

Supreme Court of the United States.
Washington, D.C.

May 12, 1922.

My dear Justice Van Devanter:

I enclose herewith opinions which I have drafted in the Chicago Board of Trade case and in the Reading case. As they reach in some respects a different conclusion from that which was voted at conference, I submit them as memorandums for your consideration and approval.

In the Chicago Board of Trade case, No. 616, we voted first that there was equitable jurisdiction by a vote of 7 to 1, Justice Brandeis voting "No" and Justice Holmes being doubtful. On the question whether it could be sustained as a taxing act, the vote stood 7 to 1, Justice McKenna casting the negative vote, and Justice Brandeis not voting. Later we took a vote as to whether the act could be sustained as a regulation of interstate commerce. At first, by a vote of 5 to 4, it was held that it could not be so sustained. Later there was a change, and by a vote of 5 to 3, Justice Brandeis not voting, its validity as a regulation of interstate commerce was sustained. On a close examination of the case, the law and the record, I have reached the conclusion stated in this opinion, namely that we have jurisdiction, that the law is invalid as a taxing law, and that it can not be sustained as a valid regulation of interstate commerce.

In respect to the Reading case, Nos. 609 and 610, on the question whether the appeal of the common stockholders could be sustained, the vote was 7 for affirming the decree below, 1 (Mr. Justice Clarke) for reversal, Justice Brandeis not sitting. On the question whether the decree conformed to the mandate in the previous case, the vote was 5, including myself, against the plan and the sale of the stock of the Coal Company free from the lien on the general mortgage, and 3 against this. Further consideration satisfies me that the decree, with two minor modifications, it would be very unwise to disturb, and that to do so would be to question, without

warrant, the action in good faith of the Assistant Attorney General who represented both the late and the present Administration in prosecuting the case, and the present Attorney General.

I hope that you will be able to read these opinions and to give your judgment on the issues raised at tomorrow's conference.

With warmest regard,

Sincerely yours,

William H. Taft

Mr. Justice Van Devanter.