TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 401

THE UNITED STATES OF AMERICA, PETITIONER

vs.

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

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 27, 1935

CERTIORARI GRANTED OCTOBER 14, 1935

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 401

THE UNITED STATES OF AMERICA, PETITIONER

vs.

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

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

INDEX

1 [Caption omitted.]

In United States District Court, District of Massachusetts

No. 3926, Equity Docket

FRANKLIN PROCESS COMPANY, PLAINTIFF

v.

HOOSAC MILLS CORPORATION, DEFENDANT

Appeal of William M. Butler and James A. McDonough, receivers

Recital as to complaint and answer

A bill of complaint in this cause was filed in the clerk's office on October 7, 1933, and was duly entered at the September Term of this Court, A. D. 1933.

On the said seventh day of October, A. D. 1933, an answer was filed.

In United States District Court

Decree appointing receivers

Filed October 17, 1933

LOWELL, J.: This cause came on to be heard at this time upon the application of the plaintiff for the appointment of a per-
2 manent receiver of the defendant corporation, and notice having been given in accordance with the order of this court as appears by affidavit on file, and all persons appearing in response to said notice having been heard, the defendant appearing and consenting thereto; and it appearing to the court from the allegations of the bill of complaint and the statements of counsel for the plaintiff and for the defendant corporation that immediate relief is necessary to preserve the assets of the defendant corporation and to prevent waste thereof; and it appearing from the evidence that the defendant corporation is solvent; upon consideration thereof it is ordered, adjudged, and decreed:

1. That William M. Butler, of Boston, Massachusetts, and James A. McDonough, of said Boston, be and they hereby are appointed receivers of all and singular the property, real, personal, or mixed, wherever or however located, of the defendant Hoosac Mills Corporation.

2. That the said receivers are hereby directed to take immediate possession of all and singular the property and assets, real, personal, and mixed, of said defendant, wherever situated or found; to use, manage, and conduct the business of the defendant in the usual and ordinary course thereof until the further order of the court; and,

for that purpose, to buy, purchase, and otherwise acquire raw materials, supplies, and other property used in the ordinary course of business; to sell and otherwise dispose of the manufactured products and other property in the usual course of such business; to employ, hire, and retain agents, employees, and other persons so far as may, in their judgment, be desirable, to carry on the business carried on by the defendant; to retain and employ counsel to advise, guide, and assist in the administration of this estate: to maintain and preserve the property of the defendant and conserve its assets; to compensate, pay, and discharge all officers, managers, and employees; to keep the said property insured to such an extent as the receivers may deem advisable; to collect and receive the income and revenues of said property and to collect all outstanding accrued or accruing accounts, things in action and credits due or owing to the defendant; to
3 hold and retain all moneys received in such manner, and to the end that the same may be applied under this order and such other and further orders as this court may hereafter make.

3. That all persons, firms, or corporations having in their possession any of the said property and premises of the defendant shall deliver the said property and premises to the receivers and each and every of the officers, directors, agents and employees of the defendant shall be, an they hereby are, commanded and required forthwith, upon demand of said receivers or of their agent or agents, to deliver and turn over to the said receivers, or their duly constituted representative, any and all books of accounts, vouchers and papers, debts, stocks, bonds, bills, notes and evidences of indebtedness, leases and contracts, accounts, moneys or other property in their hands, or under their control, belonging to or in the possession of the defendant to which the defendant is or may become entitled, and each of said officers, directors, agents, and employees is hereby commanded and directed to abide by and conform to such orders as may be from time to time made by the said receivers or their duly constituted representative in conducting the operation of and the maintaining and preservation of said property in the proper discharge of their duties as receivers.

4. That the defendant and its officers, agents, employees, directors, attorneys, and all other persons claiming under and by virtue of the defandant, all other persons, firms, and corporations whatsoever and wheresoever located or domiciled be, and they hereby are, restrained and enjoined from interfering with, attaching, levying upon, or in any manner whatsoever disturbing any operation of the property or premises of the defendant, or prosecuting any actions or suits which affect the property of the said defendant, or in taking possession thereof, or in any way interfering with the same or any part thereof, or interfering in any manner to prevent the discharge by the said receivers of their duties. And this order shall apply not only to property in the possession of the defendant, but also to any reversions and remainders thereof.

5. That the receivers shall each file, within three days from the date of this decree, with the clerk of this court, a proper bond, with a surety or sureties to be approved by the clerk of this court
4 in the penal sum of $150,000 conditioned upon the proper discharge of his duties and the proper accounting for all funds coming into his hands as receiver, according to the orders and decrees of this court.

6. That the receivers are authorized, until further order of this court, to make such payments and to do and perform such other acts and things as they may deem necessary or expedient to carry on the business of the defendant, and to adopt, assume, reject or surrender, by a writing duly signed, any contract, lease or leasehold estate now vested in or belonging to the defendant.

That either receiver may at any time, by a writing signed by him, delegate to the other power to act, but this power to delegate shall not apply to the power to execute receivers' certificates or other like evidences of indebtedness of the receivership, nor shall it apply to the power to sell or deal with assets outside the usual course of manufacture and trade, but in the said execution of said evidence of indebtedness as aforesaid and in the sale of or dealing with assets outside the ordinary course of manufacture and trade, the signature of both receivers shall be necessary to bind the receivers.

7. That the receivers are hereby authorized and empowered to institute and prosecute within this Commonwealth or elsewhere, and in their name as receivers or in the name of the defendant, all such suits as may be now pending and as may be authorized by this court for the proper protection of the said property and the discharge of the trust and to prosecute to final judgment or to compromise as may be, in their judgment, advisable, all pending suits brought by or in behalf of the defendant, and to defend, compromise, or liquidate all actions and claims now or hereafter pending or instituted against the defendant or the receivers, and to pay, settle, and discharge, in their discretion, claims against the defendant or the receivers arising in the ordinary course of business, either prior or subsequent to the date of this order. But no payment shall be made by the receivers in respect to any suits now pending, without the order or direction of a judge of this court, and no action taken in defense of any such action or suit against the defendant shall have the effect of establishing any claims upon or right in the
5 property or funds in the possession of the receivers, or to alter or change the existing equities or legal rights of the parties.

8. That the receivers shall retain possession and continue to discharge the duties and trusts aforesaid until the further order of this court; and shall, within forty days from the entry of this decree, file with this court an inventory of all of the property and assets of the defendant which shall then have come to their possession or knowledge, together with a list of its liabilities; and shall, from time to time, make report of their doings in the premises, and, from time to time, may apply to this court for such other and further

directions as they may deem necessary and requisite to the due administration of this trust.

9. The complainant is hereby authorized to apply to any other court of competent jurisdiction for such order or orders in the premises as the complainant may deem necessary to carry out any of the orders issued by this court. The right is reserved to the parties hereto to apply to the court for any other or further instructions to said receivers, and this court reserves the right to make such further orders as may be proper, and to modify this control and, in all respects, to regulate and control the conduct of the receivers.

By the court:

JOHN E. GILMAN, JR.,
Deputy Clerk.

October 17, 1933.

J. A. L., *D. J.*

6 In United States District Court

Receivers' petition for order of notice to creditors to prove claims

Filed January 3, 1934

To the Honorable the Judges of the District Court of the United States for the District of Massachusetts:

Respectfully represent William M. Butler and James A. McDonough, receivers of Hoosac Mills Corporation, that:

There are certain persons, firms and corporations which are creditors of Hoosac Mills Corporation, the name of said creditors and the amount or amounts of their claims being not fully known to your petitioners.

Wherefore your petitioners pray that an order of notice be issued to all creditors of Hoosac Mills Corporation to file proofs of claim against Hoosac Mills Corporation with William M. Butler and James A. McDonough, receivers, on or before the date to be set by this Honorable Court.

WILLIAM M. BUTLER,
JAMES A. McDONOUGH,
Receivers of Hoosac Mills Corporation.

In United States District Court

Order on receivers' petition for order of notice

January 3, 1934

BREWSTER, J. In the above-entitled cause, it is ordered that the receivers give notice to all persons having claims against said corporation to present the same to said receivers for allowance; and that the same be presented on or before the twelfth day of February next, or be forever barred, unless the court, for good cause

shown, shall otherwise order; by sending such notice, by letter or postal card, to all known creditors as soon as may be, and by publishing a copy of this order in the Boston Evening Transcript, newspaper printed in Boston, Massachusetts. Such claims shall
7 be filed with William M. Butler and James A. McDonough, receivers of Hoosac Mills Corporation, 77 Franklin Street, Boston.

By the Court:

JOHN E. GILMAN, Jr.,
Deputy Clerk.

In the United States District Court

Receivers' first report on claims

Filed February 28, 1934

Respectfully represent William M. Butler and James A. McDonough, receivers of Hoosac Mills Corporation:

Pursuant to order of notice to prove claims your receivers have received various claims, some requesting priority and some without priority. This report covers only the claim of the United States.

The United States has filed a claim asserting priority for

(a) taxes under the Agricultural Adjustment Act: Tax, $80,591.72, interest to February 9, 1934, $1,102.36, and further interest at 12 percent per annum, and

(b) 1919 Income Tax: Tax, $27,300.72, interest to February 9, 1934, $13,131.94, and further interest at 6 percent per annum.

CLAIM OF THE UNITED STATES—TAXES UNDER AGRICULTURAL ADJUSTMENT ACT

1. The claim under the Agricultural Adjustment Act is for floor taxes and processing taxes. The total amount of the claim for taxes, $80,591.72, is in accordance with the returns filed by Hoosac Mills Corporation and the receivers and the corporation's record of payments. The provisions relating to priority are found in U. S. R. S. Sec. 3466. In the event the corporation is determined to be solvent the priority should not apply. Interest is claimed to date of payment. Interest at 1 percent per month is prescribed by Revenue Act, 1932, Sec 626 (b) and U. S. R. S. 3184. The total interest contains a penalty of $286.30, which the receivers believe is not collectible against an estate in receivership. For this reason the
8 total interest item should be reduced by $286.30. The receivers are of the opinion that interest at the rate of 1 percent per month is properly charged on the tax to the date of appointment of the receivers, October 8, 1933, but that further interest is inequitable and should be disallowed. The receivers, however, recommend disallowance of the entire amount of taxes and interest under the Agricultural Adjustment Act on the ground that said taxes are unconstitutional and illegal as more fully set forth hereunder:

2. The Agricultural Adjustment Act and the taxes imposed by regulations issued thereunder are unconstitutional and void. The powers assumed in said Act are beyond any of the powers given to Congress by the Constitution. The frame and purposes of the Act are contrary to the principles of our form of government. The taxes imposed by said regulations are not imposed for any authorized purpose of the government.

3. The provisions of said Act and the taxes imposed by regulations issued thereunder are beyond the powers granted in United States Constitution, Article I, Section 8, Clause 3, relating to interstate and foreign commerce. The effect of said Act is not limited to interstate and foreign commerce. The subjects regulated by the provisions of said Act are not commerce within the meaning of the United States Constitution. The provisions of said Act go beyond regulation and in some instances amount to complete direction and control, and in other instances place the United States Government in the field of competitive bargaining with relation to manufacture and agriculture. The said Act and the said taxes are an interference with the rights reserved to the States in United States Constitution, Amendment X.

4. The said Act and the taxes imposed by regulations issued thereunder are not designed to raise revenue for public purposes but are designed to accomplish an ulterior and unconstitutional purpose. The said Act is designed and intended to take property from the class of manufacturers and from those dependent on and purchasing from them and to distribute it to the class of farmers. The system of wholesale bounty and largess thus created is subject to no check or control but is dependent solely on the uncontrolled discretion of a single executive officer not elected by or responsible to the people. The said Act and the taxes imposed by regulations thereunder and the system of bounties and benefits and licenses thereby established are a scheme to fix prices of commodities throughout the United States and such a purpose is contrary to the spirit and intention of the Constitution and beyond the powers of Congress. The said Act attempts to fix and regulate prices in transactions entirely within a state and of goods not in interstate or foreign commerce and is in violation of the rights reserved to the states by United States Constitution, Amendment X.

5. The said Act and the taxes imposed by regulations issued thereunder constitute an unlawful delegation of legislative power to an executive officer and are contrary to the separation of powers prescribed by the United States Constitution, Article I, Section 1; Article II, Section 1; Article I, Section 7, Clause 1; Article I, Section 8, Clause 1, and Article I, Section 9, Clause 7. The Act itself imposes and levies no tax. The entire taxing power, including the power to determine the commodities to be taxed, to fix the rate of the tax, to determine the duration of the tax, to make exceptions and exclusions from the operation of the tax and many other powers are delegated to the Secretary of Agriculture. In addition to

the taxing power many other legislative powers are delegated to the secretary by said Act. The Act deprives the people of the right reserved to them of making their own laws through their duly constituted representatives.

