SUPREME COURT OF THE UNITED STATES.

No. 305.—October Term, 1926.

Pan American Petroleum and Transport Company, Pan American Petroleum Company, Petitioners,
vs.
The United States of America.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[February 28, 1927.]

Mr. Justice Butler delivered the opinion of the Court.

This suit was brought by the United States in the northern division of the southern district of California against the petitioners, Pan American Petroleum and Transport Company and Pan American Petroleum Company. The former will be called the Transport Company and the latter the Petroleum Company. The relief sought is the cancelation of two contracts with the Transport Company, dated April 25, and December 11, 1922, and two leases of lands in Naval Petroleum Reserve No. 1, to the Petroleum Company, dated June 5 and December 11, 1922, an injunction, the appointment of receivers, and an accounting. The complaint alleges that the contracts and leases were obtained and consummated by means of conspiracy, fraud and bribery, and that they were made without authority of law. Receivers were appointed to take possession of and operate the properties pending the suit. At the trial the court heard much evidence and later made findings of fact; stated its conclusions of law; announced an opinion, 6 F. (2d) 43, and entered its decree. It adjudged the contracts and leases void and ordered them canceled; it directed the Petroleum Company to surrender the lands and equipment, and stated an account between the United States and each of the companies. The Transport Company was charged the value of petroleum products received by it and the amount of profits derived upon their resale, and was given credit for the actual cost of construction work performed and of fuel oil delivered under the contracts. The Petroleum Company was charged the value of the petroleum products taken under the leases and given credit for actual expenditures in drilling and operating wells and making other useful improvements. Interest was added to each of the items. The companies appealed to the

Circuit Court of Appeals, and the United States took a cross appeal. That court affirmed the decree so far as it awards affirmative relief to the United States and reversed that part which gives credit to the companies. 9 F. (2d) 761.

Under R. S. §§ 2319, 2329, and the Act of February 11, 1897, c. 216, 29 Stat. 526, public lands containing oil were open to settlement, exploration and purchase. Exploration and location were permitted without charge, and title could be obtained for a nominal amount. *United States* v. *Midwest Oil Co.*, 236 U. S. 459, 466. Prior to the autumn of 1909 large areas of public land in California were explored; petroleum was found, patents were obtained, and large quantities of oil were taken. In September of that year, the director of the Geological Survey reported that, at the rate oil lands in California were being patented, all would be taken within a few months, and that, in view of the increased use of fuel oil by the Navy, there appeared to be immediate need for conservation. Then the President, without specific authorization of Congress, by proclamation withdrew from disposition in any manner specified areas of public lands in California and Wyoming amounting to 3,041,000 acres. By the Act of June 25, 1910, c. 421, 36 Stat. 847, Congress expressly authorized the President to withdraw public lands containing oil, gas and other minerals. An executive order of July 2, 1910, confirmed the withdrawals then in force. By a later order, September 2, 1912, the President directed that some of these lands "constitute Naval Petroleum Reserve No. 1 and shall be held for the exclusive use or benefit of the United States Navy until this order is revoked by the President or by Act of Congress." This Reserve includes all the lands involved in this suit. By a similar order, December 13, 1912, the President created the Naval Petroleum Reserve No. 2.

The Leasing Act of February 25, 1920, c. 85, 41 Stat. 437, regulates the exploration and mining of public lands, and authorizes the Secretary of the Interior to grant permits for exploration and make leases covering oil and gas lands, exclusive of those withdrawn or reserved for military or naval purposes. The Act of June 4, 1920, c. 228, 41 Stat. 812, 813, appropriated $30,000 to be used, among other things, for investigating fuel for the Navy and the availability of the supply allowed by naval reserves in the public domain. It contains the following: "*Provided,* That the Secretary of the Navy is directed to take possession of

all properties within the naval petroleum reserves . . . to conserve, develop, use, and operate the same in his discretion, directly or by contract, lease, or otherwise, and to use, store, exchange, or sell the oil and gas products thereof, and those from all royalty oil from lands in the naval reserves, for the benefit of the United States: . . . *And provided further,* That such sums as have been or may be turned into the Treasury of the United States from royalties on lands within the naval petroleum reserves prior to July 1, 1921, not to exceed $500,000, are hereby made available for this purpose until July 1, 1922: *Provided further,* That this appropriation shall be reimbursed from the proper appropriations on account of the oil and gas products from said properties used by the United States at such rate, not in excess of the market value of the oil, as the Secretary of the Navy may direct."

March 5, 1921, Edwin Denby became Secretary of the Navy and Albert B. Fall Secretary of the Interior. May 31, 1921, the President promulgated an executive order purporting to commit the administration and conservation of all oil and gas bearing lands in the Reserves to the Secretary of the Interior, subject to the supervision of the President.

