

*Law School of Harvard University,
Cambridge, Mass.*

May 28, 1936

Dear Stone,

If fact, reason, or even prior rulings were dominant, such a decision as that in the Elgin, Joliet case would be impossible. That an opinion like yours as close to mathematical demonstration as is ever achieved in the law -- should not win the consent of a majority of the Court, shows how completely indifferent that majority is to the dictates of reason. What the impartial historian of the Court will say, there can be no doubt. Therefore it is of such supreme importance that the contemporaneous record have the integrity and the Doric eloquence which your dissent in this case again gives it.

“Those familiar with present day methods of corporate control will not be so naive as to suppose”

“If the commodities clause permits control such as it exhibits here”, these and such-like sentences austerely presage the judgment of condemnation which the future, within a decade, will visit upon much of the Court’s work at this Term. What bother one, is that more may go than the reputations of those who now ride high. They are the temporary custodians of law and the great traditions of the Court. One can only hope that they will not destroy more than their own reputations. Your opinion seems to me to march with impressive inevitability -- what one had supposed were the incontestable presuppositions of the commodities clause applied to the facts of the steel trust situation, as you so inescapably summarize them, to the inescapable conclusion that the present decision is “a reduction of the commodities clause to a cipher in the calculations of those who control the railroads of the country”.

Law School of Harvard University,

Cambridge, Mass.

- 2 -

Monday certainly was a field day for McReynolds. I am bound to say that his decision in the Municipal Bankruptcy case is intellectually even more contemptible than what he wrote in the commodities clause case. You will agree, I know, what Holmes, J., would have said to the argument that the acceptance of a voluntary bankruptcy by a municipality necessarily leads to recognition of the right to impose involuntary bankruptcy. He would have said, "It makes me puke."

I congratulate you on having got the Court with you on the Arizona case.

Faithfully yours,

F.F.

Hon. Harlan F. Stone