

UNITED STATES *v.* HERR.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF COLORADO.

No. 292. Argued October 15, 1908.—Decided December 14, 1908.

Decided on the authority of *United States v. Keitel*, *ante*, p. 370.
157 Fed. Rep. 396, affirmed.

THE facts are stated in the opinion.

The Attorney General and *The Solicitor General*, with whom *Mr. Edwin W. Lawrence*, Special Assistant to the Attorney General, was on the brief, for the United States.¹

Mr. B. W. Ritter and *Mr. N. C. Miller*, with whom *Mr. Edgar Buchanan* was on the brief, for defendant in error.

MR. JUSTICE WHITE delivered the opinion of the court.

The indictment in this case contains two counts, each purporting to charge the commission of an offense in violation of Rev. Stat., § 4746, as amended.

The substantial charge in each count is that the defendant unlawfully procured a named person, in connection with a preferential entry of coal lands, to make and present to the Secretary of the Interior, by and through the register and receiver of the United States Land Office at Durango, Colorado, an affidavit at purchase, which was false and fraudulent in specified particulars. A demurrer to the indictment was filed and the validity of each count was assailed on many grounds. In disposing of the demurrer it was assumed by the District

¹ For abstract of argument see *United States v. Keitel et al.*, *ante*, p. 372.

Judge, as conceded by the Government, that the affidavit was not, in fact, presented to the Secretary of the Interior, but was simply filed in the local land office.

The demurrer was sustained, "for reasons given on consideration of the second count in the indictment," in the case against *F. W. Keitel et al.* The case at bar comes within the principles applied by us in No. 287, just decided, where, in passing upon the rulings made below in the *Keitel case*, it was held that the second count of the indictment there considered, when the statute was correctly construed, stated no offense. The judgment below, which involved a similar ruling, is therefore

Affirmed.

HARRIMAN v. INTERSTATE COMMERCE COMMISSION.

KAHN v. INTERSTATE COMMERCE COMMISSION.

INTERSTATE COMMERCE COMMISSION v. HARRIMAN.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

Nos. 315, 316, 317. Argued November 3, 4, 1908.—Decided December 14,
1908.

The primary purpose of the Interstate Commerce Act is to regulate interstate business of carriers, and the secondary purpose, that for which the commission was established, to enforce the regulations enacted by it, and the power to require testimony is limited, as is usual in English-speaking countries, to investigations concerning a specific breach of the existing law; this power is not extended to mere investigations by provisions in any of the amendatory acts in regard to annual reports of interstate carriers, or of the commission, or for the purpose of recommending legislation.

Quere whether Congress has unlimited power to compel testimony in regard to subjects which do not concern direct breaches of law, and whether, and to what extent, it can delegate such power.