The contract, dated April 25, 1922, was executed on behalf of the United States by the Acting Secretary of the Interior and by the Secretary of the Navy. The Transport Company agreed to furnish at the Naval Station at Pearl Harbor, Hawaii, 1,500,000 barrels of fuel oil and deliver it into storage facilities there to be contructed by the company according to specifications of the Navy. The company was to receive its compensation in crude oil to be taken from the Reserves. The quantity, on the basis of the posted field prices of crude oil prevailing during the life of the contract, was to be the equivalent of the market value of the fuel oil and also sufficient to cover the cost of the storage facilities. The United States agreed to deliver to the company at the place of production month by month all the royalty oil furnished by lessees in Reserves Nos. 1 and 2 until all claims under the contract were satisfied. It was stipulated that if production of crude oil should decrease so as unduly to prolong performance, "then the Government will, in the discretion of the Secretary of the Interior, grant additional leases on such lands as he may designate in naval petroleum reserve No. 1 as shall be sufficient to maintain total deliveries of royalty oil under this contract at the approximate rate of five hundred thousand barrels (500,000) per annum". And, by Article

XI of the contract, it was agreed that, if during the life of the contract such additional leases should be granted within specified areas, "the contractor shall first be called upon by the Secretary of the Interior to meet such drilling conditions and to pay such royalties as the Secretary may deem just and proper, and in the event of his acceptance . . . the contractor shall be granted by the Government a preferential lease on such tracts as the Secretary of the Interior may decide to lease. In the event of the failure of the contractor to agree . . . then said lease or leases may be offered for competitive bidding, but the contractor shall have a right to submit a bid on equal terms with others engaged in said bidding."

The lease of June 5, 1922, was signed by the Assistant Secretary of the Interior. It was made in accordance with a letter of April 25, 1922, signed by the Acting Secretary of the Interior and the Secretary of the Navy, and sent to J. J. Cotter, who was Vice-President of the Transport Company. It covered the quarter section described in the letter. This lease was assigned to the Petroleum Company.

The contract dated December 11, 1922, is signed for the United States by the Secretary of the Interior and the Secretary of the Navy. It declares that it is desired to fill storage tanks at Pearl Harbor promptly as they are completed and also to procure additional fuel oil and other petroleum products in storage there and elsewhere; that the Secretary of the Navy requested the Secretary of the Interior as administrator of the Naval Petroleum Reserves to arrange for such products in storage and to exchange therefor additional royalty crude oil, "the probable cost of the additional products and storage immediately planned for being estimated at fifteen million dollars more or less"; that this cannot be done on the basis of exchange for the crude oil coming to the Government under the present leases; that, under the contract of April 25, 1922, the company is granted preferential right to leases to certain lands in Naval Reserve No. 1; and that the company was planning to provide refinery facilities at Los Angeles, together with pipe lines from the field to the refinery and docks, and to erect storage having capacity of 2,000,000 barrels or more. The company agreed to furnish, as directed by the Secretary of the Interior, the fuel oil in storage at Pearl Harbor covered by the earlier contract; to construct for actual cost additional

storage facilities there, as required, up to 2,700,000 barrels; to furnish fuel oil and other petroleum products in the proposed storage as and when completed on the basis of market prices plus transportation cost at going rates; to furnish without charge, until expiration of the contract, storage for 1,000,000 barrels of fuel oil at Los Angeles; to fill it with fuel oil for the Navy at such time as Government royalty oil should be available for exchange, and to bunker Government ships from such oil at cost; to maintain for 15 years subject to the demands of the Navy 3,000,000 barrels of fuel oil in the company's depots at Atlantic Coast points; to furnish crude oil products and storage facilities at other points, designated by the Government, when sufficient crude oil has been delivered to satisfy the Pearl Harbor contract; to sell the Navy at ten per cent. less than market price additional available fuel oil produced from the reserves and manufactured products from its California refineries; to credit the Navy for crude oil at published prices and for gas and casinghead gasoline at prices fixed in the leases, and to satisfy any surplus credits of the Government by delivery of fuel oil or other petroleum products, by construction of additional storage facilities, or by payment in cash as the Government might elect. The United States agreed to deliver to the company in exchange all royalty oil, gas and casinghead gasoline produced on Reserves Nos. 1 and 2 until its obligations were discharged and in any event for fifteen years after the expiration of the contract of April 25, 1922 [which was without specified time limit], and to lease to the company all the unleased lands in Reserve No. 1.

The lease of December 11, 1922, is signed for the United States by the Secretary of the Interior and the Secretary of the Navy. It covers all unleased lands in Reserve No. 1, but with a provision that no drilling shall be done on approximately the western half without the lessor's consent. It runs for twenty years and so long thereafter as oil or gas is produced in paying quantities. The royalties range from 12½ to 35 per cent.

