

only because of instigation and inducement by a government officer. To say that such conduct by an official of government is condoned and rendered innocuous by the fact that the defendant had a bad reputation or had previously transgressed is wholly to disregard the reason for refusing the processes of the court to consummate an abhorrent transaction. It is to discard the basis of the doctrine and in effect to weigh the equities as between the government and the defendant when there are in truth no equities belonging to the latter, and when the rule of action cannot rest on any estimate of the good which may come of the conviction of the offender by foul means. The accepted procedure, in effect, pivots conviction in such cases, not on the commission of the crime charged, but on the prior reputation or some former act or acts of the defendant not mentioned in the indictment.

The applicable principle is that courts must be closed to the trial of a crime instigated by the government's own agents. No other issue, no comparison of equities as between the guilty official and the guilty defendant, has any place in the enforcement of this overruling principle of public policy.

The judgment should be reversed and the cause remanded to the District Court with instructions to quash the indictment and discharge the defendant.

MR. JUSTICE BRANDEIS and MR. JUSTICE STONE concur in this opinion.

JOHNSON & HIGGINS OF CALIFORNIA *v.* UNITED STATES.

CERTIORARI TO THE COURT OF CLAIMS.

No. 166. Argued December 9, 1932.—Decided December 19, 1932.

Cargo, while being carried free on an Army transport, was damaged by water used to put out a fire. Insurers of the cargo having claimed contribution from the Government, and the Judge Advocate

General having advised that the claim was valid, the officer of the Quartermaster Corps who was responsible for the operation of the vessel engaged a private firm to prepare a general average statement for a reasonable compensation. *Held* that the contract was authorized even if the Government was not liable for general average, since that question was not free from doubt and the duty of preparing the statement lay on the officer and in discharging it he was entitled to have the assistance of general average adjusters.

74 Ct. Cls. 331, reversed.

CERTIORARI * to review a judgment rejecting a claim against the United States for services and expenses in preparing a general average statement.

Mr. Cletus Keating, with whom *Mr. Richard L. Sullivan* was on the brief, for petitioner.

Solicitor General Thacher, with whom *Assistant Attorney General Rugg* and *Messrs. H. Brian Holland* and *W. Marvin Smith* were on the brief, for the United States.

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

The material facts as found by the Court of Claims are these: In December, 1918, fire broke out on the United States Army Transport Logan bound from San Francisco to Manila with a general cargo belonging to various owners. The Logan was under the operation, management and control of the United States. The cargo consisted in part of military supplies for American troops in Siberia and the Philippine Islands, supplies belonging to the government of the Philippine Islands, supplies belonging to the American Red Cross, and a small amount of personal property of officers of the United States Army, all of which was being transported free of charge. In extinguishing the fire some of the cargo was damaged by water; and some or all of the cargo was covered by insurance against general average losses.

* See Table of Cases Reported in this volume.

In August, 1922, the general superintendent and administrative officer of the Army Transport Service of the Quartermaster Corps requested the petitioner, a corporation doing business as average adjuster and insurance broker, to prepare "a statement of general average in order that the responsibility of the various parties concerned may be determined." Attached to this request was a communication from the Acting Judge Advocate General of the United States to the Quartermaster General which referred to the claim of the marine underwriters for contribution in general average and stated: "The claim being a valid one, it is therefore recommended that prompt steps be taken to ascertain the amount due the insurance company by way of contribution in general average. For this purpose, it is recommended that the matter be referred to a general average adjuster." Petitioner accordingly made its investigation and prepared and submitted to the general superintendent of the Army Transport Service at San Francisco the usual general average statement. For this service and incidental disbursements, petitioner made the "usual, customary and reasonable charge" and, upon disallowance of the claim by the Comptroller General, petitioner brought this suit.

The Court of Claims held that the Government was not liable to contribute in general average and that, in consequence, none of its officers had authority to contract for the preparation of a general average statement. The Court of Claims dismissed the petition and this Court granted certiorari.

The Solicitor General, while not formally confessing error, and while reserving the question whether the Government was liable to contribute in general average, is in accord with petitioner's contention that the proper officer of the Government was authorized to employ petitioner for the purpose stated. We are of the opinion that this view is correct. In the circumstances, petitioner's right

did not depend upon the determination of the liability of the Government to contribute in general average. The question of that liability could not be regarded as free from doubt. The cargo underwriters had made claim for contribution and the Judge Advocate General of the Army had advised that the claim was valid. On receiving this information, it was the duty of the officer responsible for the operation of the vessel to prepare the general average statement in order that the basis for adjustment might be available. *Ralli v. Troop*, 157 U. S. 386, 400. That duty, in this instance, apart from the question of the liability of the Government for general average as to which it is not now necessary to express an opinion, lay with the general superintendent and administrative officer of the Army Transport Service, and in order that he might properly perform it, he was entitled to avail himself of the assistance of general average adjusters.

Judgment reversed.

PINELLAS ICE & COLD STORAGE CO. *v.* COMMISSIONER OF INTERNAL REVENUE.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 182. Argued December 12, 13, 1932.—Decided January 9, 1933.

1. A sale by one corporation to another of all of its property for a money consideration part in cash and the remainder to be paid in instalments evidenced meanwhile by the promissory notes of the vendee, *held* not to be an "exchange" of property for cash and "securities" by a "party to a reorganization," within the meaning of § 203 (b) (3) (h) of the Revenue Act of 1926, which provides that in the transactions to which it refers the gain or loss shall not be considered in computing the income tax of the transferor. P. 468.