

United States Vs. Kapp

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Court : US Supreme Court

Decided On : Dec-06-1937

Appeal No. : 302 U.S. 214

Appellant : United States

Respondent : Kapp

Judgement :

United States v. Kapp - 302 U.S. 214 (1937)

U.S. Supreme Court United States v. Kapp, 302 U.S. 214 (1937)

United States v. Kapp

No. 97

Argued November 12, 1937

Decided December 6, 1937

302 U.S. 214

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF OKLAHOMA

SYLLABUS

1. Within the meaning of the Criminal Appeals Act, an indictment for conspiracy (Criminal Code, 37) to commit a substantive offense may be treated as founded on the statute defining the substantive offense. P. [302 U. S. 216](#) .

2. The District Court sustained a demurrer to an indictment for conspiracy to violate the False Claims Act (35 Criminal Code), upon the ground that that Act does not apply to an attempt to defraud the United States by obtaining approval of claims to payments of money through false representations if the statute authorizing such payments is invalid.

HELD

(1) A construction not of the indictment, but of the False Claims Act. P. [302 U. S. 217](#) .

(2) An inadmissible construction. *Id.*

3. Those who attempt to obtain payments from the Government by false representations are estopped to defend upon the ground that the statute providing for such payments has been declared unconstitutional. P. [302 U. S. 218](#) .

Reversed.

Page 302 U. S. 215

Appeal from a judgment sustaining a demurrer to an indictment and dismissing the cause.

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

This case comes here under the Criminal Appeals Act. 18 U.S.C. 682.

The second count of an indictment charged appellees with conspiracy to defraud the United States by furnishing false information and making false statements to

the Secretary of Agriculture in order to secure benefit payments under the Agricultural Adjustment Act of May 12, 1933, c. 25, 48 Stat. 31; Criminal Code, 35, 37, 18 U.S.C. 80, 88. The District Court sustained a demurrer to this count and the government appeals.

The contention of the government is that the appellees conspired to cheat the United States by selling hogs to the government at premium prices through misrepresentation as to the identity of the producers of the hogs sold and the continued ownership by such producers. Appellees' demurrer went upon the ground, among others, that the provisions of the statute and the regulations of the Secretary of Agriculture to which the count referred are void (*United States v. Butler*, [297 U. S. 1](#)) and that the acts set forth in the indictment do not constitute an offense against the laws of the United States.

The false claims statute under which the prosecution was brought penalizes one who,

"for the purpose and with the intent of cheating and swindling or defrauding

Page 302 U. S. 216

the Government of the United States . . . , shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations."

(Criminal Code, 35, 35 Stat. 1095, as amended, 40 Stat. 1015). After referring to the statute, the District Judge said in his opinion:

"The overt acts charged which would be material in this count are that hogs were shipped under the representation by the defendants that they were the hogs of various producers when, in fact, the hogs belonged to one or more of the defendants."

"There is no contention that the hogs were not shipped, and that the bills, which were made to Armour and Company and other processors, were not correct bills, with the exception that the hogs did not originate from the sources represented by

the defendants."

"This ceases to be a material fact if the provisions of the Agricultural Adjustment Act are void. In other words, the representations which are alleged to have been made cease to be misrepresentations of material facts when the act itself falls."

1. Appellees contend that, if any statute was construed, it was not the statute on which the indictment is founded, and hence that this Court has no jurisdiction. The point is that the indictment charged a conspiracy under Criminal Code 37. But the conspiracy charged is one to violate the false claims statute, Criminal Code 35. In similar cases, the jurisdiction of this Court has been sustained. The statute at the violation of which the conspiracy is aimed has been treated as the statute upon which the indictment is founded within the meaning of the Criminal Appeals Act. *United States v. Bowman*, [260 U. S. 94](#) , [260 U. S. 95](#) ; *United States v. Walter*, [263 U. S. 15](#) , [263 U. S. 16](#) -17. See also *United States v. Keitel*, [211 U. S. 370](#) , [211 U. S. 387](#) .

Page 302 U. S. 217

2. Appellees contend that the court below construed the indictment, and not the statute. *United States v. Colgate & Co.*, [250 U. S. 300](#) , [250 U. S. 306](#) ; *United States v. Hastings*, [296 U. S. 188](#) , [296 U. S. 192](#) . The argument is that a conspiracy to violate 35 must involve a pecuniary fraud. *United States v. Cohn*, [270 U. S. 339](#) , [270 U. S. 345](#) -346. In that view, appellees urge that the court below has simply ruled that there was no pecuniary loss under the facts alleged. But the District Court found no flaw in the indictment as a pleading. Nor does the court appear to have considered the question of pecuniary loss. The court rested its decision upon the point that the facts alleged in the indictment with respect to the identity of the producers of the hogs, or the sources from which the hogs originated, had ceased to be material because of the unconstitutionality of the provisions of the Agricultural Adjustment Act. This did not purport to be a construction of the indictment, but a ruling that the indictment, in view of the invalidity of that act, failed to state an offense. The substance of the decision thus

appears to be that the false claims statute does not apply to an attempt to defraud the United States by obtaining the approval of claims and benefit payments through false representations if the statute providing for such claims and payments is found to be invalid. That is clearly a construction of the statute. *United States v. Patten*, [226 U. S. 525](#) , [226 U. S. 535](#) ; *United States v. Birdsall*, [233 U. S. 223](#) , [233 U. S. 230](#) .

3. Such a construction is inadmissible. It might as well be said that one could embezzle moneys in the United States Treasury with impunity if it turns out that they were collected in the course of invalid transactions. *See Madden v. United States*, 80 F.2d 672, 674. Appellees were not indicted for a conspiracy to violate the Agricultural Adjustment Act, but for a conspiracy to violate the statute protecting the United States against

Page 302 U. S. 218

frauds. It is cheating the government at which the statute aims and Congress was entitled to protect the government against those who would swindle it regardless of questions of constitutional authority as to the operations that the government is conducting. Such questions cannot be raised by those who make false claims against the government. *See Langer v. United States*, 76 F.2d 817, 824, 825; *Madden v. United States*, *supra*; *United States v. Harding*, 65 App.D.C. 161, 81 F.2d 563, 568; *United States v. MacDonald*, 10 F.Supp. 948.

The judgment is reversed, and the cause is remanded for further proceedings in conformity with this opinion.

Reversed.