

February 4, 1936.

Memorandum Re: No. 401.

United States v. William M. Butler, et al.,  
Receivers of Hoosac Mills Corporation.

This case was argued on December 9th and 10th, 1935, and brought up at conference by the Chief Justice on the following Saturday. In presenting the case he recommended that the statute be overturned for improper delegation. He recognized that by the August, 1935 legislation Congress had adopted the rate and method of taxation as promulgated by the Secretary of Agriculture, but in his judgment the Act of the Secretary of Agriculture was an illegal act and was not capable of ratification. After a painful elaboration of these ideas he concluded by saying that if we were to come to the merits he thought that the A.A.A. was a regulation of agriculture within the states and an invasion of the reserved power of the states. In putting forth this idea he emphasized the fact that contracts were taken by the Secretary to restrict production. There was no suggestion of coercion and no analysis of the relation of conditional grants or the contracts to the spending power.

Each of the judges, except Brandeis, Cardozo and myself, expressed objection to resting the case on unconstitutional delegation, but accepted without discussion his suggestion that the A.A.A. was unconstitutional regulation of agriculture. Justice Brandeis passed. I pointed out that under the Chief Justice's decision in the Goodcell case we had a case of a defective tax and a curative statute, and that we plainly could not overturn the statute on grounds of improper delegation without in effect overruling the Goodcell case, which I thought sound in principle which should be adhered to. Discussing the merits I stated that I thought that there was nothing

coercive about the A.A.A. legislation; that gifts upon condition which were consistent with a national purpose were within the spending power and not infringements of reserve power of the states.

Justice Cardozo contented himself with saying that he agreed with my views, and the Chief Justice stated that he was willing to put the case on the ground of unconstitutional regulation, and called for a vote.

Thus the main question in the case was decided practically without discussion and with no analysis or consideration of the relation of conditional gifts for a national purpose to the spending power conferred upon Congress.

On the following day Justice Brandeis announced to the Chief Justice that he agreed with Justice Cardozo and me.

The opinion was written during the first week of recess. It was circulated late Saturday evening of that week. I spent the Sunday (December 29th) in Boston, found the opinion on my desk on my return the following day. I spent the day in getting out an opinion for the Court on which I was working, and on Tuesday took up the writing of the dissent. I discovered that the Library was closed on that afternoon (the day before New Year's Day) and also on New Year's Day, so that I was unable to obtain books. I managed to get out an opinion which went to the printer's on Thursday and was circulated on Friday. This produced a large number of amendments to Justice Roberts' opinion which were read at conference on the following day, Saturday. He did not recirculate.

Opinion and dissent were both produced in conjunction with other work of the writers during the two weeks recess, in which there were two holidays, Christmas and New Years.

The whole history of the case was characterized by inadequate discussion and great haste in the production and circulation of the opinions.

H.F.S.