A Joint Resolution adopted by the Senate and House of Representatives and approved by the President, February 8, 1924, 43 Stat. 5, stated that it appeared from evidence taken by the Committee on Public Lands and Survey of the Senate that the contract of April 25, 1922, and the lease of December 11, 1922, were executed under circumstances indicating fraud and corrup-

tion, without authority on the part of the officers purporting to act for the United States and in defiance of the settled policy of the Government to maintain in the ground a great reserve supply of oil adequate to the needs of the Navy. It declared the contracts and leases to be against public interest and that the lands should be recovered and held for the purposes to which they were dedicated. And it authorized and directed the President to cause suit to be prosecuted for the annulment and cancelation of the lease and all contracts incidental and supplementary thereto, and to prosecute such other action or proceedings, civil and criminal, as might be warranted.

The findings contain what in abridged substance follows:

E. L. Doheny controlled both companies. Fall was active in procuring the transfer of the administration of naval petroleum reserves from the Navy Department to the Interior. And, after the executive order was made, he dominated the negotiations that eventuated in the contracts and leases. From the inception no matter of policy or action of importance was determined without his consent. Denby was passive throughout, and signed the contracts and lease and the letter of April 25, 1922, under misapprehension and without full knowledge of their contents. July 8, 1921, Fall wrote Doheny: "There will be no possibility of any further conflict with Navy officials and this Department, as I have notified Secretary Denby that I should conduct the matter of naval leases under the direction of the President, without calling any of his force in consultation unless I conferred with himself personally upon a matter of policy. He understands the situation and that I shall handle matters exactly as I think best and will not consult with any officials of any bureau in his Department, but only with himself, and such consultation will be confined strictly and entirely to matters of general policy." After that Doheny and his companies acted upon the belief that Fall had authority to make the contracts and leases. Doheny and Fall conferred as to a proposal to be made by the Transport Company whereby it should receive from the United States royalty oil for constructing storage facilities at Pearl Harbor and filling them with fuel oil. They discussed the matter of granting other leases in Reserve No. 1. They also discussed a petition of the Petroleum Company for reduction of royalties under an existing lease. Fall and Admiral John K. Robison, personal representative of the Secretary of the Navy in naval

reserve matters, agreed that the proposed contract should be kept secret so that Congress and the public should not know what was being done. [But it is to be said that Robison's motives in this were not the same as Fall's.]

November 28, 1921, Doheny submitted to Fall a proposal stating that, in accordance with a suggestion from Fall, he had made inquiries as to cost of constructing storage for 1,500,000 barrels of fuel oil at Pearl Harbor. He gave in detail figures relating to such cost, the price of crude oil in the field and of fuel oil at Pearl Harbor, and stated the total amount of crude oil necessary to pay for the tanks and fuel oil "on the basis of our being paid for both tanks and oil in royalty crude oil produced from lands within the naval reserves and to be leased to us." The letter concluded: "I suppose you will turn this matter over to First Assistant Secretary Finney, who, with Rear Admiral Robison, may arrange the details of it during your absence, and as I also expect to be absent, I am confidentially furnishing Mr. Cotter with the information so that he can intelligently discuss the matter with Mr. Finney." And the next day Fall wrote Robison: "Mr. Cotter will wait upon you with data, etc., with relation to oil tanks and royalty oils in connection with Pearl Harbor demands. I have asked him also to hand you, for your inspection, the original of a letter from Colonel Doheny addressed to myself, containing a résumé of the data. Should you think best to accept this proposition then of course it would be necessary, in my judgment, to turn over to Col. Doheny, if we can do so, leases upon further wells or area in the naval reserve in which he is now drilling. If this is done it must be understood that the royalty must be made less than are the present royalties being paid by the Midway and Pan American." The letter stated that the gas pressure was lessening and that the companies were suffering loss in the payment of the 55 per cent. royalty. "If you approve the proposition, will you kindly indicate to me such approval by simple endorsement upon Col. Doheny's letter to myself, signed by yourself. Your simple O. K. will be sufficient."

Doheny had agreed to advance $100,000 to Fall as and when he should need it. November 30, at Fall's request, Doheny sent him $100,000 in curency. The money was obtained in New York on the check of Doheny's son who carried it to Washington and gave it to Fall. And Fall sent to Doheny by the son a demand note for

$100,000. No entry of the advance was made in the accounts of Doheny or the petitioners. Nothing has been paid on account of principal or interest. At that time it was understood between Doheny and Fall that the latter need not repay it in kind. Doheny intended, if Fall did not dispose of a certain ranch in New Mexico, to cause the Transport Company to employ him at a salary sufficient to enable him, out of one-half of it, to pay off the amount in five or six years; and he knew that Fall expected to leave the service of the Government and accept employment with one of his companies. A few weeks after it was given, Doheny tore Fall's signature off the note so that it would not be enforceable in the hands of others. December 1, Fall gave instructions to subordinates that the petition of the Petroleum Company for reduction of royalties should not be granted but that, as relief, the company be given another lease at regulation royalties.