6. To the Secretary of Agriculture and the Secretary of the Treasury is entrusted the power to use for the purposes of this Act any and all money in the Treasury not otherwise appropriated. To the Secretary of Agriculture is entrusted the power to pay out the proceeds of said taxes without any limitation by way of appropriation and without control by Congress or the courts, in violation of United States Constitution, Article I, Section 9, Clause 7.

7. The taxes imposed by regulations issued under said Act, so far as they are direct taxes, are not proportional to the population as required by the United States Constitution, Article I, Section 9, Clause 4, and Article I, Section 2, Clause 3.

8. That taxes imposed by said Act, so far as they are excise taxes, are not uniform throughout the United States as required by United States Constitution, Article I, Section 8, Clause 1.

9. The said Act is so vague and indefinite and leaves so much to executive decision that it is not susceptible of accurate interpretation, enforcement, or review.

10. The said Act and taxes imposed by regulations thereunder are a deprivation of property without due process of law and a taking of private property ostensibly for a public purpose without compensation in violation of United States Constitution, Amendment 5. The purpose for which property is taken under said Act is not a public purpose. There is no adequate provision for review of assessments other than by paying and suing for an amount which may be destructive to the business.

11. The 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. The said Act is unconstitutional, illegal, and void because it attempts to authorize the taking of property from one class of persons through the instrumentality of the United States Government and the giving of such property to another class of persons.

12. The Act and the taxes imposed by regulations thereunder are class legislation. The provisions of the Act set up a virtual dictatorship. The Act is contrary to the principles of a republican form of government guaranteed by the United States Constitution, Article IV, Section 4, and the implications thereof. The Act is contrary to the intention and purposes of the founders of our government and to the spirit of the Constitution.

CLAIM OF THE UNITED STATES—INCOME TAX 1919

1. The claim of the United States so far as it relates to Income Tax 1919, $27,300.72, and interest at 6 percent to date of payment refers to a so-called transfer tax arising out of transfer of the assets of Nemasket Mill. The provisions relating to priority are

found in United States Revised Statutes, Sec. 3466. In the event the corporation is determined to be solvent the priority should
11 not apply. The receivers are of the opinion that if the claim is allowed interest is properly charged at the rate of 6 percent per annum to the date of appointment of the receivers, October 8, 1933, but that further interest is inequitable and should be disallowed.

2. The receivers are of the opinion that Hoosac Mills Corporation is not indebted to the United States in the amount of $27,300.72 and $12,784.59, nor in any sum whatever, as the transferee of the property of Nemasket Mill. The subject matter of this claim came on for hearing before the Board of Tax Appeals May 4, 1933, and was submitted on an agreed statement of facts. To date the Board has not rendered its decision.

3. Without waiving any right of appeal from the decision of the Board of Tax Appeals or any right to have such decision reviewed in this proceeding the receivers recommend that the question of allowance of disallowance of this claim be held in abeyance until a final determination of this controversy under the laws of the United States.

Wherefore said receivers pray:

1. That said claim for taxes and interest under the Agricultural Adjustment Act be disallowed.

2. That the claim for 1919 Income Tax be held in abeyance until final determination of the controversy under the laws of the United States.

3. That this report be approved and allowed.

Respectfully submitted.

WILLIAM M. BUTLER,
JAMES A. MCDONOUGH,
Receivers of Hoosac Mills Corporation.

12 In United States District Court

Motion for leave to amend receivers' first report on claims

Filed April 27, 1934

Now come the receivers in the above-entitled cause and say that their first report on claims is to be heard on the thirtieth day of April 1934, and that it has been assumed by the court and counsel that the matters then and there to be argued are based solely on matters of law which have chiefly to do with the constitutionality of the Act obtaining in the premises, but that they are advised by counsel and therefore believe and aver that the first sentence of paragraph 11, which reads as follows:

"The 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",

raises certain questions of fact dehors the record.

Wherefore, in order that there may be no misunderstanding, the receivers move that they be allowed to strike from the report the words "The 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" and that the report be accordingly amended.

WILLIAM M. BUTLER,
JAMES A. McDONOUGH,
Receivers of Hoosac Mills Corporation.

April 30, 1934. Allowed.

E. H. B., *D. J.*

Recital as to hearing, etc.

The above-mentioned motion for leave to amend was allowed by the court on April 30, 1934.

Also on the said thirtieth day of April A. D. 1934, said cause came on to be heard by the court on the part of the receivers' first report on claims relating to the claim of the United States for taxes under the Agricultural Adjustment Act, the Honorable Elisha H. Brewster, District Judge, sitting.

Said cause was thence continued under advisement from
13 term to term to the September Term, A. D. 1934, when, to wit, October 19, 1934, an opinion of the court was announced, ruling that the claim presented by the United States is a valid claim and should be allowed as such in the receivership proceedings.

In United States District Court

Supplemental memorandum or findings of fact and conclusions of law under equity rule 70½

Filed January 4, 1935

BREWSTER, J.: Upon the receivers' report on the claim of the United States for taxes under the Agricultural Adjustment Act, and at the request of the Government, I make the following findings of fact pursuant to Equity Rule 70½:

Findings of Fact

1. On or about February 12, 1934, the United States, through Joseph P. Carney, Collector of Internal Revenue for the collection district of Massachusetts, filed a claim with William M. Butler and James A. McDonough, receivers in this proceeding for the Hoosac Mills Corporation, seeking thereby to collect certain cotton processing and floor stocks taxes in the amount of $81,694 28, plus interest, due and owing from the said corporation under the provisions of Sections 9 and 16 of the Act of Congress approved May 12, 1933, known as the "Agricultural Adjustment Act" (C. 25, 48 Stat. 31), and also certain income and profits taxes for the year 1919, due and owing from the said corporation as transferee of the Nemasket Mill.

2. The present issue relates only to the claim for cotton processing and floor stocks taxes under the Agricultural Adjustment Act.

3. The Hoosac Mills Corporation, a processor of cotton, or its receivers, had previously filed with the Collector of Internal
14 Revenue at Boston original and amended floor stocks tax returns containing an inventory of articles processed wholly or in chief value from cotton, held for sale or other disposition by it on August 1, 1933, and showing the tax liability on account thereof under Section 16 of the Agricultural Adjustment Act, and also processing tax returns for the period August 1, 1933, to October 7, 1933, inclusive, showing the number of pounds of cotton put in process by it during said period, and showing the tax liability on account thereof under Section 9 of said Act. A portion of the taxes shown therein was paid by the Hoosac Mills Corporation or the receivers.

4. The Government's claim is for the unpaid balance and interest (plus interest thereon) and is made up as follows:

Section 9 (Processing Taxes)		
August	$5,726 05	Tax
	286.30	5% penalty
	74.44	Assessed int., 11/29/33–1/8/34
	36.73	Accrued int. ($5,800.49) at 12%, 1/18/34–2/9/34
August 2 Additional	17,701.44	Tax
	59 00	Accrued int. ($5,900 48) at 12%, 1/2/34–2/1/34
	31.47	Accrued int. ($11,800.96) at 12%, 2/2/34–2/9/34
September	12,835.14	Tax.
	64 18	Accrued int ($6,417.57) at 12%, 11/30/33–12/30/33
	290 93	Accrued int ($12,833.14) at 12%, 12/31/33–2/9/34
October	6,862 72	Tax.
	22 88	Accrued int. ($2,288 57) at 12%, 12/1/33–12/31/33
	45 77	Accrued int. ($4,577 14) at 12%, 1/1/34–1/31/34
15	20 59	Accrued int ($6,862 72) at 12%, 2/1/34–2/9/34.
Section 16 (Floor Stocks Taxes):		
August	1,102 85	Tax.
	2 76	Accrued int. ($275 71) at 12%, 10/1/33–10/31/33
	5 51	Accrued int ($551 42) at 12%, 11/1/33–11/30/33
	8 27	Accrued int. ($827.13) at 12%, 12/1/33–12/31/33.
	14 34	Accrued int. ($1,102.85) at 12%, 1/1/34–2/9/34.
August Additional	36,363 52	Tax
	90 91	Accrued int. ($9,090 88) at 12%, 12/2/34–2/1/34
	48 48	Accrued int. ($18,181.76) at 12%, 2/2/34–2/9/34.
Total	81,694 28	

5. There is no dispute regarding the amount of the balance due the United States on this tax claim. The court finds from the evidence that the total amount of the claim as set forth in paragraph 4 is now due and owing the United States from the corporation, that it has been correctly computed, and that it is correctly made up in the manner indicated in said paragraph 4.

6. Pursuant to the provisions of said Act, the Secretary of Agriculture determined, and, under date of July 14, 1933, proclaimed that rental and/or benefit payments were to be made with respect to cotton, a basic agricultural commodity.

7. Under date of July 14, 1933, with the approval of the President, the Secretary of Agriculture made Cotton Regulations, Series 2. These regulations in part provide as follows:

I do hereby ascertain and prescribe that for the purposes of said Act the first marketing year for cotton shall begin August 1, 1933.

16 I do hereby determine as of August 1, 1933, that the processing tax on the first domestic processing of cotton shall be at the rate of 4.2 cents per pound of lint cotton, net weight, which rate equals the difference between the current farm price for cotton and the fair exchange value of cotton, which price and value, both as defined in said Act, have been ascertained by me from available statistics of the Department of Agriculture.

8. In the aforesaid regulations and in Cotton Regulations, Series 2, Supplement 1, signed by the Secretary of Agriculture and approved by the President on July 28, 1933, conversion factors computed from available statistics of the Department of Agriculture were established to determine the amount of tax imposed or refunds to be made with respect to articles processed from cotton. Certain definitions were also established therein.

9. The Secretary of Agriculture determined the difference between the current average farm price of cotton and the fair exchange value of cotton as of August 1, 1933, to be 4.2 cents per pound of lint cotton, net weight, from available statistics of the Department of Agriculture. The rate of tax was based on reports and statistics gathered by the Department of Agriculture in accordance with the established practice, from which were computed averages (1) of farm price of cotton during the period August 1, 1909, to July 1, 1914 (12.4 cents per pound), and (2) of the farm price of cotton on June 15, 1933 (8.7 cents per pound), and also an index of prices paid by farmers for commodities which they bought (103 percent). Thus from the available statistics of the Department of Agriculture the Secretary ascertained the "current average farm price" and the "fair exchange value" of cotton.

10. The processing and floor stocks taxes involved were computed at the rate of 4.2 cents determined by the Secretary of Agriculture.

11. The prescribed marketing year was consistent with the cotton year recognized by the Department of Agriculture, the Department

of Commerce, private agencies in the United States and foreign countries, as well as by earlier congressional act, and was properly ascertained and prescribed by the secretary.

17 12. The receivers do not question the regularity of the acts of the Secretary of Agriculture under the Agricultural Adjustment Act and do not question that his regulations, and the provisions thereof, were properly and correctly promulgated and were in conformity with the said Act. They also do not question that the rate of tax was properly computed in accordance with the provisions of the said Act. At the hearing, language questioning the legality of acts of the Secretary of Agriculture was, on motion of the receivers, stricken from the receivers' report.

13. The evidence introduced in behalf of the United States discloses and supports the factual grounds upon which the Congress proceeded in its declaration of an emergency and of a legislative policy, and upon which the Secretary of Agriculture proceeded in executing that policy. No evidence has been introduced in behalf of the receivers of the Hoosac Mills Corporation tending to contradict or disprove the findings made by the Congress, and the basis for such findings, in the declaration of emergency set out in the Agricultural Adjustment Act.

14. In addition to the showing made by the evidence submitted by the United States, as set out above, Government Exhibits 2–3, 2–4, 2–5, 2–6, 3–1, 3–2, 3–3, which are uncontroverted, show the nature and details of the factual formulae prescribed by Congress which are to be considered in the determination by the Secretary of Agriculture of the rates of processing taxes on basic agricultural commodities. In addition, there is in the record uncontroverted testimony showing the physical basis on which the Secretary of Agriculture ascertained and established the conversion factors to determine the amount of tax imposed or refunds to be made with respect to articles processed from cotton.

Conclusions of law

The conclusions of law, as stated in my opinion of October 19, 1934, are to be deemed as conclusions of law rendered pursuant to said Equity Rule 70½ with two additional conclusions: (1) I rule that the Agricultural Adjustment Act does not violate the provisions of Article 1, Section 7, Clause 1, of the Constitution; (2) I

18 rule that there is now due and owing from the Hoosac Mills Corporation to the United States of America the sum of $81,697.28.

