

*United States Circuit Court of Appeals,*

EIGHTH CIRCUIT.

St. Louis, Mo., Oct. 25, 1910.

My dear Judge:-

I left St. Paul on the evening of the 18th. Up to that time I feel quite sure that Brother Sanborn had not given any more consideration to the cattle case than I had. Probably not as much, as I devoted a full day to it myself; but I get a communication from him addressed to you and me jointly bearing date October 21st in which he says: "After some days and nights of study of the cattle case these are the ways it impresses me." He then goes over the case, obviously adopting the theory expressed in the briefs of the counsel for the railroad companies on nearly every question which they presented, and finally reaches the conclusion, with hesitation, that the Interstate Commission, the master and his associates have reached an erroneous conclusion. In view of the fact that there are 11,000 pages of testimony with hundreds, and I believe thousands of tabulated exhibits, I cannot believe that Brother S. made much independent investigation of the case. It seems to me that for us to arrive at a different opinion than the Interstate Commerce Commission and the master upon the facts of this case I personally would have to spend much time and give much attention. Therefore, I have been disposed to accept the proposition made by Mr. McHugh to assume the findings of the master as correct and determine the case as a matter of law on that assumption. The few matters of discrepancy between the master's original findings and his subsequent findings after the exceptions had been filed before him and his statement that the costs of carrying cattle is not in excess of twenty per cent more than the cost of carrying other carload freight and some other things of that character are not enough for me to overrule his report in support of the Commission's findings. Out of the vast volume of testimony

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in the case there may be and must be many matters of substance affecting the cost of carriage of the live stock and affecting the proper adjustment of that cost to the cost of carrying other carload freights, and I certainly am not disposed to say that there are not such without a full and complete examination of the matter, which will carry me far beyond the 15th of November, when a conclusion must be had.

Moreover, I feel that the master's final finding on the direct issue involved as to whether the cattle rates were unjust and unreasonable or unduly preferential is a summary-a final conclusion, resulting from not only the few distinct and separate findings in his report of constitutive matter, but is the result of his thorough examination and appreciation of all the evidence in the case. It would, therefore, be impossible for me to reach a contrary conclusion upon the mere inspection of briefs. If you adhere to your views heretofore expressed on this subject you may draft a simple order overruling the exceptions to the master's report and dismissing the bill. I would have the order recite that the case was submitted to us on the pleadings, report of the master, exceptions and proof.

In fact, even if we should sustain the exceptions to the master in substantial particulars we, under well established equity practice, would be compelled to take this record as it is and from it, proof and all, make a final judgment in the case. I however, do not wish to

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discuss the matter further but submit these views for your consideration. Hoping that I may hear from you concerning your views on the subject at your early convenience, I am,

Very sincerely yours,

Elmer B. Adams

Hon Willis Van Devanter,

U. S. Circuit Judge,

St. Paul, Minn.