Long in advance of receipt of bids Fall knew that the Transport Company would offer to construct storage facilities at cost and to fill them with fuel oil in exchange for royalty oil and for the assurance that other leases on lands in Reserve No. 1 would be granted to it. Others were not advised that the United States would consider a bid conditioned on assurance to the bidder of other leases or preferential right to leases. Due to the interest of Fall, the Transport Company had opportunities for conference with and advice from those acting for the United States which were not given to others. There were five other oil companies with which officers or employees of the United States conferred as to the proposed contract. Fall knew that two of these would not bid because they considered the proposed contract illegal; that two of the others had not been invited to bid, and that the other one would refuse to bid unless authority for the contract should be obtained from Congress. Invitation for proposals was sent two construction companies; but Fall understood and stated that it was impossible for either of them to bid because payment had to be made in royalty oil. April 13, Fall left Washington for Three Rivers, New Mexico. Before leaving he gave instructions that no bids should be accepted or contract awarded without his consent. The bids were opened April 15. Four were received; one was conditioned upon Congressional approval of the contract; one did not cover the construction work and applied only to furnishing the fuel oil; the other two proposals were from the Transport Company: one of them, designated A, was in accordance with the invitation for bids, but the other, called B, was not. The latter named the smaller lump sum in barrels of crude oil; it stated that if actual cost was less than a specified amount the saving should be credited to the Government; and it was conditioned upon granting the bidder preferential right to become lessee in all leases that thereafter might be granted by the United States for recovery of oil and gas in Reserve No. 1. On April 18 Edward C. Finney, Acting Secretary of the Interior, telegraphed Fall that certain officials and employees of the United States recommended acceptance of proposal B; on the same day Fall consented by telegram, and Finney sent a letter to the company purporting to award the contract to it. Cotter then stated that the Transport Company did not desire to make the contract unless the United States would agree, within twelve months, to grant the company a lease or leases of lands in Reserve No. 1. He also raised the question whether the executive order of May 31, 1921, had any legal force and refused to permit the company to make the contract unless Denby should sign as Secretary of the Navy. April 20, Arthur W. Ambrose of the Bureau of Mines was sent from Washington to Three Rivers with the papers in the case. He was instructed to consult Fall as to whether Denby should be made a party to the contract. April 23, Fall by telegram agreed that Denby should be made a party and directed Finney to execute the contract for the Department of the Interior. While it is not clearly shown that Ambrose took with him a draft of the letter of April 25, signed by Denby and Finney and sent to Cotter, he was instructed to, and did, consult Fall concerning it. That letter declares that the company's proposals were the lowest received by the Government. After stating that, expressed in money, proposal B is the better by $235,184.40, and by the possible saving by performance for less than the estimated cost of construction, it said: "It is evident from our conversation of April 18 that your interpretation of preferential right was to the effect that the . . . Transport Co. desired the right to lease certain specified land in naval petroleum reserve No. 1 as well as preferential right to lease other land in naval petroleum reserve No. 1 to the extent described in Article XI of contract. It is also my understanding from your conversation that unless the . . . Transport Co. could get a lease to certain lands, your company would not desire to enter into a contract under the terms outlined in proposal (B) and preferred the government would

accept proposal (A)." The letter then stated that the Department favored proposal B and reiterated its stated advantages over the other proposal. Then it said: "In order that the Government may take advantage of a contract embodying the terms outlined in proposal (B), I wish to advise you that the Department of the Interior will agree to grant to the . . . Transport Co. within one year from the date of the delivery of a contract relative to the Pearl Harbor project leases to drill the following tracts of land." The letter specified the quarter section covered by the lease of June 5, 1922, and an additional strip, and stated that the royalties to be required would not be greater than specified rates ranging from 12½ to 35 per cent. The preferential right was inserted to prevent competition. The assurance that additional leases would be given was not necessary or required under proposal B.

After the making of the contract of April 25, the posted field price of crude oil declined rapidly. In the autumn of 1922 the Transport Company and Doheny were in correspondence or consultation with Fall for the purpose of at once securing additional leases in Reserve No. 1. Doheny submitted a proposition to Fall which the latter delivered to his subordinates with his favorable recommendation. Later Doheny enlarged the proposition, and there followed negotiations concerning the proposed lease. Doheny and Fall agreed upon a schedule of royalties. The lease of December 11 was arranged without competition of any kind. Plans for the proposed construction work had not been prepared. Before the contract and lease were made Fall and others in his Department stated to persons making inquiries that it was not the intention to make leases or to drill in that Reserve. The danger of drainage had been eliminated by agreement between the United States and oil companies operating in the vicinity that no drilling should be done by either except on six months' notice to the other.

