replaced the rail as the great oil carrier, and the pipes were not merely under Mr. Rockefeller's control as the rails had been; they belonged to him. It was little wonder then that the passage of the great bill did not ruffle his serenity. The Oil Regions realized the situation, so tragic in its irony, as fully as Mr. Rockefeller did. They realized it with an exasperation almost uncontrolled. It was evident enough indeed to the discerning at the very moment of the passage of the bill that a new oil war was imminent, and that it was to be fought over the pipe-line.

(To be continued)

THE POWER AND THE GLORY

BY EMERY POTTLE

STRANGE, we so toil to fashion for our unseen ends
The splendours that the tarnish of this world doth mar,—
Such palaces that crumble to a ruined age,
Such garbled memories upon Fame's fragile page,—
When all the lasting glory of our life depends
Upon a little Child, a stable, and a star.