

5 Rapp no. 11 (1927)

SACCO V. MASSACHUSETTS

HEADNOTE

by Ira Brad Matetsky

Source: 5 N. SACCO *ET AL.*, THE SACCO-VANZETTI CASE 5534 (2D ED. 1969).

Opinion by: Harlan Fiske Stone (noted in source).

Opinion date: August 22, 1927 (noted in source).

Citation: Sacco v. Massachusetts, 5 Rapp no. 11 (1927) (Stone, J., in chambers), 2 J. In-Chambers Practice 52 (2017).

Additional information: In August 1927, Justice Oliver Wendell Holmes, the Circuit Justice for the First Circuit, denied two applications to stay the impending executions of Nicola Sacco and Bartolomeo Vanzetti. See *Sacco v. Hendry*, 1 Rapp 15 (Aug. 10, 1927) (Holmes, J., in chambers); *Sacco v. Massachusetts*, 1 Rapp 16 (Aug. 20, 1927) (Holmes, J., in chambers). When he did so for the second time, Holmes added that “although I must act on my convictions I do so without prejudice to an application to another of the Justices which I should be very glad to see made, as I am far from saying that I think counsel was not warranted in presenting the question raised in the application by this and the previous writ.” *Sacco v. Massachusetts*, 1 Rapp at 17. The defense lawyers then asked Justice Louis Brandeis, also located in Boston, for a stay, but Brandeis recused himself. Defense attorney Arthur Hill and three colleagues next traveled 200 miles by car and boat from Boston to Justice Harlan Fiske Stone’s summer house on Isle au Haut, an island off the coast of Maine. Stone denied relief in a one-paragraph memorandum, quoted below. The text is found in the five-volume compendium of the record of the case, cited above, as well as in various contemporary newspapers. (For the rest of this story, at least insofar as in-chambers practice is concerned, see the next opinion.)

OPINION

Application considered and denied without prejudice to application to any other Justice. I concur in the view expressed by Justice Holmes as to the merits of the application and action of counsel in presenting it.