The District Court concluded that the contracts and leases were obtained by corruption and fraud. On their appeal, petitioners challenged practically all the findings of the trial court. The Circuit Court of Appeals, after stating the issue and the substance of the facts found and conclusions reached below, said: "We find no ground for disturbing the findings of fact which we deem essential to the decision of the case, and while the evidence may be insufficient to support certain contested findings the disputed facts, in view of our conclusions upon the law applicable to the case, become of

little importance." The petitioners here argue that the Secretary of the Navy did in fact exert the authority conferred by the Act of June 4, 1920, and that Fall did not dominate the making of the contracts and leases; that it was not proved by any evidence competent or admissible against the companies that Doheny gave Fall $100,000; that the giving of the money did not affect the transaction; that it was a loan and not a bribe, and that the record does not sustain the conclusion of the District Court.

We have considered the evidence, and we are satisfied that the findings as to the matters of fact here controverted are fully sustained, except the statement that Denby signed the contracts and leases under misapprehension and without full knowledge of the contents of the documents. As to that the record requires an opposite finding. Under the Act of June 4, 1920, it was his official duty to administer the oil reserves; he was not called as a witness, and it is not to be assumed that he was without knowledge of the disposition to be made of them or of the means employed to get storage facilities and fuel oil for the Navy. He is presumed to have had knowledge of what he signed; there are direct evidence and proven circumstances to show that he had. But the evidence sustains the finding that he took no active part in the negotiations, and that Fall, acting collusively with Doheny, dominated the making of the contracts and leases.

The finding that Doheny caused the $100,000 to be given to Fall is adequately sustained by the evidence. Early in 1924, during the investigation of these contracts and leases by the Senate Committee, Doheny voluntarily appeared as witness and there gave testimony for the purpose of explaining the money transaction between him and Fall at the time the initial contract was being negotiated. At the trial of this case, over objections of the companies, his statements before the committee were received in evidence. Petitioners insist that they were not admissible. But Doheny acted for both companies when the contracts and leases were negotiated. He controlled the voting power of one that owned all the shares of the other. He was President of the Petroleum Company up to July 24, 1922, and then became Chairman of its board. He was President of the Transport Company until December 7, 1923, when he became Chairman of its board. He was Chairman of both when he testified. There is no evidence that his control over or authority to act for these com-

panies was less in 1924, when he appeared for them before the committee, than it was in 1921 and 1922, when he negotiated and executed the contracts and leases. The companies were much concerned as to the investigation lest it might result in an effort to set aside the transaction. The hearing before the committee was an occasion where it was proper for them to be represented. Doheny had acted for them from the inception of the venture. The facts and circumstances disclosed by the record justified the lower courts in holding that, when he testified before the committee, he was acting for the companies within the scope of his authority. His statements on that occasion are properly to be taken as theirs, and are admissible in evidence against them. *Chicago* v. *Greer,* 9 Wall. 726, 732; *Xenia Bank* v. *Stewart,* 114 U. S. 224, 229; *Fidelity & Deposit Co.* v. *Courtney,* 186 U. S. 342, 349, 351; *Aetna Indemnity Co.* v. *Auto-Traction Co.,* 147 Fed. 95, 98; *Joslyn* v. *Cadillac Co.,* 177 Fed. 863, 865; *Chicago, Burlington & Quincy R. R. Co.* v. *Coleman,* 18 Ill. 297, 298.

The facts and circumstances disclosed by the record show clearly that the interest and influence of Fall as well as his official action were corruptly secured by Doheny for the making of the contracts and leases; that, after the executive order of May 31, 1921, Fall dominated the administration of the Naval Reserves, and that the consummation of the transaction was brought about by means of collusion and corrupt conspiracy between him and Doheny. Their purpose was to get for petitioners oil and gas leases covering all the unleased lands in the Reserve. The making of the contracts was a means to that end. The whole transaction was tainted with corruption. It was not necessary to show that the money transaction between Doheny and Fall constituted bribery as defined in the Criminal Code or that Fall was financially interested in the transaction or that the United States suffered or was liable to suffer any financial loss or disadvantage as a result of the contracts and leases. It is enough that these companies sought and corruptly obtained Fall's dominating influence in furtherance of the venture. It is clear that, at the instance of Doheny, Fall so favored the making of these contracts and leases that it was impossible for him loyally or faithfully to serve the interests of the United States. The lower courts for that reason rightly held the United States entitled to have them adjudged illegal and void. *Crocker* v. *United States,* 240 U. S. 74, 80, 81; *Garman* v. *United States,* 34 Ct. Cls. 237, 242; *Herman* v. *City of Oconto,* 100 Wis. 391, 399; *Harrington* v. *Victoria Graving Dock Co.,* L. R. 3 Q. B. D. 549; *Tool Company* v. *Norris,* 2 Wall. 45, 54, 56; *Trist* v. *Child,* 21 Wall. 441, 448, 452; *Meguire* v. *Corwine,* 101 U. S. 108, 111; *Oscanyan* v. *Arms Co.,* 103 U. S. 261, 275; *Washington Irr. Co.* v. *Krutz,* 119 Fed. 279, 286.

