

mere assertions in the nature of conclusions of law. The effect or weight to be given them necessarily depends upon the details and circumstances shown by the evidence. Made as they were through a mistaken view of the applicable law, these declarations may not reasonably be adopted here as findings that no such contracts were made and that plaintiff and defendants indulged in the make-believe denounced by § 4318.

There is no evidence of any violation of the bucketshop laws, nor is there any suggestion that the transactions shown can be held illegal except by force of the Missouri statute. I do not disagree with the majority that the Federal Grain Futures Act has not superseded the statutes of Missouri applicable to these transactions.

I am of opinion that the judgment of the district court should stand reversed and that the judgment of the circuit court of appeals should be affirmed.

MR. JUSTICE STONE and MR. JUSTICE CARDOZO join in this dissent.

MILLER *v.* ADERHOLD, WARDEN.

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

No. 138. Argued January 9, 1933.—Decided February 6, 1933.

1. One upon whom sentence in a criminal case has been suspended may at any time request the court to pronounce judgment, and in the absence of such request must be deemed to have consented to the indefinite delay. P. 210.
2. In a criminal case in the federal district court an order for a permanent suspension of sentence is void. *Ex parte United States*, 242 U. S. 27. P. 209.
3. Final judgment in a criminal case means sentence; and a void order purporting permanently to suspend sentence is neither a final nor a valid judgment. P. 210.

4. Where judgment has not been pronounced upon a verdict during the term at which it was rendered, the cause continues on the docket and necessarily passes over to a succeeding term for final judgment or other appropriate action. P. 211.
 5. Where the district court, in a criminal case in which a verdict has been duly returned, orders sentence suspended, it is not without jurisdiction thereafter, either at the same or a subsequent term, to impose sentence,—even though the intent of the order of suspension was to suspend sentence permanently. P. 211.
- 56 F. (2d) 152, affirmed.

CERTIORARI, 287 U.S. 592, to review a judgment affirming a judgment dismissing a writ of habeas corpus.

Mr. Dean G. Acheson for petitioner.

The order of the District Court was clearly an indefinite or permanent suspension of sentence. Petitioner was not placed on probation. This order, under *Ex parte United States*, 242 U. S. 27, was beyond the power of the court. *Ex parte Singer*, 284 Fed. 60; *United States v. Wilson*, 46 Fed. 748.

Where the record shows a suspension of sentence and release of the prisoner, the suspension is permanent and indefinite. *Mintie v. Biddle*, 15 F. (2d) 931; *People v. Barrett*, 202 Ill. 287; *Grundel v. People*, 33 Colo. 191; *Collins v. State*, 217 Pac. 896; *Smith v. State*, 188 Ind. 64; *In re Flint*, 25 Utah 338; *Commonwealth v. Maloney*, 145 Mass. 205; *Weaver v. People*, 33 Mich. 296; *Warner v. State*, 194 Ind. 426. The cases of *Miner v. United States*, 244 Fed. 422, and *Musick v. United States*, 2 F. (2d) 711, are in no sense to the contrary.

With the passing of the trial term in which the invalid order was entered, the trial court, according to the uniform holdings of the federal and many state courts, lost jurisdiction thereafter to impose sentence. *Ex parte United States*, 242 U. S. 27; *United States v. Wilson*, 46 Fed. 748; *Ex parte Singer*, 284 Fed. 60; *Mintie v. Biddle*, 15 F. (2d) 931.

The following cases hold that, when the imposition of sentence has been indefinitely suspended or postponed and the trial term has expired, the trial court has no jurisdiction thereafter to impose sentence: *Grundel v. People*, 33 Colo. 191; *Hawaii v. Pedro*, 11 Hawaii 287; *People v. Allen*, 155 Ill. 61; *People v. Barrett*, 202 Ill. 287; *Smith v. State*, 188 Ind. 64; *Warner v. State*, 194 Ind. 426; *In re Beck*, 63 Kan. 57; *State v. Sapp*, 87 Kan. 740; *Weaver v. People*, 33 Mich. 296; *State v. Hockett*, 129 Mo. App. 639; *Collins v. State*, 217 Pac. 896; *In re Flint*, 25 Utah 338; *People v. Kennedy*, 58 Mich. 372; *Hitchcock v. State*, 145 Tenn. 626.