In United States District Court

Decree

January 4, 1935

This cause came on for final hearing on the receivers' first report on claims (insofar as the report relates to, and recommends the disallowance of, the claim of the United States for taxes under the Agricultural Adjustment Act) and the objections of the United States made to the said recommendations of the receivers. Upon the issues as thus made, evidence was introduced by both parties, and the court having considered all the evidence, oral arguments and briefs of both parties, and being fully advised in the premises, it is by the court this fourth day of January, 1935, found, ordered, adjudged and decreed:

1. That the Hoosac Mills Corporation is indebteded to the United States in the sum of eighty-one thousand, six hundred ninety-four dollars and twenty-eight cents ($81,694.28), plus interest as provided by law, said sum representing cotton processing tax due and owing under the Argicultural Adjustment Act, approved May 12, 1933, as amended, in the amount of forty-three thousand, four hundred eighty-six dollars and nine cents ($43,486.09), plus interest and penalties thereon computed to and including February 9, 1934, in the amount of five hundred seventy-one dollars and fifty-five cents ($571.55), and also cotton floor stocks tax due and owing under said Act, in the amount of thirty-seven thousand four hundred sixty-six dollars and thirty-seven cents ($37,466.37), plus interest thereon computed to and including February 9, 1934, in the amount of one hundred seventy dollars and twenty-seven cents ($170.27).

2. That the receivers' first report on claims be, and it hereby is, disapproved insofar as it relates to the claim of the United States for said cotton processing tax and said cotton floor stocks tax.

3. That the claim of the United States is a valid claim, and should be, and the same hereby is, allowed.

4. That William M. Butler and James A. McDonough, receivers of the Hoosac Mills Corporation, be, and they hereby are, ordered and directed to allow the claim of the Government of the United States as follows:

(a) Forty-four thousand fifty-seven dollars and sixty-four cents ($44,057.64), representing the principal of the processing tax item of claim, in which are included interest and penalties computed to and including February 9, 1934; plus

(b) Interest on forty-three thousand four hundred eight-six dollars and nine cents ($43,486.09) at the rate allowed by law from and including February 10, 1934, to the date of payment;

(c) Thirty-seven thousand six hundred thirty-six dollars and sixty-four cents ($37,636.64) representing the principal of the floor stocks tax item of claim in which is included interest computed to and including February 9, 1934; plus

(d) Interest on thirty-seven thousand four hundred sixty-six dollars and thirty-seven cents ($37,466.37) at the rate allowed by law from and including February 10, 1934, to the date of payment.

5. This decree has no bearing in any way on that part of the receivers' first report on claims dealing with the claim of the United States for income taxes, which such matter and any other matters relating to said report are hereby reserved for the further consideration and determination of this court.

ELISHA H. BREWSTER,
Judge of the United States District Court
for the District of Massachusetts.

Recital as to petition for appeal and allowance thereof

From the foregoing decree a petition for appeal to the United States Circuit Court of Appeals for the First Circuit was filed by the receivers of the Hoosac Mills Corporation on January 26, 1935, and allowed by the court on the twenty-eighth day of said January.

In United States District Court

Opinion

October 19, 1934

[8 Fed. Supp. 552]

BREWSTER, J.: The receivers of the Hoosac Mills Corporation have presented to this court a report on a claim of the United
20 States for $81,694.28, representing a balance due on the processing and floor stock taxes assessed pursuant to Sections 9 and 16 of the Act of May 12, 1933, known as the Agricultural Adjustment Act. The receivers recommended that this claim be disallowed, and ask that the report be approved.

The report brings into question the validity of the tax. The matter was heard on evidence submitted by the Government, oral arguments and briefs. The evidence was largely received over the objections of the receivers, and so far as it or the arguments of both parties relate to the occasion for, the expediency of, or the results, beneficial or otherwise, of the Agricultural Adjustment Act, they must be disregarded, except as they tend to disclose the factual grounds upon which Congress proceeded in its declaration of an emergency and of a legislative policy, and the Secretary of Agriculture proceeded in executing that policy. It can here be said, as was stated by Chief Justice Hughes in Home Building & Loan Association v. Blaisdell, 290 U. S. 398, at page 444, that "The declarations of the existence of this emergency by the legislature . . . cannot be regarded as a subterfuge or as lacking in adequate basis . . . The finding of the legislature . . . has support in the facts of which we take judicial notice."

The facts controlling upon the issues presented may be briefly stated as follows:

On July 14, 1933, with the approval of the President, the Secretary of Agriculture promulgated a regulation which in part provided as follows:

"I do hereby ascertain and prescribe that for the purposes of said Act the first marketing year for cotton shall begin August 1, 1933.

I do hereby determine as of August 1, 1933, that the processing tax on the first domestic processing of cotton shall be at the rate of 4.2 cents per pound of lint cotton, net weight, which rate equals the difference between the current average farm price for cotton and the fair exchange value of cotton, which price and value, both as defined in said Act, have been ascertained by me from available statistics of the Department of Agriculture."

21 The prescribed marketing year was consistent with the cotton year recognized by the Department of Agriculture, the Department of Commerce, private agencies in the United States and foreign countries, as well as by earlier congressional act. The rate of the tax was based upon reports and statistics gathered by the Department of Agriculture in accordance with the established practices from which were computed averages (1) of farm prices of cotton during the period August 1909 to July 1914 (12.4 cents per pound), and (2) of the farm prices of cotton on June 15, 1933 (8.7 cents per pound), and also an index of prices paid by farmers for commodities which they bought (103 percent). Thus, from the available statistics in the Department of Agriculture, the Secretary of Agriculture ascertained the "current average farm price" and "the fair exchange value" of the commodity involved. He determined the rate at which the processing and floor stock tax was to be levied, and thereupon proceeded to fix the rate of taxes at 4.2 cents per pound.

The Hoosac Mills Corporation is a processor of cotton, and had, or the receivers had, filed returns showing liability for the processing tax under Section 9 of the Agricultural Adjustment Act for August, September, and October 1933, and showing the floor stock tax for August 1933. There is no dispute regarding the amount of the balance due on account of this tax liability.

The question whether the claim for these taxes can be recognized as a valid claim turns upon the constitutionality of Title I of the Agricultural Adjustment Act. The Act, in part, is entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency." The title contains a declaration of emergency and a declaration of legislative policy which are set forth in the following language:

"Title I. Agricultural Adjustment—Declaration of Emergency.

"That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has
22 largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities, and render imperative the immediate enactment of title I of this Act.

"DECLARATION OF POLICY

"SEC. 2. It is hereby declared to be the policy of Congress—

"(1) To establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. The base period in the case of all agricultural commodities except tobacco shall be the pre-war period, August 1909–July 1914. In the case of tobacco, the base period shall be the post-war period, August 1919–July 1929.

"(2) To approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets.

"(3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the pre-war period, August 1909–July 1914."

For present purposes the following summary of the provision of the Act may be deemed adequate:

Part 2 of the title confers upon the Secretary of Agriculture "in order to effectuate the declared policy" power to provide for
23 crop reduction and benefit payments with respect to basic agricultural commodities through "agreements with producers and other voluntary methods" (Sec. 8 (1)).

To enter into marketing agreements with persons or associations "engaged in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof" (Sec. 8 (2)); and to issue licenses to persons or associations so engaged (Sec. 8 (3, 4)), the licenses being subject to terms and conditions compatible with statutes which might be necessary to eliminate

unfair practices or charges which tended to prevent the effectuation of the declared policy.

The Act further provides that in order "to obtain revenue for extraordinary expenses incurred by reason of the national economic emergency, there shall be levied processing taxes" as provided in the Act. When the Secretary of Agriculture determines that benefit payments are to be made, he shall proclaim such determination and a processing tax shall be in effect from the beginning of the next marketing year. The tax is levied on the first domestic processing of the commodity and is to be paid by the producer. The rate of the tax is fixed by the Secretary of Agriculture, but it must conform to the requirements of sub-section b of Section 9, and is to be determined as of the effective date of the tax. The rate must be adjusted from time to time to conform to the requirements of the statute at such intervals as the secretary may deem necessary to effectuate the declared policy (Sec. 9 (a)).

Subsection b of Section 9 is in the following terms:

"(b) The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity; except that if the Secretary has reason to believe that the tax at such rate will cause such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depression of the farm price of the commodity, then he shall cause an appro-
24 priate investigation to be made and afford due notice and opportunity for hearing to interested parties. If thereupon the Secretary finds that such result will occur, then the processing tax shall be at such rate as will prevent such accumulation of surplus stocks and depression of the farm price of the commodity * * *."

Subsection c provides that for the purposes of the title the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period, namely, August 1909 to July 1914. Cotton and any regional or market classification, type, or grade thereof, is included in the term "basic agricultural commodity" (Sec. 11), and in case of cotton the term "processing" means the spinning, manufacturing or other processing except ginning of cotton (Sec. 9 (d) (2)).

The Act appropriated in addition to the $100,000,000 out of other money in the treasury "the proceeds derived from all taxes imposed by" Title I of the Act "to be available to the Secretary of Agriculture for expansion of markets, removal of surplus agricultural products, administration expenses, rentals, and benefit payments and refund on taxes. The tax may be abated or refunded if the Secretary of Agriculture shall certify that the effect of the tax is to substantially reduce consumption and increase the surplus of the commodity (Sec. 15 (a)). The tax on products processed for exportation may also be refunded (Sec. 17 (2)). If the Secretary de-

termines that the tax is causing or will cause to the processor disadvantages in competition, he may, by proclamation, specify the competing commodity and the rate of the compensating tax necessary to prevent such disadvantages in competition (Sec. 15 (d)). A compensating tax is also levied on imported articles processed from commodities to which the Act relates (Sec. 15 (e)). The determination of the secretary upon the effect of the Act is made only after due notice and hearing.

The Act provides for a floor stock tax on sales, or other disposition of articles already processed which are held for sale at the time the processing tax takes effect. When the Act ceases to be effective there is a refund with respect to processed articles held for sale or distribution at the time of the termination of the Act.

25 Two underlying issues are presented. They are (1) whether the processing tax and the floor stock tax are valid impositions, and (2) whether the proceeds of the tax are appropriated for constitutional purposes. The issue, as I see it, is a broad one. It comprehends an inquiry into not only the scope of the taxing powers of Congress, but also into the powers of the Federal government to regulate the production and the prices of basic agricultural commodities.

First. The receivers contend that the taxes are not lawful, because they are direct taxes and not apportioned, or if they be regarded as excises they do not meet the requirements of uniformity.

The processing tax is clearly a tax upon the exercise of a particular use of property, namely, the privilege of manufacturing or otherwise processing a commodity. The tax conforms to that class of taxes upheld as proper excise taxes in the Supreme Court. Knowlton v. Moore, 178 U. S. 41, 48; Bromley v. McCaughn, 280 U. S. 124; Patton v. Brady, 184 U. S. 608; McCray v. United States, 195 U. S. 27; Nicol v. Ames, 173 U. S. 509. With respect to the floor tax, the nature of the tax is not so clearly defined because of the ambiguity in the language of Section 16. Section 16 (a) provides that upon the sale or other disposition of any article processed from any commodity, with respect to which a processing tax is to be levied, which is "held for sale or other disposition" when the processing tax first takes effect, or when it is wholly terminated, by any person, there shall be made a tax adjustment according to subsections 1 and 2. Subsection (1) fixes the rate of the tax, and also provides that "Whenever the processing tax first takes effect, there shall be levied, assessed, and collected" the tax. Subsection (a) provides for a tax adjustment when the sale is made, and (a (1)) provides that the tax shall be assessed when the processing tax takes effect. This apparent conflict can be reconciled by construing (a (1)) as merely fixing the time when the floor stock tax takes effect and the rate of the tax. This would be consistent with (a (2)) which fixes the time when the floor-stock tax shall cease to operate. It obviously was the legislative intention that the two taxes should operate contemporaneously (a (1)) sets out the method of adjust-

ment as to goods on hand when the law became effective, and
26 (a (2)) the method of adjustment as to goods on hand when the law ceases to be effective. In both instances, the adjustment is to be made "upon the sale or other disposition of the article." While this interpretation is not entirely free from doubt, it is to be favored, because the tax can then be treated as a tax imposed on the sale or other disposition of property, and therefore capable of being sustained as an excise. If it is held to be a tax levied or collected because of the general ownership of property, the tax would be a direct tax and fail, because it was not apportioned. Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429; Dawson v. Ky. Distilleries Co., 255 U. S. 288. If reasonably possible, that construction will be adopted which upholds the constitutionality of the Act. Plymouth Coal Co. v. Penn., 232 U. S. 531; Buttfield v. Stranahan, 192 U. S. 470; Nicol v. Ames, supra.

If the tax is deemed to be one imposed upon the holding of the article for sale or other disposition, I can see no distinction in principle between the floor-stock tax and the excise, considered in the case of Patton v. Brady, 184 U. S. 608, and it comes within the definition of an excise adopted in Bromley v. McCaughn, supra, where the court remarked:

"This court has consistently held, almost from the foundation of the government, that a tax imposed upon a particular use of property or the exercise of a single power over property incidental to ownership, is an excise which need not be apportioned."