The transaction evidenced by the contracts and leases was not authorized by the Act of June 4, 1920. The grant of authority to the Secretary of the Navy did not indicate a change of policy as to conservation of the reserves. The Act of June 25, 1910, the Act of February 25, 1920, the executive orders, and the Joint Resolution of February 8, 1924, show that it has been and is the policy of the United States to maintain a great naval petroleum reserve in the ground. While the possibility of loss by drainage might be a reason for legislation enabling the Secretary to take any appropriate action that at any time might become necessary to save the petroleum, it is certain that the contracts and leases have no such purpose. The work to be paid for in crude products contemplated the construction of fuel depots. The one covered by the first contract was a complete unit sufficient for 1,500,000 barrels including pumping stations, fire protection and its own wharf and channel. It is not necessary to consider the possible extent of the construction that might be required under the later contract. Indeed it could not then be known how much work and products in storage it would take to exhaust the reserve. The record shows that the Navy Department estimated the cost of proposed storage plants and contents at approximately $103,000,000. Congress has not authorized any such program. The Department tried and failed to secure additional appropriations for the Pearl Harbor storage facilities. The Act of August 31, 1842, 5 Stat. 77 (R. S. § 1552), gave the Secretary authority to construct fuel depots. But it was taken away by the Act of March 4, 1913, 37 Stat. 898. Since that time Congress has made separate appropriations for fuel stations at places specifically named.[1] And it has long been its policy to prohibit the making of

[1]March 4, 1913, c. 148, 37 Stat. 891, 898; June 30, 1914, c. 130, 38 Stat. 392, 401; March 3, 1915, c. 83, 38 Stat. 928, 937; August 29, 1916, c. 417, 39 Stat. 556, 570; March 4, 1917, c. 180, 39 Stat. 1168, 1179; June 15, 1917, c. 29, 40 Stat. 182, 207; July 1, 1918, c. 114, 40 Stat. 704, 726; November 4, 1918, c. 201, 40 Stat. 1020, 1034; July 11, 1919, c. 9, 41 Stat. 131, 145; June 5, 1920, c. 253, 41 Stat. 1015, 1030; July 12, 1921, c. 44, 42 Stat. 122, 130.

contracts of purchase or for construction work in the absence of express authority and adequate appropriations therefor. R. S. §§ 3732, 3733; Act of June 12, 1906, 34 Stat. 255; Act of June 30, 1906, 34 Stat. 764. The Secretary was not authorized to use money received from the sale of gas products. All such sums are required to be paid into the Treasury. R. S. §§ 3617, 3618, as amended, 19 Stat. 249.

The words granting authority to the Secretary are "use, store, exchange, or sell" the oil and gas products. As the Secretary, among other things, was authorized until July 1, 1922, to use money out of the appropriation to "store" oil and gas products from these lands, it will not be held, in the absence of language clearly requiring it, that he was also empowered without limit to use crude oil to pay for additional storage facilities. Unless given him by "exchange" the Secretary had no power by such contracts to locate or construct fuel depots. It is not contended that the clause confers unlimited authority, and the petitioners say that the word "exchange" must have some reasonable limitation. But they insist that it is broad enough to authorize the contracts. If it is, there is no reason why crude oil may not be used to pay for any kind of construction work or to purchase any property that may be desired by the Department for the use of the Navy.

The purpose and scope of the provision are limited to the administration of the reserves. The clause is found in a proviso to an appropriation for an investigation of fuel adapted to naval requirements and the availability of the supply in the naval reserves. If "exchange" has the meaning contended for by petitioners, it must be taken to indicate that Congress intended by the clause in question not only to restore to the Secretary authority in respect of fuel depots that had been taken from him by the Act of March 4, 1913, but also to enable him by means of contracts and leases such as these to reverse, if he saw fit, the established policy of the Government as to the petroleum reserves. The circumstances of the enactment as well as the terms of the provision indicate a purpose to authorize exchange of crude petroleum from these reserves for fuel oil and other petroleum products suitable for use by the Navy. The Secretary was not authorized to refine the crude product. A draft of the Act included that authority, but the word "refine" was stricken out. This made necessary the exchange of the crude product for fuel oil and other

products suitable for use. Whatever the meaning rightly to be attributed to the words employed, it is clear that they stop short of authorizing the Secretary to pay for improvements such as were covered by the contracts.

The petitioners insist that, in any event, they are entitled to credit for the cost of construction work performed and of the fuel oil furnished at Pearl Harbor, and also for the amount they expended to drill and operate oil wells and to make other improvements on the leased lands.

