Supreme Court of the United States.

October Term, 1935.

No. 401.

UNITED STATES OF AMERICA

v.

WILLIAM M. BUTLER et al., Receivers of Hoosac Mills Corporation.

Brief in Opposition to Petition for Writ of Certiorari.

EDWARD R. HALE,
BENNETT SANDERSON,
Counsel for Receivers of Hoosac Mills Corporation.

ADDISON C. GETCHELL & SON, LAW PRINTERS, BOSTON.

INDEX.

Citations.

Supreme Court of the United States.

OCTOBER TERM, 1935.

No. 401.

UNITED STATES OF AMERICA

v.

WILLIAM M. BUTLER ET AL., RECEIVERS OF HOOSAC MILLS CORPORATION.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

The respondents oppose the application for a writ of certiorari on the ground that the decision of the Circuit Court of Appeals is right, is in accordance with the weight of authority and is not in conflict with the decision of any other Circuit Court.

OPINIONS BELOW.

The opinion of the District Court for the District of Massachusetts is reported in 8 F. Supp. 552, under the style *Franklin Process Company* v. *Hoosac Mills Corporation* (R. 19-38). The opinion of the Circuit Court of Appeals has not yet been reported, but will be found at page 45 of the record. The decree of the Circuit Court of Appeals sought to be reviewed was entered on July 13, 1935 (R. 61).

Jurisdiction.

Jurisdiction to issue the writ requested is found in the provisions of section 240(*a*) of the Judicial Code as amended by Act of February 13, 1925.

Questions Presented.

The general question presented is inaccurately stated on page 2 of the petition for writ of certiorari. The question is whether the processing and floor stocks taxes sought to be imposed by the Agricultural Adjustment Act as originally enacted, not as amended, constitute an invalid exercise of power by Congress under the Constitution. A separate question is sought for the first time in this proceeding to be raised by the Petition, viz.: Whether the ratification attempted in new sections 21(*b*) and (*c*) added to the Agricultural Adjustment Act by section 30 of the Act to amend the Agricultural Adjustment Act approved August 24, 1935, in any way changes the effect of the Act as applied to the respondents with respect to taxes accrued and assessed prior to any amendments.

Statutes Involved.

This case arises under the provisions of the Act of Congress of May 12, 1933, c. 25, 48 Stat. 31, known as the Agricultural Adjustment Act. The provisions of the Declaration of Emergency, sections 2, 8, 9, 10, 11, 12, 16 and 19 of said Act as originally passed, set out in the Appendix to the Petition, beginning at page 15, are deemed sufficient for consideration of this Petition. The quotation, on page 23 of the Appendix to the Petition, from provisions of the Act to amend the Agricultural Adjustment Act and for other purposes approved August 24, 1935, appears to be miscited as being a portion of section 32, when in fact it is a portion of section 30.

CORRECTIONS OF STATEMENT.

It is stated on page 5 of the Petition:

> "In the stages of this litigation subsequent to the Receivers' report no specified exception has been taken by the respondents to the denial of their contention that as Receivers they were not subject to the penalty or to the payment of interest after the date of receivership."

The decree contains no provision requiring the payment of any penalty after the date of the receivership, and fails to fix any rate of interest to be charged after the date of the receivership (R. 18-19). The question of payment of penalties and of the amount of interest to be charged against the receivership was not determined adversely to the Receivers and is not involved in the case at bar.

It is stated on page 6 of the Petition:

> "On the same date, the Secretary of Agriculture by regulations approved by the President determined as of August 1, 1933, that the rate of the processing tax on cotton was 4.2 cents per pound of lint cotton, this amount equalling the difference between the current average farm price of cotton and the fair exchange value of cotton (R. 15-16). Pursuant to the formula prescribed by the Act, the fair exchange value of cotton was based upon the average of farm prices of cotton during the period August 1, 1909, to July 1, 1914 (the base period), and an index reflecting increases of current prices paid by farmers for commodities which they bought over such prices during said base period."

The record fails to reveal that the tax was computed in accordance with any formula or that the rate of tax fixed equalled the difference between the "current average farm

price of cotton'' and the ''fair exchange value of cotton'' (R. 16).