The receivers argue that the tax does not comply with the requirements of Section 8 of Article 1 of the Constitution, that all excises shall be uniform throughout the United States. The argument is based upon the provisions of Section 11, which authorizes the Secretary of Agriculture to exclude from the operation of the Act any basic commodity or any regional classification thereof. They say that if the power is exercised a commodity from one part of the United States may be subject to the Act, while the same commodity from another section would not be. "But what the Constitution commands is the imposition of a tax by the rule of geographical uniformity, not that in order to levy such a tax objects must
27 be selected which exist uniformly in the several states." Mr. Justice White in Knowlton v. Moore, supra; Gottlieb v. White, 1 Fed. Supp. 905; affirmed 69 Fed. (2) 792. The tax meets this test of uniformity. Every processor of the commodity, wherever it may have originated, would be liable to the same tax upon that particular commodity or classification thereof. If the commodity happened to fall within the class of excluded commodities, the Act would not operate upon the processing of it, and no tax could be imposed.

SECOND. The constitutionality of the Act is assailed, upon the ground that it unlawfully delegates legislative power to the executive branch of the government. There are those who question whether the earlier accepted doctrine of the separation of powers of the government has today sufficient vitality to render it an adequate

basis for setting aside an Act of Congress on that ground. Modern writers refer to the doctrine as merely an "American primitive" or a constitutional dogma for which Montesquieu is held responsible, because he once said that the English people owed their liberty to the separation of governmental functions. Whether it is an "American primitive" or a dogma of foreign origin, it was recognized by Chief Justice Marshall in Wayman v. Southard, 10 Wheat. 1. In Field v. Clark, 143 U. S. 649, the doctrine was deemed "vital to the integrity and maintenance of the system of government ordained by the Constitution". See Kilbourn v. Thompson, 103 U. S. 168; Union Bridge Co. v. United States, 204 U. S. 364, 381; J. W. Hampton v. United States, 276 U. S. 394; Mass. v. Mellon, 262 U. S. 447; O'Donoghue v. United States, 289 U. S. 516. There has, nevertheless, developed in the United States a marked tendency, which has attained considerable momentum during the last two years, toward the extension of fields of governmental activities, and hand in hand with this tendency has gone ever-increasing power to administrative officers to perform functions not strictly administrative but which partake of the character of legislative or judicial functions. Bureaus have been created with authority to interfere with the affairs of the individual. Regulations and executive orders with the force of law have been promulgated and have been upheld, even where a violation resulted in a penalty, United States v. Grimaud,
28 220 U. S. 506. The result of this tendency has been a vast accumulation of administrative law, so called, applied by boards, commissions and officials. (See Report of the Special Committee on Administrative Law to the Bar Association submitted at the 57th Annual Meeting.) The drift is not peculiar to the United States. The courts of England have given serious consideration to the growing mass of administrative law in that country. Some five years ago the Lord Chancellor referred to a committee the duty of considering "the powers exercised by or under the direction of (or by persons or bodies appointed especially by) Ministers of the Crown by way of (a) delegated legislation * * * and to report what safeguards are desirable or necessary to secure the constitutional principles of the sovereignty of Parliament and the rule of law". See Administrative Law in England, Iowa Law Review, Vol. XVIII,

It is significant, however, that up to the present time no Act of Congress, so far as I am aware, has been held invalid because it conferred legislative powers upon an executive or administrative officer, though several acts have been attacked on this ground. Thus the President's authority to supend for such time as he should deem just the provisions of the Tariff Act of 1890 relating to the free introduction of certain commodities was upheld in Field v. Clark, supra. The Secretary of the Treasury was held to be lawfully authorized to establish standards to govern in the importation of teas, and to forbid importation which did not come up to the fixed standard. Buttfield v. Stranahan, 192 U. S. 470. The court has also sustained an act authorizing the Interstate Commerce Commission to designate

standard weights and maximum variation of drawbars for freight cars. St. Louis & Iron Mt. R. R. v. Taylor, 210 U. S. 281, and likewise an act giving the President power to change rates under flexible tariff provisions. J. A. Hampton v. United States, supra. For other cases upholding the delegation of authority involving the exercise of powers of a legislative character, see Erhardt v. Boaro, 113 U. S. 537; Avent v. United States, 266 U. S. 127; United States v. Grimaud, supra; United States v. Atchison, T. & S. F. R. R. Co., 234 U. S. 476; Union Bridge Co. v. United States, 204 U. S. 364;
Ryan v. Amazon Petroleum Corp., 71 Fed. (2) 1; Williams-
29 port Wire Rope Co. v. United States, 277 U. S. 551; Blair v.
Osterlein, 275 U. S. 220; Heiner v. Diamond Alkali Co., 288 U. S. 502; United States v. Shreveport Grain Co., 287 U. S. 77; P. F. Petersen Baking Co. v. Bryan, 290 U. S. 570.

These cases demonstrate that when Congress has gone as far as it reasonably can in declaring a policy, and the means to accomplish the end sought, leaving to administrative officers the filling in of details, the statute will very likely be upheld, even if no definite standard has been established, and though the functions are legislative in character.

In the light of the foregoing, it is necessary to consider the authority conferred upon the Secretary of Agriculture by Title I of the Agricultural Adjustment Act. The Congress declared a policy which had for its objective the raising of the price level of agricultural commodities, and restoring the purchasing power of such commodities to that which obtained in the pre-war period, 1909–1914. To that end, it authorized the Secretary to enter into agreements with producers to reduce production of certain specified basic agricultural products, to enter into marketing agreements with producers, to issue licenses permitting processors and associations of producers to engage in the handling in interstate commerce of agricultural commodities, upon such terms and conditions consistent with acts of Congress as the secretary might deem necessary to eliminate unfair practices or charges that would tend to prevent the effective accomplishment of the declared policy or hinder the restoration of normal economic conditions. This program outlined by Congress necessarily involved the expenditure of large sums of money for benefit payments and for other purposes. To meet, in part at least, these expenditures, Congress saw fit to impose an excise on processing of certain basic agricultural products. It laid down a formula by which the rate of the tax was to be determined, and prescribed the source from which the secretary should derive his data in applying the formula. The Act leaves it with the secretary to determine what basic commodities or classifications thereof should be brought under the Act, and to fix the time when the tax provisions should become ef-
fective, and when they should cease to operate.
30 It also, in Section 9 (b), permits the secretary to fix a rate
which may not conform to the formula. There is a provision that if the secretary has reason to believe that the rate will reduce

the consumption, so as to result in a surplus of the commodity, or depress farm prices, he shall cause an investigation to be made, and if he finds that these results will occur, the rate then is to be such as will prevent such surplus or depression of prices. Obviously, the secretary furnishes his own standard of what is required by these provisions. If Congress in its wisdom deemed it expedient to introduce into the legislation flexible provisions in order that a strict application may not defeat the intended end, it is doing no more than it has done in earlier tax legislation. Certain provisions of the Internal Revenue Act may be cited as illustrations:

Sections 327, 328 of the Revenue Act of 1918 and 1921; Williamsport v. United States, supra; Heiner v. Diamond Alkali Co., supra; Blair v. Osterlein, supra.

The question arises, therefore, whether it can fairly be said respecting the Act that Congress, and not the secretary, has imposed the tax, and having gone as far as it reasonably can in forwarding the avowed policy of the legislation, has conferred upon the secretary merely discretionary authority to be exercised only in the execution of the law.

The formula for fixing the rate of taxes is somewhat indefinite. Statistics of the Department of Agriculture at best are only averages obtained from variable factors subject to different interpretations. The discretion to fix the rate, regardless of the formula, and to decide when and on what commodities a processing tax shall be levied, would seem to lodge with the secretary power to impose taxes—a power which the Constitution placed with the legislative branch. It must, I think, be conceded that legislative functions are conferred upon administrative officers by the Act. But whether there has been an unlawful delegation of power is to be doubted upon the authorities. The courts have not as yet clearly defined the line between lawful and unlawful delegation of legislative power. While the Agricultural Adjustment Act would seem to come near the line, it would be presumptuous for this court to undertake to put the Act outside
the circle of the Constitution in view of earlier acts already
31 cited which have received the sanction of the Supreme Court.

So far as we are concerned with the delegation of legislative authority, I can see no sound distinction in principle between statutes imposing a duty on importation, and one imposing an excise on domestic manufactures.

THIRD. The receivers make the further contention that the tax is invalid because the Act constitutes an unlawful attempt to legislate outside the powers granted to Congress and within the field of State powers.

The Government argues that the receivers, as taxpayers, cannot attack the validity of the taxes by questioning the purposes for which they have been levied. If this issue involved only the legality of appropriations of proceeds of taxes lawfully exacted, the attack must necessarily fail. The course of history under the Constitution furnishes numerous instances where appropriations have been made for

territorial expansion, to advance education, and to promote particular industries. Large appropriations have already been made to establish and maintain the Department of Agriculture and the varied activities of that Department. It is inconceivable that all these appropriations could have been illegal. Story in his work on the Constitution, Sec. 991, says:

"Appropriations have never been limited by Congress to cases falling within the specific powers enumerated in the Constitution, whether these powers be construed in their broad or narrow sense."

But there is implicit in the issue something more than the power to appropriate public funds. While the statute (Sec. 9) recites that the processing tax is to be levied "to obtain revenue for extraordinary expenses incurred by reason of the National Emergency Act", the Act, taken as a whole, leaves no doubt of the legislative intent to levy the tax for the purposes of defraying the expenses of administering the Act and paying the debts incurred for benefit payments, and rentals incident to the crop-reduction program.

The taxing power of Congress, while extremely broad, is not without its limitations, and one of these is that it shall be exercised
32 for public uses as distinguished from private ends. Loan Association v. Topeka, 20 Wall. 655. In that case the court observed that:

"Of all the powers conferred upon government, that of taxation is most liable to abuse. Given a purpose or object for which taxation may be lawfully used and the extent of its exercise is in its very nature unlimited."

But the court adds that:

"This power can as readily be employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited wealth and prosperity to the other, if there is no implied limitation of the uses for which the power may be exercised."

And in this opinion taxes are defined as "burdens or charges imposed by the legislature upon persons or property to raise money for public purposes."

The Constitution has restricted the power to levy taxes to two purposes, namely, payment of debts of the United States, and to provide for the general welfare of the United States. This "general welfare" clause does not embody a specific grant of power. Jacobson v. Mass., 197 U. S. 11; Sherlock v. Alling, 93 U. S. 99. If, therefore, it should appear on the face of the Act that it was calculated to benefit only private interests, it would be the duty of the court, I take it, to declare the tax unlawful. It is not, however, within the province of the court to substitute its judgment for that of Congress upon the effect of a particular measure manifestly designed to promote the general welfare of the people of the United States. It is no objection that individuals will derive profit from the consummation of the legislative policy. Individuals benefit from every bounty, subsidy, or pension provided for by statute, whether Federal or State. Compare United States v. Realty Co., 163 U. S. 427; Legal Tender

Case, 79 U. S. 457; Mountain Timber Co. v. Washington, 243 U. S. 219, 238; Noble State Bank v. Haskell, 219 U. S. 104. Another rule affecting power of Congress to levy taxes is to be found in cases such as The Child Labor Tax Case, supra, and Hill v. Wallace, supra.

This rule is that the law levying the tax must be a genuine
33 revenue measure, and not one intended to operate merely as a penalty in order to "coerce people of a State to act as Congress wishes them to act in respect of a matter completely the business of the State government under the Federal Constitution" (Chief Justice Taft in Child Labor Tax, p. 39.) The Agricultural Adjustment Act does not offend in this respect. The principal purpose of the Act is to regiment the agricultural industry by regulating production of certain agricultural commodities. The tax is incidental to this main object. The power to tax is not being used to coerce compliance with regulations prescribed by the Secretary of Agriculture.

The tax, on the contrary, is laid to produce revenue which Congress has, by appropriation, put at the disposal of the administrative officer to be used for the purposes of the Act.

The third limitation is stated in the opinion of Veazie Bank v. Fenno, 8 Wall. 533 at 541, where it is said:

"There are, indeed, certain virtual limitations (upon the taxing power) arising from the principles of the Constitution itself. It would undoubtedly be an abuse of the power if so exercised as to impair the separate existence and independent self-government of the States, or if exercised for ends inconsistent with the limited grants of power in the Constitution."

It is necessary, therefore, to consider the purposes of the legislation in order to determine whether they are consistent with the granted powers.

The language employed in framing the Act clearly indicates a legislative intent to bring the powers exerted within the commerce clause of the Constitution. Section 8 (2) and (3) of the Act, which deal with marketing agreements and licenses, by express terms limit the authority of the secretary to deal only with those engaged in handling, in the course of interstate commerce, agricultural commodities. The provisions of Section 8 (1) relating to the reduction of acreage or production, and the payment of rental or benefits, are not so limited. But when read in connection with the declaration of an emergency it becomes apparent that the legislature sought

to connect the power with interstate commerce by proceeding
34 on the theory that "the acute economic emergency" which was partly the result of disparity between agricultural and other prices, destroying the purchasing power of farmers, gave rise to conditions in the basic industry of agriculture which affected transactions in agricultural commodities with the national public interest, and which burdened and obstructed the normal currents of commerce in such commodities. Whereupon Congress declared it to be its policy to restore farm prices to prewar levels, and to that end

granted broad powers to the Secretary of Agriculture to enter upon a program which it was hoped would effectuate the policy and end the disparity. Here we note an ingenious attempt to bring this legislation within the scope of the powers conferred by the commerce clause.

