

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

CHAMBERS OF
JUSTICE FRANK MURPHY

November 4, 1943

Dear Bob:

I have a few comments about No. 24, Securities and Exchange Commission v. C.M. Joiner Leasing Corp., that I want to send on to you.

You have stated that the question is whether the Securities Act as a matter of law excludes from its operation all sales of oil and gas leases. You have answered this question admirably by holding that such sales may be included within the Act depending on the facts of the particular case. I fully agree with your excellent analysis of this matter.

But I cannot agree that the case should be remanded for further consideration. As I understand it, the ultimate issue, and the one which led us to grant certiorari, is whether the undisputed facts in this case show as a matter of law that respondents were engaged in the sale of securities. This necessarily involves the question you have discussed. But once that has been answered, there remains this ultimate issue and I think we must decide it. I am of the opinion that respondents were engaged in the sale of securities and it was on that basis, and in the belief that we would so hold, that I cast my vote to reverse the judgment below.

I can see no practical purpose to be served by a remand. In the first place, you have really decided the ultimate issue as the opinion now reads. You make various strong statements to the effect that the facts in this case tend to show that this was not an ordinary lease transaction; the whole tenor of the opinion is to that effect. In view of such language, I cannot conceive of the court below doing much more than reversing its judgment per curiam on the basis of your opinion. It could hardly conclude now, in view of your analysis of the undisputed facts, that respondents were not engaged in the sale of securities.

In the second place, the facts are undisputed and are all before us. There is no reason, as I see it, why we cannot decide as a matter of law whether they amount to a sale of securities. I am not aware of any reluctance by the Court to lay down general principles and, at the same time, to decide the particular case where the facts allow such a determination. If the general principles are clear and if the facts are settled, the ultimate decision is simply a matter of law – which we can determine just as easily and as competently as the court below.

I don't think this suggestion would require any great change in what you have already done.

Sincerely,

JM