

*United States Circuit Court of Appeals,*

Ans June 6

EIGHTH CIRCUIT.

Woodstock, Vermont

June 4, 1911.

My dear Judge,

After carefully reading yours of June first, I have concluded to adopt both of its suggestions. There was obviously a clerical error on page 6 in the use of the word "Union" instead of "Southern" (Pacific). I had an idea in writing the opinion that reference to the two connections of the Southern Pacific with the Rio Grande at El Paso as well as Ogden gave additional importance and significance to the Rio Grande as a system including, of course, with it all the Gould lines. This however on reflection seems unimportant. I have accordingly concluded to erase the words, "with its two Union Pacific connections at Ogden and El Paso" so that the sentence as it now stands reads as follows:-

"The Rio Grande and its allied lines" (by which I of course have reference to the lines of the Gould system as referred to on page 5 of the opinion) "and connections with trunk lines from the East at St. Louis was available to the Southern Pacific as a connection at Ogden for business for the Atlantic Seaboard and Middle States." That sentence is now entirely satisfactory to me and I hope and believe it eliminates the difficulties or doubts suggested by you.

Again; - referring to page 13 of the opinion, I entirely agree with your suggestion to modify or omit the following sentence, "any contract or combination which by its necessary operation destroys or restricts free competition in Interstate commerce is in restraint of that commerce (Northern Securities Co. vs. United States, 193 U.S. 197)"

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Since the elucidation of the Anti Trust Law in the recent opinion of your Court in the Standard Oil case, my expression that any contract etc., which by its necessary operation destroys or restricts free competition etc., is too strong. I am happy to say that if I were to write the opinion over again I should gladly insert the words “unduly” or “unreasonably” as modifying the restraint of trade denounced in the Sherman Act.

I however think that the whole sentence may be eliminated. In view of what I have said immediately before and after that sentence, any further reference to the law of the case is unnecessary. We are disposing of this case on the facts and under any view of the law which has ever been advanced the judgment which we have reached on those facts is Happily the law is now settled so as to admit of a rational and practical enforcement.

I shall direct the custodians of the original opinion and of the copies at St. Louis and St. Paul to strike out the parts of the opinion which have been referred to above.

I am obliged to you for this further manifestation of your kindness in suggesting the corrections. I make them most cheerfully believing that they will improve the opinion.

I wrote you yesterday concerning a re-arrangement of our plan for holding the September Term of the Court. I will write more fully on that subject as soon as Floyd comes, when I can dictate freely. I am happy, however, in having a friend here who takes this down in long hand and quite rapidly. I think your last opinion in the Tobacco Cases is taking very well. I have seen or heard no adverse criticisms. It is right and must win in the end.

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With best wishes I am most sincerely yours.

Elmer B. Adams

To Hon. Willis Van Devanter, Justice Supreme Court,

1923 Sixteenth Street W., Washington, D. C.