Inasmuch as the District Court allowed the Receivers to strike from the First Report on Claims the following words: ''Regulations issued under said Act and the rate of tax prescribed by said regulations are not in accordance with the requirements of said Act and are illegal'' (R. 12), the computation of the tax rate is not involved in this case and the validity of the determination of the tax rate is not decided by this case. The District Court stated: ''As the matter comes before the Court in the case at bar my consideration is restricted to the law as it is written and does not extend to the law as it may be interpreted and applied by administrative officers acting under color of its provisions'' (R. 35).

It is the position of the respondents that the Addendum to Transcript of Record referred to in the footnote on page 14 of the Petition was not a part of the record before the Circuit Court of Appeals.

Contentions of Respondents.

The respondents contend that the processing and floor stocks taxes are unconstitutional for the following reasons:

1. Congress has improperly delegated to administrative officers legislative powers with respect to the processing and floor stocks taxes which under the Constitution must be retained and exercised solely by Congress.

2. The processing and floor stocks taxes as fixed, levied, collected and expended under the Act are designed to control the production of agriculture and to raise prices. They are an illegal interference with intra-state activities and are invalid under the Tenth Amendment.

3. The processing and floor stocks taxes are laid and applied for a private, not a public, purpose, and are not laid or applied for the general welfare of the United States, and are laid and applied for the unlawful purpose of control of agriculture, hence are not a valid exercise of the taxing power given to Congress in article I, section 8, clause 1, of the Constitution.

4. The processing and floor stocks taxes constitute a taking of property without due process of law in violation of the Fifth Amendment.

5. The processing and floor stocks taxes are not laid or applied for any purpose which is within the powers granted to Congress by the Constitution.

6. The processing and floor stocks taxes are direct taxes not apportioned to the population.

7. The processing and floor stocks taxes, if excises, are not uniform throughout the United States.

8. Section 16 of the Agricultural Adjustment Act fails to define a tax.

9. Congress could not legally enact the processing and floor stocks taxes nor could it delegate, to the executive, legislative power with respect to such taxes, hence may not ratify either the taxes or the action taken by the executive under illegally delegated powers.

Argument.

A decision by Congress to the effect that federal assistance is needed to restore the normal functioning of the agricultural life of the nation does not create powers or grant powers to Congress beyond those delegated to it by the Constitution.

Kansas v. *Colorado,* 206 U.S. 46.

The decision of the Circuit Court of Appeals in determining that Congress improperly delegated, to the executive, legislative power granted to it by article I, section 8, clause 1, of the Constitution is fully supported by the decisions in *Panama Refining Co.* v. *Ryan,* decided by this Court January 7, 1935, 55 S. Ct. 41, and *Schechter* v. *United States,* decided by this Court May 27, 1935, 55 S. Ct. 837.

The attempted ratification contained in section 30 of the Act approved August 24, 1935, amending the Agricultural Adjustment Act by adding new sections 21(*b*) and (*c*) does not cure the invalid delegation by Congress of the legislative power delegated to Congress by the Constitution. Congress is without power to ratify and thus make valid an act which it could not perform in the first place. It follows that Congress cannot by ratification make valid the acts of executive officers which are in effect the exercise of the power of legislation, if Congress could not have delegated such power to executive officers under the powers granted to Congress by the states and the people.

Such a conclusion is required from the cases cited by counsel for the United States on this point.

To permit Congress to ratify a tax imposed by executive officers exercising illegally delegated legislative powers is in effect to permit Congress to enact an arbitrary retroactive tax in violation of the Fifth Amendment and to do indirectly what it may not do directly.

> *Nichols* v. *Coolidge,* 274 U.S. 531.
> *Untermeyer* v. *Anderson,* 276 U.S. 440.
> *Forbes Pioneer Boat Line* v. *Commissioners,* 258 U.S. 338.

The determination of the Circuit Court of Appeals that the imposition and application of the processing and floor stocks taxes is beyond the powers of Congress and is an

interference with the rights reserved to the states by the Tenth Amendment is required by decisions of this Court, such as—

Hill v. *Wallace,* 259 U.S. 44.
Child Labor Tax Case, 259 U.S. 20.
Hammer v. *Dagenhart,* 247 U.S. 251.
Schechter v. *United States,* decided May 27, 1935.

Respectfully submitted,

EDWARD R. HALE,
BENNETT SANDERSON,
Counsel for Receivers of
HOOSAC MILLS CORPORATION.