

United States Vs. Herr

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Court : US Supreme Court

Decided On : Dec-14-1908

Appeal No. : 211 U.S. 404

Appellant : United States

Respondent : Herr

Judgement :

United States v. Herr - 211 U.S. 404 (1908)

U.S. Supreme Court United States v. Herr, 211 U.S. 404 (1908)

United States v. Herr

No. 291

Argued October 22, 23, 26, 1908

Decided December 14, 1908

211 U.S. 404

ERROR TO THE DISTRICT COURT OF THE UNITED

STATES FOR THE DISTRICT OF COLORADO

SYLLABUS

Decided on the authority of *United States v. Keitel*, ante, p. [211 U. S. 370](#) , and *United States v. Forrester*, ante, p. [211 U. S. 399](#) .

157 F. 396, reversed.

Page 211 U. S. 405

The facts are stated in the opinion.

MR. JUSTICE WHITE delivered the opinion of the Court.

The court below sustained a demurrer to the indictment in this case, for the reasons which caused it to quash the first count of the indictment in the case of *United States v. F. W. Keitel*, ante, p. [211 U. S. 370](#) .

The indictment alleged a conspiracy to defraud the United States of coal lands, in violation of 5440, Rev.Stat. The conspiracy charged was, speaking in a broad sense, of the same general nature as that set forth in the first count of the indictment in the *Keitel* case. In the argument at bar, however, counsel differ as to the correct construction of the indictment here under consideration, the United States contending that the conspiracy to which the indictment related concerned entries based upon preferential rights, while, on the part of the defendants in error, it is insisted that the conspiracy related to only cash entries. In view, however, of our ruling in the *Keitel* case, No. 286, and the reasoning by which the decision in that case was held to be controlling in *United States v. Forrester*, No. 287, just decided, the contentions referred to are irrelevant on this writ of error.

As it results from the opinions in the cases just referred to that the court below erred in sustaining the demurrer to the indictment, its order so doing must be reversed.

Reversed and remanded for further proceedings in conformity to this opinion.

