

HOLMES, J., THE CHIEF JUSTICE, WHITE, PECKHAM, JJ., dissenting. 193 U. S.

If, however, the question of the power of Congress be conceded, and the assumption as to the meaning of the Anti-Trust Act which has been indulged in for the purpose of considering that power be put out of view, it would yet remain to be determined whether the Anti-Trust Act embraced the acquisition and ownership of the stock in question by the Northern Securities Company. It is unnecessary for me, however, to state the reasons which have led me to the conclusion that the act, when properly interpreted, does not embrace the acquisition and ownership of such stock, since that subject is considered in an opinion of Mr. Justice Holmes, which explains the true interpretation of the statute, as it is understood by me, more clearly than I would be able to do.

Being of the opinion, for the reasons heretofore given, that Congress was without power to regulate the acquisition and ownership of the stock in question by the Northern Securities Company, and because I think even if there were such power in Congress, it has not been exercised by the Anti-Trust Act, as is shown in the opinion of Mr. Justice Holmes, I dissent.

I am authorized to say that the CHIEF JUSTICE, MR. JUSTICE PECKHAM and MR. JUSTICE HOLMES, concur in this dissent.

MR. JUSTICE HOLMES, with whom concurred the CHIEF JUSTICE, MR. JUSTICE WHITE, and MR. JUSTICE PECKHAM, dissenting.

I am unable to agree with the judgment of the majority of the court, and although I think it useless and undesirable, as a rule, to express dissent, I feel bound to do so in this case and to give my reasons for it.

Great cases like hard cases make bad law. For great cases are called great, not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests

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exercise a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend. What we have to do in this case is to find the meaning of some not very difficult words. We must try, I have tried, to do it with the same freedom of natural and spontaneous interpretation that one would be sure of if the same question arose upon an indictment for a similar act which excited no public attention, and was of importance only to a prisoner before the court. Furthermore, while at times judges need for their work the training of economists or statesmen, and must act in view of their foresight of consequences, yet when their task is to interpret and apply the words of a statute, their function is merely academic to begin with—to read English intelligently—and a consideration of consequences comes into play, if at all, only when the meaning of the words used is open to reasonable doubt.

The question to be decided is whether, under the act of July 2, 1890, c. 647, 26 Stat. 209, it is unlawful, at any stage of the process, if several men unite to form a corporation for the purpose of buying more than half the stock of each of two competing interstate railroad companies, if they form the corporation, and the corporation buys the stock. I will suppose further that every step is taken, from the beginning, with the single intent of ending competition between the companies. I make this addition not because it may not be and is not disputed but because, as I shall try to show, it is totally unimportant under any part of the statute with which we have to deal.

The statute of which we have to find the meaning is a criminal statute. The two sections on which the Government relies both make certain acts crimes. That is their immediate purpose and that is what they say. It is vain to insist that this is not a criminal proceeding. The words cannot be read one way in a suit which is to end in fine and imprisonment and another way in one which seeks an injunction. The construction which is adopted in this case must be adopted in one