reasonable rates, rules, and regulations on all freight traffic, both through and local." To that end the association is formed, and a body created which is to adopt rates, which, when agreed to, are to be the governing rates for all the companies, and a violation of which subjects the defaulting company to the payment of a penalty; and, although the parties have a right to withdraw from the agreement on giving thirty days' notice of a desire so to do [sic], yet while in force, and assuming it to be lived up to, there can be no doubt that its direct, immediate, and necessary effect is to put a restraint upon trade or commerce as described in the act.

For these reasons, the suit of the government can be maintained without proof of the allegation that the agreement was entered into for the purpose of restraining trade or commerce, or for maintaining rates above what was reasonable. The necessary effect of the agreement is to restrain trade or commerce, no matter what the intent was on the part of those who signed it. . . .

Reversed and remanded.

[The dissenting opinion of JUSTICE WHITE is omitted. JUSTICE WHITE argued that the Sherman Act prohibited only unreasonable restraints.]

Note on *Joint Traffic*
171 U.S. 505 (1898)

In *United States v. Joint Traffic Ass'n*, decided one year after *Trans-Missouri*, Justice Peckham appeared to retreat from his previous literal reading of Section 1. *Joint Traffic* involved a railroad cartel similar to that in *Trans-Missouri*, only operating between Chicago and the eastern seaboard. Although the Court reaffirmed its holding in *Trans-Missouri*, the *Joint Traffic* opinion is noteworthy not only because Justice Peckham backed away from his earlier rigid approach but also because the opinion provides a more sophisticated interpretation of Section 1 which helped provide the basis for both rule of reason and *per se* antitrust analysis. A salient portion of the opinion follows:

> [T]he formation of corporations for business or manufacturing purposes has never, to our knowledge, been regarded in the nature of a contract in restraint of trade or commerce. The same may be said of the contract of partnership. It might also be difficult to show that the appointment by two or more producers of the same person to sell their goods on commission was a matter in any degree in restraint of trade.
>
> We are not aware that it has ever been claimed that a lease or purchase by a farmer, manufacturer, or merchant of an additional farm, manufactory, or shop, or the withdrawal from business of any farmer, merchant, or manufacturer, restrained commerce or trade within any legal definition of that term; and the sale of a goodwill of a business with an accompanying agreement not to engage in a similar business was instanced in the *Trans-Missouri* case as a contract not within the meaning of the act; and it was said that such a contract was collateral to the main contract of sale, and

was entered into for the purpose of enhancing the price at which the vendor sells his business. . . . In *Hopkins v. United States*, 171 U.S. 578 (1898), decided at this term, we have said that the statute applies only to those contracts whose direct and immediate effect is a restraint upon interstate commerce, and that to treat the act as condemning all agreements under which, as a result, the cost of conducting an interstate commercial business may be increased, would enlarge the application of the act far beyond the fair meaning of the language used. The effect upon interstate commerce must not be indirect or incidental only. An agreement entered into for the purpose of promoting the legitimate business of an individual or corporation, with no purpose to thereby affect or restrain interstate commerce, and which does not directly restrain such commerce, is not, as we think, covered by the act, although the agreement indirectly and remotely affects that commerce. We also repeat what is said in the case above cited, that "the act of Congress must have a reasonable construction, or else there would scarcely be an agreement or contract among business men that could not be said to have, indirectly or remotely, some bearing upon interstate commerce, and possibly to restrain it." To suppose, as is assumed by counsel, that the effect of the decision in the *Trans-Missouri* case is to render illegal most business contracts or combinations, however indispensable and necessary they may be, because, as they assert, they all restrain trade in some remote and indirect degree, is to make a most violent assumption, and one not called for or justified by the decision mentioned, or by any other decision of this court.

171 U.S. at 567-68. *See also Hopkins v. United States*, 171 U.S. 578, 600 (1898); *Anderson v. United States*, 171 U.S. 604, 615 (1898), in which Justice Peckham applied a jurisdictional and substantive test for Sherman Act legality which depended on whether the anticompetitive effect on interstate commerce was direct or "indirect and incidental." *See* M. Handler, *Antitrust in Perspective* 6-7 (1957).

UNITED STATES v. ADDYSTON PIPE & STEEL CO.

United States Court of Appeals, Sixth Circuit
85 F. 271 (1898) modified and affirmed, 175 U.S. 211 (1899)

[The following factual summary is excerpted from the Supreme Court's opinion, 175 U.S. 211, 213 (1899):

[It was charged in the petition that on the 28th of December, 1894, the defendants entered into a combination and conspiracy among themselves, by which they agreed that there should be no competition between them in any of the states or territories mentioned in the agreement (comprising some thirty-six in all), in regard to the manufacture and sale of cast-iron pipe, and that in obedience to such arrangement and combination, and to carry out the same, the defendants had since that time operated their shops and had been selling and shipping the pipe manufactured by them into other states and