The following cases hold that, the suspension being invalid and the sentence valid, the prisoner may be lawfully held: *Tanner v. Wiggins*, 54 Fla. 203; *Neal v. State*, 104 Ga. 509; *Miller v. Evans*, 115 Ia. 101; *Brabandt v. Commonwealth*, 157 Ky. 130; *Fuller v. State*, 100 Miss. 811; *State v. Abbott*, 87 S. C. 466; *Spencer v. State*, 125 Tenn. 64; *Reese v. Olsen*, 44 Utah 318.

The following cases hold that subsequent imprisonment is unlawful: *State v. Voss*, 80 Ia. 467; *In re Peterson*, 19 Idaho 433; *In re Strickler*, 51 Kan. 700; *Ex parte Cornwall*, 223 Mo. 259; *State v. Murphy*, 23 Nev. 390; *In re Markuson*, 5 N. D. 180; *Ex parte Clendenning*, 22 Okla. 108; *In re Webb*, 89 Wis. 354. Cf. *Ex parte Bugg*, 163 Mo. App. 44.

Compare, as to indefinite suspension of imposition: *Ex parte Williams*, 26 Fla. 310; *Ex parte St. Hilaire*, 101 Me. 522; *Commonwealth v. Dowdican's Bail*, 115 Mass. 133; *Philpot v. State*, 65 N. H. 250; *People v. Court*, 141 N. Y. 288; *Commonwealth v. Dunleavy*, 16 Pa. Sup. Ct. 380.

Compare, as to indefinite suspension of execution: *Sylvester v. State*, 65 N. H. 193; *State v. Drew*, 75 N. H. 402; *State v. Hilton*, 151 N. C. 687.

The Federal Probation Act is inapplicable to the present case, because that Act does not confer the power to

suspend the imposition of sentence except as a necessary incident to subjecting a defendant to the discipline of probation. This was not done or attempted.

Mr. Paul D. Miller, with whom *Solicitor General Thacher*, *Assistant Attorney General Youngquist*, and *Messrs. John J. Byrne* and *W. Marvin Smith* were on the brief, for respondent.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.*

December 10, 1930, in the federal district court for the southern district of New York, petitioner was convicted on his plea of guilty of the crime of stealing from the United States mails. By order of the court, sentence was suspended and he was discharged from the custody of the marshal.

At a subsequent term of court, on June 17, 1931, petitioner was sentenced by another judge to four years imprisonment. A motion to vacate the sentence was denied; and a petition for a writ of *habeas corpus* was filed in the federal district court for the northern district of Georgia, praying the discharge of petitioner on the ground that the court imposing the sentence was without jurisdiction to do so. After a hearing the writ was dismissed and petitioner remanded to custody. The circuit court of appeals affirmed the judgment. 56 F. (2d) 152.

Petitioner seeks a reversal here on the ground that the order of December 10 constitutes a permanent suspension of sentence, void under the decision of this court in *Ex parte United States*, 242 U. S. 27; and that with the expiration of the term the trial court was without power to sentence petitioner. The Solicitor General vigorously opposes the contention that the effect of the order was

* The opinion was announced by the Chief Justice, Mr. Justice Sutherland being absent from the Bench.

to suspend sentence permanently; but, without determining that question, we are of opinion that if such was the effect, nevertheless, the court was not deprived of power to impose sentence at a subsequent term.

The decisions on the point are in conflict. The greater number support the view of petitioner; but we are of opinion that the weight of reason is the other way. Several of the cases holding with petitioner are set forth in *Mintie v. Biddle*, 15 F. (2d) 931. While these cases and others are emphatically to the effect that a permanent suspension of sentence is void, and that the court thereby, with the passing of the term, loses jurisdiction, we find no convincing reason in any of them for the latter conclusion. The decision in the *Mintie* case rests primarily upon considerations affecting the accused. Support for its conclusion is found by the court in the supposition that during the suspension the accused can "make no plans, enter into no contracts, engage in no permanent occupation, and bind himself to no obligations, or create any permanent ties, business or domestic." But it is hard to see the relevancy of these difficulties to the question of jurisdiction. They equally would be present if sentence were definitely postponed from term to term; and power to that extent is not doubted. Moreover, since the suspension order is void, the accused is not bound to rest under the supposed hardship. He may at any time put an end to it by requesting the court to pronounce judgment, which the court no doubt would do unless good cause to the contrary were made to appear. In the absence of such request he must be held to have consented to the indefinite delay and cannot complain. *Hoggett v. State*, 101 Miss. 269, 271; 57 So. 811. Compare *United States v. Mulligan*, 48 F. (2d) 93; *United States v. Lecato*, 29 F. (2d) 694, 695.