The substance of the account, as stated in the decree of the District Court, is printed in the margin.[2] The findings show that the storage facilities at Pearl Harbor covered by the contracts were economically completed on the lands of the United States under the direction of the companies and the supervision of officers of

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[2]A. Transport Company is debited:

1. All royalty oil, etc., delivered under contracts of April 25, 1922, and December 11, 1922, to May 31, 1925	$7,889,759.21
2. Profit on their resale	791,012.03
3. Interest on #1	684,625.55
4. Interest on #2	94,351.36
Total	$9,459,748.15

B. Transport Company is credited:

1. Actual cost of storage facilities at Pearl Harbor, under contracts of April 25, 1922, and December 11, 1922	$7,350,814.11
2. Interest on #1	820,922.43
3. Cost of fuel oil delivered to tanks	1,986,142.47
4. Interest on #3	259,569.11
Total	$10,417,448.12
Balance due Transport Company	$957,699.97

C. Petroleum Company is debited:

1. Value of petroleum products taken under leases of June 5, 1922, and December 11, 1922 (other than those included in the account of the Transport Co.)	$1,556,861.17
2. Interest on #1	170,650.02
Total	$1,727,511.19

D. Petroleum Company is credited:

1. Actual cost of drilling, putting on production, maintaining and operating wells, and other useful improvements to property under leases	$1,013,428.75
2. Actual cost of constructing, maintaining and operating compressor and absorption plant less value of use for products of other lands and less gasoline manufactured and sold from gas produced from lands in controversy	194,991.01
3. Interest on #1 and #2	161,060.43
Total	$1,369,480.19
Balance due United States	$358,031.00

NOTE: Interest is at the rate of 7% and is calculated on monthly balances to May 31, 1925.

the Navy; that they are of benefit to the United States and are now available for use and should be retained by it; that the Transport Company delivered into the storage constructed a specified quantity of fuel oil of value to the United States equal to what it cost the company; that under the supervision of Government officials the Petroleum Company economically expended money for development of the leased lands to produce oil, gas and gasoline and to make thereon permanent improvements that resulted in benefit to the United States equal to the amount expended.

They maintain that, as a condition of granting the United States the relief it claims, equity requires it to give credit to them for their expenditures; that if this be denied, they will be required to pay double the value of the royalty oil they have received, and that the United States thereby will be unjustly enriched; that, except the balance shown by the account, they have paid in full for such oil; that the United States has fully paid for the benefits it received from petitioner's expenditures, and that, in effect, it now seeks to recover the payments it made voluntarily. And they insist that the United States must be made to bear these amounts even if the contracts were made without authority of law or were tainted with fraud, violation of public policy, conspiracy or other wrongful act.

In suits brought by individuals for rescission of contracts the maxim that he who seeks equity must do equity is generally applied, so that the party against whom relief is sought shall be remitted to the position he occupied before the transaction complained of. "The court proceeds on the principle, that, as the transaction ought never to have taken place, the parties are to be placed as far as possible in the situation in which they would have stood if there had never been any such transaction." *Neblett* v. *Macfarland,* 92 U. S. 101, 103. And, while the perpetrator of the fraud has no standing to rescind, he is not regarded as an outlaw; and, if the transaction is rescinded by one who has the right to do so, "the courts will endeavor to do substantial justice so far as is consistent with adherence to law." *Stoffela* v. *Nugent,* 217 U. S. 499, 501. The general principles of equity are applicable in a suit by the United States to secure the cancelation of a conveyance or the rescission of a contract. *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 339; *United States* v. *Stinson,* 197

U. S. 200, 204; *State of Iowa* v. *Carr,* 191 Fed. 257, 266; cf. *Mason* v. *United States,* 260 U. S. 545, 557, *et seq.* But they will not be applied to frustrate the purpose of its laws or to thwart public policy.

Causey v. *United States,* 240 U. S. 399, was a suit in equity brought by the United States to recover title to public lands conveyed to defendant under the homestead laws. The patent was obtained by fraud. The defendant paid the United States for the land in scrip at the rate of $1.25 per acre. The complaint did not contain an offer to return the scrip, and it was insisted by the defendant that, because of such failure, the suit could not be maintained. The court said (p. 402): "This objection assumes that the suit is upon the same plane as if brought by an individual vendor to annul a sale of land fraudulently induced. But, as this court has said, the Government in disposing of its public lands does not assume the attitude of a mere seller of real estate at its market value. These lands are held in trust for all the people, and in providing for their disposal Congress has sought to advance the interests of the whole country by opening them to entry in comparatively small tracts under restrictions designed to accomplish their settlement, development and utilization. And when a suit is brought to annul a patent obtained in violation of these restrictions, the purpose is not merely to regain the title but also to enforce a public statute and maintain the policy underlying it. Such a suit is not within the reason of the ordinary rule that a vendor suing to annul a sale fraudulently induced must offer and be ready to return the consideration received. That rule, if applied, would tend to frustrate the policy of the public land laws; and so it is held that the wrongdoer must restore the title unlawfully obtained and abide the judgment of Congress as to whether the consideration paid shall be refunded."

