

**SOMETHING ABOUT JUSTICE VAN DEVANTER**

The following article is reproduced from the Golden (Colo.) Globe:

Judge Taft is a most lovable man in many respects. Two of these qualities, viz: his good nature and lack of suspicion, have done him much injury. Through them he has been taken prisoner by the Aldrich tribe, and now finds himself at variance with the great majority of his party. He may be able to pull through, but if he does it will be on account of his popularity won before he became president. His visit to the west and the speeches made, have been one of continued attempted explanation of his acts. What he has accomplished is yet to be seen.

At Minneapolis on Oct. 24th we are told that "he replied again as he did at Aberdeen, S. D., to the charge that he had set up the supreme court with the understanding that the judges would emasculate the anti-trust statute."

"Of course," said the president, "there is not the slightest foundation in such a statement. Of course I never had an understanding of any sort with any man I ever put upon the bench, and the man or men who make such a charge lightly, reveal the fact that they have no realization of the iniquity, the corruption, that would be involved in such an understanding."

We must believe the president when he says, "I never had an understanding of any sort with any man I ever put on the bench."

We must believe him also when he speaks of the "iniquity, the corruption, that would be involved in such an understanding."

It surely would have been wholly inexcusable for the president to have such a personal "understanding" as he himself declares would involve "iniquity and corruption."

But did the men who caused the president to make these appointments have any such an understanding? Did they not know what each of these proposed judges would do in reference to certain questions? Was President Taft in any doubt as to what Chief Justice White would do toward overturning the majority opinion and following his own expressed minority opinion, in the case of U. S. vs. Trans-Missouri Freight association 166 U. S. 290? Did not the president have every reason to believe that he would do exactly as he did in the Standard Oil Co., vs. U. S. 31 Court. Rep. 503?

Did not the president have every reason to believe that each of the other three judges appointed by him would be in perfect harmony with Chief Justice White. Could he not easily gather this from the recommendations oral and written of each and all of these men. Take for instance the following in relation to Justice Van Devanter.

December 9, 1910.—To His Excel-

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lency, the President of the United States, Executive Mansion, Washington, D. C. Dear Sir: In reference to the application of the Hon. William Van Devanter for appointment as one of the justices of the supreme court of the United States, I beg leave to call your attention to an opinion written by the learned circuit judge on May 2nd, 1910, in the case of Thomas B. Stuart and Charles A. Murray vs. Union Pacific Railroad company and reported in Vol. 178, Federal Reporter, at page 753. This case is now pending in the United States supreme court, and numbered 694, a writ of certiorari having been granted therein at the present term of the supreme court.

I also forward for your inspection, under separate cover, a copy of the petition for the writ of certiorari, and also a copy of our opening arguments on file in the supreme court.

Millions of dollars of property will be taken from the people of the states of Colorado, Kansas and Nebraska, and given to the Union Pacific Railroad company, should the opinion of the circuit court of appeals be affirmed. The appointment of Judge Van Devanter to a place upon the supreme bench would be construed, of course, as an endorsement of the position taken by him in this, the most important case ever decided by him.

I am a lawyer of over forty years practice, and while the question of politics should not enter into such grave questions as the one here presented, I may be permitted to say that I have never voted any other than the republican ticket in national politics, although I have not at all times been in harmony with my party in local or state politics, when interests control it that I think are selfish or un-republican. With great respect, yours very truly,

T. B. STUART.

In answer the following was received.

December 13, 1910, My Dear Sir: Your letter of December 9th, and accompanying papers, was received and at once brought to the attention of the president. Very truly yours, CHARLES D. NORTON, Secretary of the President.

In the opinion of Judge Van Devanter referred to in the above letter it is said, "Finally the appellants rely upon the recent decision in Union Pacific R. R. Co., vs. Harris 215 U. S. 386 as definitely holding that the authority of the company to extend its road west of the 100th meridian was derived from the act of 1866 and not from the act of 1864. Of course if that be as stated, it must be followed." Judge Van Devanter then proceeds to argue that the supreme court overlooked section 9 of the act of 1864, and finds that the supreme court was mistaken in its conclusions. In short he reverses the decision of the supreme court of the United States, written by Judge Brewer, and among the last opinions written by him. The Van Devanter opinion gives the Union Pacific road and each of its branches a strip of land 400 feet wide from Omaha and Kansas City to Denver, Cheyenne and Ogden.

It gives to them land of private citizens that have been held under government patent, and paid taxes on for over forty-five years. There are more than a score of cases now pending in Colorado, and these are barely starters of the litigation. The U. P. R. R. will under this decision, be entitled to a strip of land 400 feet wide clear through the city of Denver to the union depot and out again to Cheyenne. Millions of dollars in value have thus been won by the railroad in Colorado, and probably similar amounts in Kansas and Nebraska.

The above letter called the president's attention to the situation. We are hardly willing to believe that so

good and wise a man as President Taft could voluntarily make such an appointment. Is it the result of another one of the tricks of the Union Pacific, by and through which it has controlled the appointment of every federal judge west of the Missouri river?

Van Devanter knocks out the Harris case, White knocks out the Trans-Missouri freight decision—next will

follow the Northern Securities decision. Each of these decisions were fortresses of strength turned over by Roosevelt to Mr. Taft. Two of them have already been handed over to the enemy, through Mr. Taft's appointments, and the nation has lost every battlefield won by the people in the last thirty years.—T. B. S., in the Golden (Colo.) Globe.

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