In a criminal case final judgment means sentence; and a void order purporting permanently to suspend sentence

is neither a final nor a valid judgment. *United States v. Lecato*, *supra*, at p. 695; *State v. Bongiorno*, 96 N. J. L. 318; 115 Atl. 665; *People v. Bork*, 78 N. Y. 346, 350; *State v. Vaughan*, 71 Conn. 457, 458; 42 Atl. 640; *Symington v. State*, 133 Md. 452, 454; 105 Atl. 541. If the suspension be for a fixed time, the case undoubtedly remains on the docket of the court until disposed of by final judgment. There is no good reason, in our opinion, why a different rule should obtain where the order of suspension, though expressly made permanent, is void. Such an order is a mere nullity without force or effect, as though no order at all had been made; and the case necessarily remains pending until lawfully disposed of by sentence. Compare *In re Bonner*, 151 U. S. 242, 259-262; *G. Amsinck & Co. v. Springfield Grocer Co.*, 7 F. (2d) 855, 858; *Hammers v. United States*, 279 Fed. 265, 266; *Biddle v. Thiele*, 11 F. (2d) 235, 236-237; *Bryant v. United States*, 214 Fed. 51.

The order here under review being ineffectual to confer immunity from punishment, the conclusion that such immunity existed must rest upon the bare fact that, without any saving provision, the term at which the accused was convicted but not sentenced had passed. But that foundation for the conclusion at once vanishes in the face of the rule that where judgment has not been pronounced upon a verdict during the term at which it was rendered, the cause continues on the docket and necessarily passes over to a succeeding term for final judgment or other appropriate action. *Walker v. Moser*, 117 Fed. 230, 232. We conclude, in accordance with what we regard as the better view, that in a criminal case, where verdict has been duly returned, the jurisdiction of the trial court, under circumstances such as are here disclosed, is not exhausted until sentence is pronounced, either at the same or a succeeding term. *Rachmil v. United States*, 288 Fed. 782, 785; *Ex parte Dunn*, 50 S. D. 48, 52-54; 208

N. W. 224; *Hoggett v. State*, *supra*, at p. 271; *Hancock v. Rogers*, 140 Ga. 688; 79 S. E. 558; *Dilley v. Commonwealth*, 243 Ky. 464, 468; 48 S. W. (2d) 1070; *Neace v. Commonwealth*, 165 Ky. 739, 742-743; 178 S. W. 1062.

Judgment affirmed.

FEDERAL TRADE COMMISSION v. ROYAL MILL-
ING CO. ET AL.

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

No. 393. Argued January 20, 1933.—Decided February 6, 1933.

1. Respondents were engaged in the business of preparing, by a process of mixing and blending, plain and self-raising flour. Although not themselves grinders of the wheat from which their product was made, they were doing business under trade names which included the words "milling company," or words of like import, and made representations to the trade calculated to convey the impression that they were grinders. Their product was sold in interstate commerce in competition with a similar article marketed by concerns which were in fact grinders and also by other "blenders," although the latter did not hold themselves out in any way as grinders. A large number of buyers preferred to purchase the product prepared by grinders, in the belief that the quality or price or both were better. Respondents' representations and trade names induced many buyers to believe that they were grinders. Proceeding under § 5 of the Federal Trade Commission Act, and upon findings supported by evidence, the Commission ordered respondents to cease and desist from the use of such trade names and from making such representations. *Held*:

(1) The methods of respondents were unfair and were methods of competition within the meaning of § 5 of the Act. P. 216.

(2) It sufficiently appeared that the proceeding was in the interest of the public. P. 216.

(3) While the findings and conclusions of the Commission are sustained, its orders should go no further than is reasonably necessary to correct the evil and preserve the rights of competitors and public; and, in respect of the use of the trade names, which con-