We are, then, brought to an inquiry into the limitations which the courts have set about the commerce powers of the Congress. The grant is broad in its terms. The provisions of the grant have been accorded liberal interpretation, and within its proper scope it is said to be unlimited. The legislative motive in its exercise has been held to be "free from judicial suspicion and inquiry." (Chief Justice Taft in Child Labor Tax Case, supra, p. 39.)

It is necessary, however, to keep in mind the observation of Chief Justice Marshall in McCulloch v. Maryland, 4 Wheat. 416, 423, that Congress may not "under the pretext of executing its powers pass laws for the accomplishment of objects not entrusted to the government."

The development of the regulatory powers of Congress under the commerce clause presents an interesting study. The power was first applied to the instrumentalities of commerce. (Examples: Interstate Commerce Act; Employers' Liability Act.) The power has been exerted to prevent monopolies, and restraints of trade. (Examples: Anti-trust Laws, see Standard Oil of New Jersey v. United States, 221 U. S. 1.) It was also extended to prohibit transportation in interstate commerce of certain subjects of traffic the transportation of which was deemed to be detrimental to the public welfare. (Lottery Case, Champion v. Ames, 188 U. S. 321.)

But in Hammer v. Dagenhart, supra, it was held that the
35 power could not be exercised to exclude from commerce articles inherently innocent.

This outline is sufficient to illustrate the marked tendency of Congress, approved by the court, to centralize power in the Federal government by invoking the grant contained in the commerce clause.

There are, however, to be inferred from the cases limitations imposed upon the exercise of the commerce power. It cannot be applied to the regulation of the manufacture of goods even though intended for shipment in interstate commerce. United States v. E. C. McKnight, 156 U. S. 1; see also Hammer v. Dagenhart, supra; Utah Power & Light Co. v. Pfost, 286 U. S. 165; Crescent Cotton Oil Co. v. Mississippi, 257 U. S. 129; Chassanoil v. Greenwood, 291 U. S. 584; nor to the mining of products. Delaware, Lackawanna & Western R. R. Co. v. Yurkonis, 238 U. S. 439; Heisler v. Thomas Colliery Co., 260 U. S. 245; Oliver Iron Co. v. Lord, 262 U. S. 172. By the same token, the commerce powers, I take it, could not be extended to reach a crop of wheat or cotton, notwithstanding the farmer may have intended to introduce it into the channels of commerce. If, therefore, Congress had undertaken by coercive measures to regulate the amount of wheat or cotton a farmer should produce, a serious constitutional question would arise whether Congress had not ex-

tended the frontier of Federal bureaucratic activities too far. But, as has already been noted, the authority delegated to the Secretary of Agriculture by the first subdivision of Section 8 cannot be brought to bear up any one who does not voluntarily submit to it and this for a monetary consideration. The authority in the second subdivision also presupposes agreement between the secretary on the one hand and processors and producers on the other. It is only in the third subdivision that the regulatory powers may be forced upon the individual against his will, and these powers are restricted in their application to those "engaged in the handling in the current of interstate and foreign commerce" of agricultural commodities.

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. It is conceivable that
36 the power to license may be exercised through the imposition of conditions in such a way that the regulation would be beyond the scope of the legitimate powers of Congress under the commerce clause. Such a result, however, is not to be presumed. Mountain Timber Co. v. Washington, supra; Prentis v. Atlantic Coast Line, 211 U. S. 210; Henderson Water Co. v. Corporation Commission, 269 U. S. 278; Lieberman v. Van De Carr, 199 U. S. 552; Doherty v. McAuliffe, 7 Fed. Supp. 49.

These cases also dispose of the contention of the receivers—that the legislation is class legislation, imposing burdens upon one class for the benefit of another.

Furthermore, the Act was obviously enacted as an emergency measure, and as such it must be treated. Congress has declared that the conditions, which it aims to relieve by the measure, burden and obstruct the normal current of commerce in commodities. While in Hill v. Wallace, supra, the court refused to uphold the law involved, there was dicta in the opinion indicating that if Congress had from the evidence before it regarded that the sales for future delivery on a board of trade directly interfered with interstate commerce so as to be a burden or obstruction, the law would have been upheld on the doctrine of cases like United States v. Ferger, 250 U. S. 199; Stafford v. Wallace, 258 U. S. 495; Swift v. United States, 196 U. S. 375.

We have been recently told on the highest authority that an emergency does not create power, nor increase granted powers or diminish restrictions imposel upon powers granted or reserved; but that an emergency may furnish the occasion for the exercise of powers theretofore dormant. Home Loan Association v. Blaisdell, supra. A nation-wide economic disturbance may create a condition which would bring the purposes of the legislation into relationship with commerce which would not exist under normal conditions, thereby furnishing an occasion for the exercise of the commerce powers which might not be legally exercised under more favorable economic conditions.

It may be objected that if the law is to stand as a constitutional enactment all limitations upon the power of the central government to regulate local and individual interests in a time of emer-
37 gency would be effaced; that all Congress would have to do would be to declare a policy that the reduced purchasing power of any class of people burdened and obstructed the free flow of commerce. In fact, Congress has already enacted a National Industrial Recovery Act upon the declared policy that wide-spread unemployment has burdened or obstructed interstate commerce. This Act, at least as construed and administered, has been held unconstitutional in Hart Coal Corp. v. Sparks, 7 Fed. Supp. 16; United States v. Lieto, 6 Fed. Supp. 32; United States v. Mills, 7 Fed. Supp. 547.

The conclusions which I have reached are not necessarily in conflict with these cases, because I am dealing with an entirely different statute; and, as I have already indicated, I am concerned only with the statute and not with any regulatory act of an administrative officer.

FOURTH. It is said that the statute cannot stand, because it denies to the taxpayer due process of law. In Nebbia v. New York, 291 U. S. 502, 525, it is stated "The Fifth Amendment, in the field of federal activity" does "not prohibit governmental regulation for the public welfare." It merely conditions "the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. It results that regulation valid for one sort or business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts."

I am unable to discern any ground upon which it can fairly be argued that the law imposing the processing, compensating, and floor stock taxes is arbitrary, unreasonable, or capricious. Congress in its wisdom has seen fit to declare that the means selected have a substantial relation to the object sought to be attained. This declaration is not so wanting in substance as to warrant this court in treating it as a mere pretext.

Respecting the contention of the receivers that the law is
38 repugnant to the constitutional guarantees of a republican form of government, it is only necessary to quote from the opinion in Mountain Timber Co. v. Washington, at page 234, where it is observed:

"As has been decided repeatedly, the question whether this guaranty has been violated is not a judicial but a political question, committed to Congress and not to the courts."

The Agricultural Adjustment Act indubitably authorizes an executive to exercise powers of a legislative character. One may entertain doubts respecting the right of Congress to exert the powers

which it has attempted in the Act. But probably no presumption is more thoroughly established than the presumption that an enactment by a legislative body does not transcend the powers possessed by that body. Erie R. Co. v. Williams, 233 U. S. 685, 699; Mountain Timber Co. v. Washington, supra; United States v. Cohen Grocery Co., 155 U. S. 81. This presumption is especially strong when the issue is raised in the District Court in a case involving a statute of great public importance and by virtue of which vast sums have already been expended and equally vast sums have already been levied upon the processors of agricultural products. See United States v. Suburban Motor Service Co., 5 Fed. Supp. 798; McCulloch v. Maryland, 4 Wheat. 315, 401.

In conclusion, I rule that the claim presented by the United States is a valid claim and should be allowed as such in these receivership proceedings.

In United States District Court

Assignment of errors

Filed January 26, 1935

Now come William M. Butler and James A. McDonough, as they are receivers of Hoosac Mills Corporation, and in connection with their appeal from the decree upon the receivers' first report on claims relating to taxes under the Agricultural Adjustment Act herein make the following assignment of errors upon which they will rely in the prosecution of the appeal herein petitioned for in said cause from the decree of this court dated the fourth day of January 1935:

1. The court erred in holding that the claim of United
39 States for the cotton processing tax and the cotton floor stocks tax under the Agricultural Adjustment Act was a valid claim and in ordering that such claim be allowed by the receivers, thereby disallowing the report of the receivers.

2. The court erred in holding that the cotton processing tax and the cotton floor stocks tax imposed under the Agricultural Adjustment Act are constitutional.

3. The court erred in holding that the cotton processing tax is an excise and not a direct tax.

4. The court erred in holding that the cotton floor stocks tax is an excise and not a direct tax.

5. The court erred in holding that the cotton processing tax and the cotton floor stocks tax, if excises, are uniform throughout the United States.

6. The court erred in holding that the delegation of powers to the Secretary of Agriculture under the Agricultural Adjustment Act was not an unconstitutional delegation of legislative powers to an administrative officer.

7. The court erred in holding in effect that the delegation to the Secretary of Agriculture of power to determine when rental or benefit payments are to be made was not an unconstitutional delegation of legislative power to an administrative officer.

8. The court erred in holding in effect that the delegation to the Secretary of Agriculture of power to determine the rate of tax was not an unconstitutional delegation of legislative power to an administrative officer.

9. The court erred in holding in effect that the delegation to the Secretary of Agriculture of power to determine the commodities to which the tax shall apply was not an unconstitutional delegation of legislative power to an administrative officer.

10. The court erred in holding in effect that the delegation to the Secretary of Agriculture of power to determine what competing commodities shall be taxed was not unconstitutional delegation of legislative power to an administrative officer.

11. The court erred in holding in effect that the delegation to the Secretary of Agriculture of power to determine the time when the tax shall become effective and shall terminate was not an unconstitutional delegation of legislative power to an administrative officer.

12. The court erred in holding in effect that the delegation to the Secretary of Agriculture of power to determine the expenditure of the proceeds of the tax was not an unconstitutional delegation of legislative power to an administrative officer.

13. The court erred in holding that the processing and floor stocks taxes are raised for a public purpose and not to benefit the private interests of individuals.

14. The court erred in holding that the Agricultural Adjustment Act in authorizing the processing and floor stocks taxes is an exercise of the taxing power for a purpose which is within the powers given to Congress under the Constitution.

15. The court erred in holding that the processing and floor stocks taxes are not unconstitutional under the Fifth Amendment as a denial of due process of law.

16. The court erred in holding that the Agricultural Adjustment Act is not unconstitutional as an interference with the rights reserved to the states under the Tenth Amendment.

17. The court erred in holding that Section 16 of the Agricultural Adjustment Act relating to floor stocks taxes imposes or authorizes any tax.

18. The court erred in holding that the Agricultural Adjustment Act and taxes imposed thereunder are for the general welfare.

19. The court erred in decreeing that the claim of the United States be allowed for the reason that the Agricultural Adjustment Act in imposing taxes for the purpose of restoring farm prices to pre-war levels and regulating the production of agricultural commodities is beyond the powers granted by the commerce clause.

20. The court erred in decreeing that the claim of the United States be allowed for the reason that the Agricultural Adjustment Act, in imposing or authorizing cotton processing and floor stocks taxes for the purposes provided in the Agricultural Adjustment Act constituted a tax for an unlawful purpose not within the powers of Congress.

21. The court erred in decreeing that the claim of the
41 United States be allowed for the reason that the cotton processing and floor stocks taxes were imposed for the unlawful purpose of regulating the growing of cotton within the several States and constitute an unlawful and unconstitutional interference with the powers held by or reserved to the states.

By their Attorneys:

EDWARD R. HALE,
BENNETT SANDERSON.

Recital as to bond on appeal

A bond on appeal in the sum of two hundred fifty dollars was filed by the receivers on January 26, 1935, the American Employers' Insurance Company acting as surety, and was allowed by the court on the twenty-eighth day of January 1935.

In United States District Court

Praecipe of the receivers of the Hoosac Mills Corporation

Filed February 5, 1935

To the Clerk of the United States District Court for the District of Massachusetts:

Please prepare a certified copy of the Transcript of Record in the above-entitled cause, for use in the Circuit Court of Appeals for the First Circuit, pursuant to an appeal in said cause taken and allowed the receivers of the Hoosac Mills Corporation, and in making up such transcript observe the following directions and include therein the following proceedings and pleadings, to wit:

1. a. Recital of filing of bill of complaint.
b. Recital of filing of answer.
2. Decree of October 17, 1933, appointing receivers.
3. Petition of receivers filed January 3, 1934, for order of notices to creditors to prove claims.
4. Order of January 3, 1934, on receivers' petition for order of notice.
5. Receivers' first report on claims filed February 28, 1934.
6. Motion filed on April 27, 1934, for leave to amend receivers' first report on claims.
7. Order of April 30, 1934, on receivers' motion for leave to amend receivers' first report on claims.
42 8. Recital of docket entry of April 30, 1934, relating to hearing on receivers' first report on claims.

