

of the United States in any manner or for any purpose within the intendment of that section.

It remains only to notice the ruling of the court below as to the bar of the statute of limitations. While the act of 1907<sup>1</sup> gives authority to come directly here to obtain a review of the construction of a statute under the circumstances which the act enumerates, and also authorizes us to review a "decision or judgment sustaining a special plea in bar, when the defendant has not been put in jeopardy," we consider that the power given is coincident with the purpose for which it was conferred, that is, to have determined in a case within the statute the question whether or not the Government is entitled to further prosecute the case, and therefore does not of course call upon us to decide every question of the character referred to in the statute, when by the decision of one of such questions the case is completely disposed of and the other questions have become so irrelevant as to cause it to be in our opinion unnecessary to consider and determine them. Of course, under these circumstances, we intimate no opinion whatever concerning the correctness of the construction adopted by the court below in respect to the statute of limitations.

*Affirmed.*

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### UNITED STATES *v.* SULLENBERGER.

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

No. 290. Argued December 16, 17, 1908.—Decided January 4, 1909.

Decided on the authority of *United States v. Biggs*, *ante*, p. 507.

THE facts are stated in the opinion.

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<sup>1</sup> The act of March 2, 1907, is reproduced in full, *ante*, p. 398.

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Argument for Defendants in Error.

*The Attorney General and The Solicitor General*, with whom *Mr. Edwin W. Lawrence*, Special Assistant to the Attorney General, for the United States.<sup>1</sup>

*Mr. Edmund F. Richardson*, with whom *Mr. Horace N. Hawkins* was on the brief, for defendants in error:

The indictment contains no charge of a crime, in that it charges the plan or alleged conspiracy of defendants to have been simply an agreement or plan to obtain *indirectly* lands for a corporation that could not, according to the indictment, have been *directly* purchased by the said corporation. A plan to obtain indirectly lands from the Government may or may not be a plan to defraud the Government. Whether or not it is a scheme to defraud the Government necessarily depends upon the question of whether or not the means to be adopted are criminal or unlawful.

No unlawful or criminal means are charged to have been planned or contemplated, there being no claim made in the indictment that the defendants agreed, or planned to hire, employ or induce anyone to make application to purchase lands. In other words, no claim is made anywhere in the indictment that the alleged conspiracy embraced the making of a deal or agreement with any person in advance of that person having made, in good faith, an application to purchase the land. There is, therefore, no charge of a conspiracy to defraud the United States.

The Sixth Amendment to the Constitution secures to the defendants, among other things, the right "to be informed of the nature and cause of the accusation." *United States v. Miller*, 7 Pet. 1422; *United States v. Cruikshank*, 92 U. S. 542, 558; *Evans v. United States*, 153 U. S. 584.

All the essential elements of fact required to be set forth in an indictment must be there charged in direct, positive and explicit language. Any omission in that behalf cannot be

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<sup>1</sup> For argument of counsel for United States in this case, see *United States v. Biggs et al.*, ante, p. 507.

aided by implication, inference, argument, recital or intendment. This principle has been well stated in *United States v. Post*, 113 Fed. Rep. 854; *Pettibone v. United States*, 148 U. S. 197; *United States v. Hess*, 124 U. S. 486; *United States v. Staats*, 8 How. 41, 44; *In re Wolf*, 27 Fed. Rep. 606, 611; *In re Corning*, 51 Fed. Rep. 205, 210.

"In an indictment nothing material shall be taken by intendment or implication." *Salla v. United States*, 104 Fed. Rep. 544, 547; *Miller v. United States*, 133 Fed. Rep. 337; *United States v. Hess*, 124 U. S. 483; *United States v. Walsh*, 5 Dill. 58, 63; *S. C.*, 28 Fed. Cas., No. 16,636, p. 396; *United States v. Martin*, 26 Fed. Cas., No. 15,728; *In re Wolf*, 27 Fed. Rep. 606, 611; *United States v. Crafton*, 25 Fed. Cas., No. 14,881; *United States v. Watson*, 17 Fed. Rep. 145; *United States v. Taffe*, 86 Fed. Rep. 113, 115; *In re Greene*, 52 Fed. Rep. 104, 111, 112, 114; *Evans v. United States*, 153 U. S. 584, 587; *Pettibone v. United States*, 148 U. S. 197, 203; *United States v. Milner*, 36 Fed. Rep. 890; *Conrad v. United States*, 127 Fed. Rep. 789, 801; *Stearns v. United States*, 152 Fed. Rep. 900, 904; *People v. Willis*, 54 N. Y. Supp. 130, 137, citing other authorities.

MR. JUSTICE WHITE delivered the opinion of the court.

In this case the United States seeks the reversal of the action of the court below in quashing an indictment, the writ of error being prosecuted directly from this court upon the assumption that the case comes within the act of March 2, 1907. The indictment charged a conspiracy in violation of § 5440, Rev. Stat., to unlawfully acquire land of the United States under the timber and stone act. The court gave to the indictment the same construction which it affixed to the indictment in the case of *United States v. Biggs et al.*, No. 289, which we have just decided, *ante*, p. 507, and applied the same principles which it expounded in the opinion in that case. Disregarding mere immaterial differences in the form of the pleadings

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Opinion of the Court.

this case is like the *Biggs case*, and is disposed of by the opinion which we have just announced in that case.

*Affirmed.*

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UNITED STATES *v.* FREEMAN.

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

No. 288. Argued December 16, 17, 1908.—Decided January 4, 1909.

Decided on the authority of *United States v. Biggs, ante*, p. 507.

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.<sup>1</sup>

*Mr. Charles J. Hughes* and *Mr. Clyde C. Dawson* for defendants in error.<sup>1</sup>

MR. JUSTICE WHITE delivered the opinion of the court.

In this case the court below quashed an indictment, and a writ of error direct from this court is prosecuted on behalf of the United States, upon the theory by which it prosecuted the writ in the case of *United States v. Biggs et al.*, No. 289, just decided. The case presented by the record, omitting references to irrelevant distinctions in the form of the pleadings, is like that in the *Biggs case*, and is controlled and disposed of by the opinion just announced therein.

*Affirmed.*

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<sup>1</sup> For abstracts of arguments see *ante*, p. 507.