Heckman v. *United States,* 224 U. S. 413, was a suit by the United States to cancel conveyances of allotted lands made by members of the Cherokee Nation and to have the title decreed to be in the allottees and their heirs, upon the ground that the conveyances were made in violation of restrictions upon the power of alienation. On demurrer to the complaint it was insisted that the allottees had received considerations for the conveyances and should be made parties to the suit in order that equitable restoration might be enforced. The court said (p. 446): "Where, however, convey-

ance has been made in violation of the restrictions, it is plain that the return of the consideration cannot be regarded as an essential prerequisite to a decree of cancellation. Otherwise, if the Indian grantor had squandered the money, he would lose the land which Congress intended he should hold, and the very incompetence and thriftlessness which were the occasion of the measures for his protection would render them of no avail. The effectiveness of the acts of Congress is not thus to be destroyed. The restrictions were set forth in public laws, and were matters of general knowledge. Those who dealt with the Indians contrary to these provisions are not entitled to insist that they should keep the land if the purchase price is not repaid, and thus frustrate the policy of the statute."

United States v. *Trinidad Coal Co.*, 137 U. S. 160, was a suit brought by the United States to set aside patents conveying certain coal lands on the ground that they were obtained by fraud and in violation of R. S. §§ 2347, 2348, 2350. The company, in furtherance of a fraudulent scheme to get the lands, furnished the money that was paid to the United States by the fraudulent patentees who conveyed the lands to the company. The complaint did not contain an offer by the United States to return the money. The company contended that the United States was subject to the rules that apply to individuals and that relief should be conditioned upon return of the money. The court held that the rule should not be applied in a case like that one. It laid down and applied the principles on which rest the decisions in *Causey* v. *United States, supra,* and *Heckman* v. *United States, supra.* Among other things, the court said (p. 170): "If the defendant is entitled, upon a cancellation of the patents fraudulently and illegally obtained from the United States, in the name of others, for its benefit, to a return of the moneys furnished to its agents in order to procure such patents, we must assume that Congress will make an appropriation for that purpose, when it becomes necessary to do so. The proposition that the defendant, having violated a public statute in obtaining public lands that were dedicated to other purposes, cannot be required to surrender them until it has been reimbursed the amount expended by it in procuring the legal title, is not within the reason of the ordinary rule that one who seeks equity must do equity; and, if sustained, would interfere with the prompt and efficient administration of the public domain. Let the wrongdoer first restore what it confesses to have obtained from the government by means of a fraudulent scheme formed by its officers, stockholders and employes in violation of law."

It was the purpose of those making the contracts and leases to circumvent the laws and defeat the policy of the United States established for the conservation of the naval petroleum reserves. The purpose of the representatives of the Department was to get for the Navy fuel depots or storage facilities that had not been authorized by Congress. The leases were made to obtain the crude products for use as a substitute for money to make good the amounts advanced by petitioners to pay for such improvements. The Secretary's authority to provide facilities in which to "store" naval reserve petroleum or its products did not extend beyond those that might be provided by use of the money made available by the Act of June 4, 1920. And, in order to get control of the oil lands covered by the leases, the companies agreed to pay for these unauthorized works of construction and to furnish fuel oil and other products of petroleum suitable for naval use to fill the storage facilities so added. The contracts and leases and all that was done under them are so interwoven that they constitute a single transaction not authorized by law and consummated by conspiracy, corruption and fraud. The United States does not stand on the same footing as an individual in a suit to annul a deed or lease obtained from him by fraud. Its position is not that of a mere seller or lessor of land. The financial element in the transaction is not the sole or principal thing involved. This suit was brought to vindicate the policy of the Government, to preserve the integrity of the petroleum reserves and to devote them to the purposes for which they were created. The petitioners stand as wrongdoers, and no equity arises in their favor to prevent granting the relief sought by the United States. They may not insist on payment of the cost to them or the value to the Government of the improvements made or fuel oil furnished as all were done without authority and as means to circumvent the law and wrongfully to obtain the leases in question. As Congress had not authorized them, it must be assumed that the United States did not want the improvements made or was not ready to bear the cost of making them. No storage of fuel oil at Pearl Harbor was authorized to be made in excess of the capacity of, or in any places other than, the facilities provided for that purpose pursuant to authorization by

Congress. Whatever their usefulness or value, it is not for the courts to decide whether any of these things are needed or should be retained or used by the United States. Such questions are for the determination of Congress. It would be unjust to require the United States to account for them until Congress acts; and petitioners must abide its judgment in respect of the compensation, if any, to be made. And this applies to the claim on account of the fuel oil as well as to the other items. Clearly petitioners are in no better position than they would be if they had paid money to the United States, instead of putting the fuel oil in storage. Equity does not condition the relief here sought by the United States upon a return of the consideration. *United States* v. *Trinidad Coal Co., supra; Heckman* v. *United States, supra; Causey* v. *United States, supra.*

Decree affirmed.

Mr. Justice STONE took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.