9. Opinion of court dated October 19, 1934.
10. Findings of fact and conclusions of law under Equity Rule 70½, dated January 4, 1935.
11. Decree dated January 4, 1935, allowing claim of United States.
12. Recital of filing of petition for appeal January 26, 1935.
13. Assignment of errors filed January 26, 1935.
14. Recital of order of January 26, 1935, granting appeal to Circuit Court of Appeals.
15. Recital of citation of January 26, 1935, and of acceptance of service thereon.
16. This praecipe for record.

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

February 18, 1935. Approved.

E. H. B., *D. J.*

PROOF OF SERVICE OF PRAECIPE

To FRANCIS J. W. FORD,
Post Office Building, Boston, Mass.,
United States Attorney for the District of Massachusetts:

Please take notice that we will today file with the clerk of the District Court a praecipe, which is the original of that hereto attached, and a copy of which is herewith handed to you.

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

Received a copy of the foregoing notice and a copy of the praecipe therein referred to this fifth day of February 1935.

FRANCIS J. W. FORD,
United States Attorney.
By J. DUKE SMITH,
Special Assistant to the United States Attorney.

43 In United States District Court

Cross-praecipe of the United States

Filed February 15, 1935

To the Clerk of the United States Court for the District of Massachusetts:

Please prepare, in addition to the proceedings and pleadings requested in the praecipe for transcript of record filed by the receivers of Hoosac Mills Corporation February 5, 1935, in the above-entitled cause, for use in the Circuit Court of Appeals for the First Circuit pursuant to an appeal in said cause taken and allowed the receivers of the Hoosac Mills Corporation, and include in the cer-

tified copy of the transcript of record in said cause the following documents, to wit:

1. Statement of evidence as settled and allowed under Equity Rule 75.

[NOTE.—This statement of evidence was not settled and allowed by the court. JAMES S. ALLEN, *Clerk.*]

2. This praecipe.

FRANK J. WIDEMAN,
Assistant Attorney General.
ROBERT N. ANDERSON,
Special Assistant to the Attorney General.
FRANCIS J. W. FORD,
United States Attorney.
By J. DUKE SMITH,
Special Assistant to the United States Attorney.
PREW SAVOY,
Special Assistant to the United States Attorney,
Counsel for the United States.

A copy of the above was handed to Mr. Bennett Sanderson on February 15, 1935.

J. DUKE SMITH,
Special Assistant to the United States Attorney.

February 18, 1935. Cross-praecipe denied.

E. H. B., *D. J.*

44 *Recital as to citation and service*

A citation on appeal was issued on January 28, 1935, being made returnable in the United States Circuit Court of Appeals on February 27, 1935. Service of said citation was duly acknowledged by the United States Attorney.

Clerk's certificate

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I, James S. Allen, Clerk of the District Court of the United States for the District of Massachusetts, do hereby certify that the foregoing is the transcript of the record on the appeal of the receivers of Hoosac Mills Corporation, William M. Butler and James A. McDonough, including true copies of such proofs, entries, and papers on file as have been designated by praecipe, in the cause entitled,

No. 3926, Equity Docket

FRANKLIN PROCESS COMPANY, PLAINTIFF

v.

HOOSAC MILLS CORPORATION, DEFENDANT

Now pending in said District Court.

And I further certify that transmitted herewith are the originals of the petition for appeal, the bond on appeal and the citation on appeal with the acknowledgment of service thereon.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court, at Boston, in said District, this fifth day of March, A. D. 1935.

[SEAL] JAMES S. ALLEN, *Clerk.*

[MEMORANDUM: An order of enlargement of time for docketing case to, and including, March 29, 1935, is here omitted. A. I. CHARRON, *Clerk.*]

45–46 In United States Circuit Court of Appeals, First Circuit

Minute entry

On April 23, 1935, this cause came on to be heard, and was fully heard by the Court, Honorable George H. Bingham and Honorable Scott Wilson, Circuit Judges, and Honorable George F. Morris, District Judge, sitting.

47 In United States Circuit Court of Appeals for the First Circuit

No. 3018—October Term, 1934

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

v.

UNITED STATES OF AMERICA, CLAIMANT, APPELLEE

Appeal from the District Court of the United States for the District of Massachusetts

Before Bingham, Wilson, and Morris, *JJ.*

Opinion of the court

Filed July 13, 1935

WILSON, *J.:* This is an appeal from a decree of the District Court of Massachusetts in the conduct of receivership proceedings against the Hoosac Mills Corporation, a Massachusetts corporation. The United States filed a claim with the receivers for processing and floor taxes levied under Secs. 9 and 16 of the Agricultural Adjustment Act, Chap. 25, 48 Stat. 31 (hereinafter referred to as the Act), amounting in the aggregate to $81,694.28, of which $44,057.64 represented processing taxes and interest, and $37,636.64 represented floor taxes and interest.

The receivers in their report to the District Court recommended that the claims for these taxes be disallowed. The District Court, however, found that the claims were valid and entered a decree ordering the claims to be paid.

The receivers appealed from the decree and filed numerous
48 assignments of error, which may be grouped under three heads:

(1) The taxes imposed are not warranted under the Federal Constitution in that they were imposed for the unlawful purpose of regulating and restricting the production of cotton in the several States, which is an unwarranted interference with matters solely within the control of the respective states and is violative of the powers reserved to the states under the Tenth Amendment, and therefore does not constitute an exercise of any authority or power of taxation granted to Congress under Sec. 8 of the Constitution.

(2) The delegation of the power under Sections 8 and 9 of the Act to the Secretary of Agriculture to determine by agreement with the producers which of the basic commodities enumerated under Sec. 11 of the Act as amended, shall be restricted as to production, to what extent the acreage devoted to the production of any of such basic commodities shall be limited to bring about the result sought to be gained by the Act, to determine when rental or benefit payments shall be made and the amount, and the investing of power in the Secretary to determine when and what competing commodities should be taxed and to what extent, and to determine when such processing tax shall become effective or shall cease to be imposed, is an unwarranted delegation of the legislative power granted exclusively to Congress.

(2) That the processing and floor taxes imposed are direct taxes and are not apportioned as required under Sec. 8 of the Constitution, or, if excise taxes, are not uniform throughout the United States and are therefore not authorized under the Constitution.

We are not unmindful of the rule of construction that a presumption exists as to the validity of an act of Congress, or that if an act is susceptible of two interpretations that should be accepted which will uphold its validity. It is clearly apparent, however, from the provisions of the Act that the main purpose of Congress
49 in its enactment was not to raise revenue, but to control and regulate the production of what is termed the basic products of agriculture, in order to establish and maintain a balance between the production and consumption of such commodities, which Congress realized could not in any event be accomplished by compulsory regulation of the production of agricultural products, and it sought to avoid the objection that it was interfering with matters solely within the control of the States themselves by making the restriction of production voluntary, by basing the Act on the power of Congress to regulate interstate commerce, on its power to tax to provide for the general welfare of the United States, and by declaring that in the acute economic emergency that exists transactions in

agricultural commodities have become affected with a public interest.

Title I of the Act opens with the following:

"Declaration of Emergency: That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected, transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities, and render imperative the immediate enactment of title I of this Act."

According to recent pronouncements of the Supreme Court, however, such a declaration grants no new powers to Congress, nor does a declaration by Congress that under certain conditions the industry of agriculture is affected with a public interest, or burdens and obstructs the normal flow of commerce necessarily give to Congress the absolute power to control or regulate it by legislation.

The assignments of error are based on the provisions of the following sections:

50 "SEC. 2. It is hereby declared to be the policy of Congress—

"(1) To establish and maintain such balance between the production and consumption of agricultural commodities and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. The base period in the case of all agricultural commodities except tobacco shall be the prewar period, August 1909–July 1914. In the case of tobacco the base period shall be the postwar period August 1919–July 1929.

"(2) To approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets.

"(3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the prewar period, August 1909–July 1914.

"SEC. 8. In order to effectuate the declared policy the Secretary of Agriculture shall have power—

"(1) To provide for reduction in the acreage or reduction in the production for market, or both, of any basic agricultural commodity, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection there-

with or upon that part of the production of any basic agricultural commodity required for domestic consumption, in such amounts as the Secretary deems fair and reasonable, to be paid out of any moneys available for such payments. Under regulations of the Secretary of Agriculture requiring adequate facilities for the storage of any non-perishable agricultural commodity on the farm, inspection and measurement of any such commodity so stored, and the locking and sealing thereof, and such other regulations as may be prescribed by the Secretary of Agriculture for the protection of such commodity and for the marketing thereof, a reasonable percentage of any benefit payment may be advanced on any such
51 commodity so stored. In any such case, such deduction may be made from the amount of the benefit payment as the Secretary of Agriculture determines will reasonably compensate for the cost of inspection and sealing, but no deduction may be made for interest."

"SEC. 9. (a) To obtain revenue for extraordinary expenses incurred by reason of the national economic emergency, there shall be levied processing taxes as hereinafter provided. When the Secretary of Agriculture determines that rental or benefit payments are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation. The processing tax shall be levied, assessed, and collected upon the first domestic processing of the commodity, whether of domestic production or imported, and shall be paid by the processor. The rate of tax shall conform to the requirements of subsection (b). Such rate shall be determined by the Secretary of Agriculture as of the date the tax first takes effect, and the rate so determined shall, at such intervals as the Secretary finds necessary to effectuate the declared policy, be adjusted by him to conform to such requirements. The processing tax shall terminate at the end of the marketing year current at the time the Secretary proclaims that rental or benefit payments are to be discontinued with respect to such commodity. The marketing year for each commodity shall be ascertained and prescribed by regulations of the Secretary of Agriculture: Provided, That upon any article upon which a manufacturers' sales tax is levied under the authority of the Revenue Act of 1932 and which manufacturers' sales tax is computed on the basis of weight, such manufacturers' sales tax shall be computed on the basis of the weight of said finished article less the weight of the processed cotton contained therein on which a processing tax has been paid.

"(b) The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity; except that if the Secretary has reason to believe that the tax at such rate will cause such reduction in the quantity of the commodity or products thereof

domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depres-
52 sion of the farm price of the commodity, then he shall cause an appropriate investigation to be made and afford due notice and opportunity for hearing to interested parties. If thereupon the Secretary finds that such result will occur, then the processing tax shall be at such rate as will prevent such accumulation of surplus stocks and depression of the farm prices of the commodity. In computing the current average farm price in the case of wheat, premiums paid producers for protein content shall not be taken into account.

"(c) For the purposes of part 2 of this title, the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period specified in section 2; and the current average farm price and the fair exchange value shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture.

"SEC. 10. (c) The Secretary of Agriculture is authorized, with the approval of the President, to make such regulations with the force and effect of law as may be necessary to carry out the powers vested in him by this title, including regulations establishing conversion factors for any commodity and article processed therefrom to determine the amount of tax imposed or refunds to be made with respect thereto. Any violation of any regulation shall be subject to such penalty, not in excess of $100, as may be provided therein."

As originally enacted, Sec. 11 read as follows:

"SEC. 11. As used in this title, the term 'basic agricultural commodity' means wheat, cotton, field corn, hogs, rice, tobacco, and milk and its products, and any regional or market classification, type, or grade thereof; but the Secretary of Agriculture shall exclude from the operation of the provisions of this title, during any period, any such commodity or classification, type, or grade thereof if he finds, upon investigation at any time and after due notice and opportunity for hearing to interested parties, that the conditions of production, marketing, and consumption are such that during such period this title cannot be effectively administered to the end of effectuating the declared policy with respect to such commodity or classification, type, or grade thereof.

"SEC. 12. (a) There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $100,-
53 000,000 to be available to the Secretary of Agriculture for administrative expenses under this title and for rental and benefit payments made with respect to reduction in acreage or reduction in production for market under part 2 of this title. Such sum shall remain available until expended.

"(b) In addition to the foregoing, the proceeds derived from all taxes imposed under this title are hereby appropriated to be available to the Secretary of Agriculture for expansion of markets and

removal of surplus agricultural products and the following purposes under part 2 of this title: Administrative expenses, rental and benefit payments, and refunds on taxes. The Secretary of Agriculture and the Secretary of the Treasury shall jointly estimate from time to time the amounts, in addition to any money available under subsection (a), currently required for such purposes; and the Secretary of the Treasury shall, out of any money in the Treasury not otherwise appropriated, advance to the Secretary of Agriculture the amounts so estimated. The amount of any such advance shall be deducted from such tax proceeds as shall subsequently become available under this subsection.

"SEC. 15 (a) If the Secretary of Agriculture finds, upon investigation at any time and after due notice and opportunity for hearing to interested parties, that any class of products of any commodity is of such low value compared with the quantity of the commodity used for their manufacture that the imposition of the processing tax would prevent in whole or in large part the use of the commodity in the manufacture of such products and thereby substantially reduce consumption and increase the surplus of the commodity, then the Secretary of Agriculture shall so certify to the Secretary of the Treasury, and the Secretary of the Treasury shall abate or refund any processing tax assessed or paid after the date of such certification with respect to such amount of the commodity as is used in the manufacture of such products.

"(d) The Secretary of Agriculture shall ascertain from time to time whether the payment of the processing tax upon any basic agricultural commodity is causing or will cause to the processors thereof disadvantages in competition from competing commodities by reason of excessive shifts in consumption between such commodities or products thereof. If the Secretary of Agriculture finds, after investigation and due notice and opportunity for hear-
54 ing to interested parties, that such disadvantages in competition exist, or will exist, he shall proclaim such finding. The Secretary shall specify in this proclamation the competing commodity and the compensating rate of tax on the processing thereof necessary to prevent such disadvantages in competition. Thereafter there shall be levied, assessed, and collected upon the first domestic processing of such competing commodity a tax, to be paid by the processor, at the rate specified, until such rate is altered pursuant to a further finding under this section, or the tax or rate thereof on the basic agricultural commodity is altered or terminated. In no case shall the tax imposed upon such competing commodity exceed that imposed per equivalent unit, as determined by the Secretary, upon the basic agricultural commodity.

"SEC. 16 (a) Upon the sale or other disposition of any article processed wholly or in chief value from any commodity with respect to which a processing tax is to be levied, that on the date the tax first takes effect or wholly terminates with respect to the commodity,

is held for sale or other disposition (including articles in transit) by any person, there shall be made a tax adjustment as follows:

"(1) Whenever the processing tax first takes effect, there shall be levied, assessed, and collected a tax to be paid by such person equivalent to the amount of the processing tax which would be payable with respect to the commodity from which processed if the processing had occurred on such date.

"(2) Whenever the processing tax is wholly terminated, there shall be refunded to such person a sum (or if it has not been paid, the tax shall be abated) in an amount equivalent to the processing tax with respect to the commodity from which processed."

POWER OF CONGRESS OVER PRODUCTION OF AGRICULTURAL COMMODITIES

It is clear from the above sections, together with the other sections of the Act, that its main purpose is to control and regulate the production of the so-called basic agricultural commodities in the several states, through agreements with the producers and in consideration of what is termed rental or benefit payments, to reduce acreage or production for market sufficient to increase the current average price of such products to that elusive point where the
55 returns to the farmer from the production of such commodities will purchase under present conditions the same amount of industrial products that the returns to the farmer from the same products would buy in the five-year prewar period from July 1909 to August 1914.

The "processing" and "floor taxes", though ostensibly imposed for raising funds to meet extraordinary expenses incurred by reason of the national economic emergency, are obviously intended to provide funds for the rental and benefit payments authorized under Sec. 8, as such taxes are not imposed except when the Secretary determines that rental or benefit payments are to be made, and the proceeds are expressly appropriated for the purpose.

It is urged by the receivers, and in a brief filed by one of the amici curiae, that the restriction of the production of agricultural products is entirely within the control of the several states, and Congress cannot control it directly or indirectly through the executive department, however great the emergency; that even if in a great emergency transactions in agricultural products become affected with a public interest, which is not met by concerted action by the states themselves, it does not lie within the power of Congress to regulate their production; that however wide-spread the public interest in a matter solely within the control of the states themselves. Congress has no power to control or regulate it, it being reserved to the states under the Tenth Amendment.

The power of Congress to regulate interstate commerce does not authorize it to do so by taxing products either of agriculture or industry before they enter interstate commerce, or otherwise to control their production merely because their production may indirectly affect interstate commerce.

There is, of course, nothing new in this statement; see Hammer v. Dagenhart, 247 U. S. 251; Child Labor Tax Case, 259 U. S. 20; Chassaniol v. City of Greenwood, 291 U. S. 584; Kidd v. 56 Pearson, 128 U. S. 1; Keller v. United States, 213 U. S. 138, 145; New York v. Miln, 11 Pet. 102, 139; United Leather Workers International Union, etc., v. Herkert, 265 U. S. 457; United Mine Workers, etc., v. Coronado Co., 259 U. S. 344, 408; Crescent Cotton Oil Co. v. Mississippi, 257 U. S. 129; Champlin Refining Co. v. Corporation Commission of Oklahoma, 286 U. S. 210, 235; United States v. Eason Oil Co., 8 Fed. Sup. 365; United States v. Wierton Steel Co., 10 Fed. Sup. 55.

In Hammer v. Dagenhart, supra, p. 275, the court said:

"A statute must be judged by its natural and reasonable effect. Collins v. New Hampshire, 171 U. S. 30, 33, 34. The control by Congress over interstate commerce cannot authorize the exercise of authority not entrusted to it by the Constitution. Pipe Line Cases, 234 U. S. 548, 560. The maintenance of the authority of the States over matters purely local is as essential to the preservation of our institutions as is the conservation of the supremacy of the federal power in all matters entrusted to the Nation by the Federal Constitution.

"In interpreting the Constitution it must never be forgotten that the Nation is made up of States to which are entrusted the powers of local government. And to them and to the people the powers not expressly delegated to the National Government are reserved. Lane County v. Oregon, 7 Wall. 71, 76. The power of the States to regulate their purely internal affairs by such laws as seem wise to the local authority is inherent and has never been surrendered to the general government. New York v. Miln, 11 Pet. 102, 139; Slaughter House Cases, 16 Wall. 36, 63; Kidd v. Pearson, supra. To sustain this statute would not be in our judgment a recognition of the lawful exertion of congressional authority over interstate commerce, but would sanction an invasion by the federal power of the control of a matter purely local in its character, and over which no authority has been delegated to Congress in conferring the power to regulate commerce among the States.

"We have neither authority nor disposition to question the motives of Congress in enacting this legislation. The purposes intended must be attained consistently with constitutional limitations and not by an invasion of the powers of the States. 57 This court has no more important functions than that which devolves upon it the obligation to preserve inviolate the constitutional limitations upon the exercise of authority, federal and state, to the end that each may continue to discharge, harmoniously with the other, the duties entrusted to it by the Constitution."

The government contends that Congress does not seek by the Act to interfere with the states' control over agriculture, inasmuch as the reduction of acreage and of production of either of the basic agricultural products depends on voluntary agreements by the pro-

ducers and the processing and floor taxes depend on the execution of such agreements to reduce production, citing Massachusetts v. Mellon, 262 U. S. 447; but it is clear, we think, that under the recent decision of the Supreme Court in the Schechter Poultry Corporation case, decided May 27, 1935, that Congress at the outset has attempted to invade a field over which it has no control, since its obvious purpose, viz: to control or regulate the production of agricultural products in the several states by the methods adopted in this Act is beyond the power of Congress; Kansas v. Colorado, 206 U. S. 46; Flint v. Stone Tracy Co., 220 U. S. 107. The processing and floor taxes are not dependent on the execution of agreements to reduce acreage or production alone, but on the determination by the Secretary without any foundation other than his own opinion that the existing economic emergency demands that to accomplish the declared purpose of the Act rental or benefit payments shall be made. The imposing of the taxes automatically follows.

The issue is not, as the government contends, whether Congress can appropriate funds raised by general taxation for any purpose deemed by Congress in furtherance of the "general welfare", but whether Congress has any power to control or regulate matters left to the states and lay a special tax for that purpose.

Delegation of Legislative Powers

The issue of whether under the Act there has been an
58 unauthorized delegation by Congress of its legislative powers is decisive of the case before this court.

Except as a premise for the conclusions which follow, it is unnecessary to restate what has been so often reiterated by the courts, viz: that the federal government is a government of enumerated powers, and Congress cannot delegate legislative powers to the executive department.

The line between grants of legislative powers and the authority to perform a purely administrative function as drawn in the decisions may at first blush appear wavy instead of straight, notwithstanding the rule has been often definitely stated.

The Supreme Court of Ohio in Cincinnati, Wilmington, etc., R. R. v. Commissioners, 1 Ohio St. 77, 88, stated the rule in a form which has been approved by the Supreme Court of the United States, Field v. Clark, 143 U. S. 649, and again in the recent case of Panama Refining Co. et al. v. Ryan et al., 293 U. S. 388, 426:

"The true distinction, therefore, is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made."

The Supreme Court in the Panama Refining Co. case, supra, also said:

"The Congress manifestly is not permitted to abdicate, or to transfers to others, the essential legislative functions with which it

is thus vested. Undoubtedly legislation must often be adapted to complex conditions involving a host of details with which the national legislature cannot deal directly. The Constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. Without
59 capacity to give authorizations of that sort we should have the anomaly of a legislative power which in many circumstances calling for its exertion would be but a futility."

The court, however, added:

"But the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained."

And in the case of Wichita R. R. & Light Co. v. Public Utilities Commission, 260 U. S. 48, 59, the court said:

"In creating such an administrative agency the legislature, to prevent its being a pure delegation of legislative power, must enjoin upon it a certain course of procedure and certain rules of decision in the performance of its function."

It is the application of this principle to complex situations that sometimes makes it difficult to determine whether there has been a grant of legislative power to an administrative officer, or merely administrative functions.

While the courts have always shown a desire to sustain, if possible, acts of Congress, they have recognized the limitations imposed on Congress in this respect under the Constitution.

In the leading case of Field v. Clark, supra, p. 692, the court said that the rule "that Congress cannot delegate legislative powers to the President is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution."

Under stress of circumstances we sometimes forget the reason for the division of our government into three independent branches, which was expressed in the Constitution of Massachusetts by one of those instrumental in securing the adoption of the Federal Constitution:

"In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise
60 the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men."

The extent to which the Court has gone in upholding the acts of Congress upon the ground that Congress may select instrumentalities

for the purpose of ascertaining the existence of facts upon which the operation of the law depends, and may properly give authority to administrative officers to determine certain facts, and by establishing primary standards devolve on others the duty to carry out the declared legislative policy in accordance therewith is shown in the following cases: The Brig Aurora, 7 Cranch. 382; Field v. Clark, supra; Buttfield v. Stranahan, 192 U. S. 470; Union Bridge Co. v. United States, 204 U. S. 364; United States v. Chemical Foundation, 272 U. S. 1; Radio Commission v. Nelson Brothers Co., 289 U. S. 266; United States v. Grimaud, 220 U. S. 506; Hampton & Co. v. United States, 276 U. S. 394; Plymouth Coal Co. v. Pennsylvania, 232 U. S. 531; United States v. Shreveport Grain & El. Co., 287 U. S. 77; Avent v. United States, 266 U. S. 127; Williamsport Wire Rope Co. v. United States, 277 U. S. 551; St. Louis & Iron Mountain Southern Rwy. Co. v. Taylor, 210 U. S. 281, 287.

But an examination of these decisions and others of the Supreme Court will also disclose that, when an act of Congress of this nature has been sustained, either there has been a clear direction to perform an administrative function, or to add a tax of the same character to one already imposed by Congress; Milliken v. United States, 283 U. S. 15, 24; Patton v. Brady, 184 U. S. 608; or to grant relief from an excessive tax already imposed, Williamsport Wire Rope Co. v. United States, 277 U. S. 551; Heiner v. Diamond Alkali Co., 288 U. S. 502; or a power to determine, after notice and hearing, certain facts upon which the operation of congressional edicts are made to depend, particularly when the determination of the facts are dependent on data not within the knowledge of Congress, or not readily accessible, and the ultimate facts on which the will of Con-
61 gress depends can only be determined from evidentiary facts to be proved by evidence, which cannot be fairly weighed except by permanent and specially qualified officials, such as the Interstate Commerce Commission, the Commissioner of Internal Revenue, the Board of Tax Appeals, the Radio Commission, or the Tariff Commission, and from the findings of which Commission judicial review is provided for. Interstate Commerce Com. v. Louisville & Nashville R. R. Co., 227 U. S. 88.

The power to determine what the law shall be, what property shall be affected by taxation or regulation, and what standards shall govern the administrative officers in administering acts of Congress, has never been held to be an administrative function. The power to impose a tax and to determine what property shall bear the tax can only be determined by the legislative department of the government. If Congress undertakes to lay down a guide for an administrative officer to follow in carrying out its mandates, it must be by an intelligible and a reasonably definite standard. Adkins v. Children's Hospital, 261 U. S. 525; Hampton & Co. v. United States, supra, p. 409. The balance between production and consumption of certain commodities, or the equalizing of the purchasing power thereof between certain widely separated periods alone forms no such standard.

Congress in the National Recovery Act authorized the President to prohibit the transmission of oil in interstate commerce in excess of the amount authorized by a state, which on its face might seem definite, but the Court said in the Panama Refining Co. case, supra, p. 415:

"The question whether that transportation shall be prohibited by law is obviously one of legislative policy. Accordingly, we look to the statute to see whether the Congress has declared a policy with respect to that subject; whether the Congress has set up a standard for the President's action; whether the Congress has required any finding by the President in the exercise of the authority to enact the prohibition. * * * Section 9 (c) does not state whether, or
62 in what circumstances or under what conditions, the President is to prohibit the transportation of the amount of petroleum or petroleum products produced in excess of the State's permission. It establishes no criterion to govern the President's course. It does not require any finding by the President as a condition of his action."

The court found no standard in that Act by which the President's action was to be governed except a general declaration in Sec. 1 of a policy even broader than that contained in Sec. 2 of this Act. The court said of Sec. 1 of the Recovery Act, page 417:

"This general outline of policy contains nothing as to the circumstances or conditions in which transportation of petroleum or petroleum products should be prohibited—nothing as to the policy of prohibiting, or not prohibiting, the transportation of production exceeding what the States allow. * * * It is manifest that this broad outline is simply an introduction of the Act, leaving the legislative policy as to particular subjects to be declared and defined, if at all, by the subsequent sections."

If Congress has the power to control or regulate the production of agricultural products within the several states, and assess a tax on their processing or sale for that purpose, it is obviously legislative in character. Query, then, has Congress set up any definite standard for the Secretary's action in making rental or benefit payments to producers and thereby imposing a processing tax?

We find no definite, intelligible standard set up in the Act for determining when the Secretary shall pay rental or benefit payments in order to reduce production of any particular commodity except his own judgment as to what will effectuate the purpose of the Act.

The Declaration of Emergency in the Agricultural Adjustment Act contains no such standard for the Secretary of Agriculture to follow in entering into restrictive agreements with producers of agricultural products. It is merely a statement of conditions which in the judgment of Congress warranted legislative action. Sec. 2 of the Act declaring the policy of Congress in enacting the legisla-
63 tion contains no more than a statement of the objects Congress had in view in passing the Act, viz: "to establish and maintain a balance between the consumption and production of agricultural commodities and such marketing conditions therefor as will

reestablish prices to farmers at such a level as will give agricultural commodities a purchasing power with respect to articles that farmers buy equivalent to the purchasing power of agricultural commodities during the five-year pre-war period from July 1909 to August 1914." We can conceive of no goal that can be more elusive and difficult of attainment.

Without requiring any findings to warrant his action, Congress has empowered him, in conjunction with the producers, to determine when a reduction of acreage or production of any one of the agricultural commodities which it has termed basic should be resorted to to accomplish the purpose of the Act, when rental or benefit payments are to be made and in what amounts, and thereby to determine through the initiation of the benefit payments or rentals the consequent imposition of a tax.

The making of benefit payments, therefore, rests upon, and the consequent imposition of the tax is vested in, the discretion of the Secretary, in conjunction, of course, with the producers, governed by no other consideration than the general purpose of Congress to equalize the purchasing power of certain agricultural products. The carrying out of the policy stated by Congress in Sec. 2 is no more definite as a standard by which the acts of the Secretary are determined than the policy expressed in the National Recovery Act as to transportation of oil and the power vested in the President to prescribe industrial business codes governing the conduct of business.

What the Supreme Court said of Sec. 9 (c) of the National Recovery Act in the Panama Refining Co. case may likewise be said of Sec. 2 and Sec. 8 of the Agricultural Adjustment Act. Neither Sec. 2 nor Sec. 8 of this Act states whether or under what circum-
64 stances the Secretary shall enter into agreements to limit production of basic agricultural commodities. Action by the Secretary is not mandatory, and the Act establishes no criterion to govern his course of action. It requires no finding by him as a condition of his action, nor is any provision for judicial review provided in the Act in case of a finding that such standard in fact exists. It is true that the facts in this case are different from those in the Panama Refining Co. case and in the Schechter Poultry case, but the provisions defining the acts of the Secretary differ from those authorizing the acts of the President in those cases only in the general terms employed. The principle involved is the same.

The indefiniteness of the standard by which the Secretary of Agriculture is to proceed is at once apparent and was recognized by Congress in paragraphs (2) and (3) of Sec. 2, in which it was provided that the approach to such equality of purchasing power must be by a gradual correction of the present inequalities at as rapid a rate as is deemed feasible by the Secretary in view of the current consumptive demand in the domestic and foreign markets; and further by protecting the consumers' interest by readjusting farm production at such a level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities which is returned to

the farmer above that returned to him during the five year pre-war period.

As originally enacted Congress enumerated in Sec. 11 seven products which it termed basic, and later by amendment added rye, flax, barley, grain, sorghum, sugar beets, sugar cane, peanuts, and rice. Benefit payments under the Act have been made with respect to wheat, cotton, tobacco, hogs, field corn, and peanuts, but none with respect to barley, cattle, flax, grain, sorghum, milk, or rye. Congress has not specifically directed that payments should be made to the producers of any one of them except the producers of sugar, or that the processing of any one of these products should be taxed except rice; but as to each of the other commodities
65 enumerated, has left it to the Secretary of Agriculture to determine by agreements with the producers themselves which ones, if any, should receive benefit or rental payments and in what amounts.

The Secretary made no finding of facts as to why he selected the first list of basic commodities for reducing acreage or production, and was not required to do so. He simply made a proclamation that "rental and/or benefit payments are to be made with respect to cotton", and a processing tax automatically followed.

It cannot be said that the Secretary's judgment that his acts will tend to effectuate the general policy laid down by Congress can be called a finding; as his judgment involves merely his opinion as to the general effect of the agreements he executes, to equalize the purchasing power of the commodity in question with that of the five year pre-war period. Only when he undertakes to readjust taxes is he supposed to make findings, but in that case it amounts to no more, as the Court said in the Schechter Poultry Corporation case of the President's code-making powers under the National Recovery Act, than in his opinion as to its effect in promoting the general policy outlined by Congress in the Act itself.

To quote from the opinion in the Schechter Poultry Corporation case, decided May 27, 1935:

"But would it be seriously contended that Congress could delegate its legislative authority to trade or industrial associations or groups so as to empower them to enact the laws they deem to be wise and beneficient for the rehabilitation and expansion of their trade or industries? Could trade or industrial associations or groups be constituted legislative bodies for that purpose because such associations or groups are familiar with the problems of their enterprises? And, could an effort of that sort be made valid by such a preface of generalities as to permissible aims as we find in section I of title I? The answer is obvious. Such a delegation of legislative power is unknown to our law and is utterly inconsistent with the constitutional prerogatives and duties of Congress."

Because the proposed reduction of acreage and of production of the so-called basic agricultural commodities is to be
66 secured through voluntary agreements, the government also

contends that Congress has not delegated legislative powers to the Secretary; but can Congress, in order to effectuate the general policy expressed in Sec. 2 of the Act, lawfully delegate to the Secretary the power to determine whether, in consideration of rental or benefit payments to the producers, the production of any one of such basic agricultural commodities shall be reduced and to what extent reduced, without a finding by the Secretary that facts exist requiring a reduction of the acreage and of production of such agricultural commodity, or without some standard fixed by Congress by which action by the Secretary shall be determined; and further provide that upon his determination to pay such rental or benefit payments a tax shall be automatically imposed on the processing of such commodity for the purpose of providing revenue for such rental or benefit payments? We think not.

While the amount of the reduction of acreage or production of any basic commodity under this Act is done by agreements and not by a code, the purpose and result is the same, viz: the control and regulation of a great intrastate industry, and the Secretary with the approval of the President is authorized to make regulations for carrying out the powers vested in him and imposing a penalty for their violation.

If Congress can take over the control of any intrastate business by a declaration of an economic emergency and a public interest in its regulation, it would be difficult to define the limits of the powers of Congress, or to fortell the future limitations of local self-government.

But these are not the only powers vested in the Secretary under the Act. When a tax shall first be imposed on a processing of such commodity depends on the joint action of both the Secretary and the producer; but if the Secretary finds or has reason to believe that

a tax determined in accordance with the statistics in the Agri-
67 cultural Department as to the purchasing power of such com-
modities in the two contrasting periods will cause such a reduction in the quantity of the commodity or products thereof domestically consumed as to result in an accumulation of surplus stocks of the commodity and in the depression of the farm price of the commodity, and if he finds, after hearing, that such result has occurred, he may make a new rate that will prevent an accumulation of such commodity or a depression of farm prices. In readjusting the rate of tax there is no mathematical formula or standard provided in the Act to guide the Secretary except the indefinite one of preventing an accumulation of surplus stock of any of the basic commodities or a depression in farm prices. A finding or conclusion by the Secretary, after hearing, that the readjustment of the tax would carry out the congressional policy by preventing the accumulation of a surplus of the commodity, amounts to no more than an expression of his opinion.

If it could be urged that there is a standard set up in Sec. 9 of the Act for determining the amount of the processing tax, viz:

the equalizing of the purchasing power of the basic commodities with the prewar period, it requires readjustments to such an extent as to render the standard so indefinite as to leave it entirely in the discretion of the Secretary what the amount shall be to accomplish that purpose.

He is also given authority to impose what is termed compensating taxes; that is, if the Secretary, after notice and hearing, finds that any competing commodity will cause the processors disadvantage from such competition by reason of excessive shifts in consumption between such commodities or the products thereof, he may specify the competing commodity and a compensating processing tax on the competing commodity necessary to prevent such disadvantage.

No standard or guide is here laid down to determine how the compensating tax shall be fixed or what elements shall be taken into consideration in determining the amount, except that it
68 shall be determined by the amount necessary to prevent such disadvantage in competition. We find no decision of the Supreme Court authorizing such a delegation of power to an administrative officer. On the contrary, the recent decision in the Panama Refining Co. case and the Schechter Poultry Corporation case, we think, clearly condemns it as unwarranted under the Constitution.

It is not contended that the receivers have been adversely affected by these last two provisions, and is adverted to for the purpose of showing the extent to which Congress has attempted to vest legislative power in the Secretary.

It is not difficult to understand, after studying the Act, why the District Court concluded that "It must * * * be conceded that legislative functions are conferred upon administrative officers by the Act", or that "The Agricultural Adjustment Act indubitably authorizes an executive to exercise powers of a legislative character."

The District Court, however, hesitated to hold the authority vested in the Secretary was an unlawful delegation of legislative power because no decision of the Supreme Court at the time of his decision had held any of the recent acts of Congress unconstitutional on this ground. Since that time, however, the case of Panama Refining Co. and the Schechter Poultry Corporation case have been decided.

PROCESSING AND FLOOR TAXES

Upon determining that benefit payments are to be made to the producers, the Secretary is further vested with the power to fix the amount of the processing tax on any commodity provided for in Sec. 16 and at a rate that will equal the difference between the current average farm price for the commodity and its fair exchange value during the five-year prewar period, which fair exchange value is to be determined by him from statistics in the Department of Agriculture.

If the District Court, however, understood the receivers as agreeing that the Secretary had correctly followed the mandate of
69 Congress in fixing the tax in the first instance, or as waiving any claim that he had in this respect acted outside the powers vested in him under the Act, then, although he appears for some reason outside of what is termed a mathematical formula based on the statistics of the Agricultural Department, to have fixed a tax at 4.2 cents per pound, when the mathematical application of the statistics in the Agricultural Department would establish the rate of the tax at 4.34 cents per pound, the error cannot be taken advantage of in this court.

If Congress has invaded a field over which it has no control under the Constitution, or the Secretary has been unlawfully vested with legislative powers, the exercise of which has affected these appellants, it is not necessary to consider whether the processing and floor taxes are direct taxes, or, if excise taxes, are not uniformly laid.

The decree of the District Court is reversed and the case is remanded to that court with directions to enter a decree for the appellants.

BINGHAM, *J.*, dissents.

70 In United States Circuit Court of Appeals

Final decree

July 13, 1935

This cause came on to be heard April 23, 1935, upon the transcript of record of the District Court of the United States for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now, to wit, July 13, 1935, here ordered, adjudged and decreed as follows: The decree of the District Court is reversed and the case is remanded to that court with directions to enter a decree for the appellants.

By the Court,

ARTHUR I. CHARRON, *Clerk.*

Recital as to issuance of mandate

Thereafter, to wit, on August 14, 1935, mandate issued to the District Court.

Clerk's certificate

I, Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the foregoing pages numbered 1 to 70, inclusive, contain and are a true copy of the record and all proceedings to and including August 22, 1935, in
71 the cause in said court numbered and entitled,

No. 3018

WILLIAM M. BUTLER ET AL., RECEIVERS, APPELLANTS

v.

UNITED STATES OF AMERICA, CLAIMANT, APPELLEE

In testimony whereof, I hereunto set my hand and affix the seal of the United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, this twenty-second day of August, A. D. 1935.

[SEAL] ARTHUR L. CHARRON, *Clerk.*

72 Supreme Court of the United States

Order allowing certiorari

Filed October 14, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1935