

This doctrine does not impinge on that laid down in *United States v. Rodgers, supra*, that the United States may define and punish offenses committed by its own citizens on its own vessels while within foreign waters where the local sovereign has not asserted its jurisdiction.¹⁰ In the absence of any controlling treaty provision, and any assertion of jurisdiction by the territorial sovereign, it is the duty of the courts of the United States to apply to offenses committed by its citizens on vessels flying its flag, its own statutes, interpreted in the light of recognized principles of international law. So applied the indictment here sufficiently charges an offense within the admiralty and maritime jurisdiction of the United States and the judgment below must be

Reversed.

UNITED STATES *v.* BURROUGHS AND JAMES
CANNON, JR.

CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT
OF COLUMBIA

No. 683. Argued March 14, 15, 1933.—Decided April 10, 1933

1. Under § 935 of the Code of Laws for the District of Columbia, passed in 1901, the Court of Appeals of the District has jurisdiction of an appeal by the United States from a judgment of the Supreme Court of the District which sustained a demurrer to an indictment on two grounds, one involving a construction of the statute on which the indictment was founded, and the other a construction of the indictment; and on such appeal the ruling of the trial court based on the construction of the statute is reviewable. P. 161.
2. The Criminal Appeals Act, passed in 1907, providing for direct review by this Court of decisions of the "district or circuit courts" quashing indictments when based upon the invalidity or construction of the statutes upon which the indictments are founded, etc.,

¹⁰ That the doctrines are not in conflict was pointed out by Webster in his letter to Lord Ashburton, quoted *supra* note 9. See also Hall, *International Law*, 8th ed., 255-256.

is not to be construed as applicable to the courts of the District of Columbia and as working an implied repeal of the appellate system established under § 935 of the D. C. Code. P. 161.

3. Implied repeals are not favored, and if effect can reasonably be given to both statutes, the presumption is that the earlier is intended to remain in effect. P. 164.
4. The declarations of the District Code (Title 18, § 43) that the Supreme Court of the District is to be "deemed a court of the United States," and "shall possess the same powers and exercise the same jurisdiction as district courts of the United States," do not make that court a district court of the United States. P. 163.

RESPONSE to questions certified by the Court of Appeals of the District of Columbia upon appeal by the United States from a judgment sustaining a demurrer to an indictment for violation of the Federal Corrupt Practices Act.

Solicitor General Thacher, with whom *Mr. W. Marvin Smith* was on the brief, for the United States.

Messrs. Robert H. McNeill and *Levi H. David* for Burroughs and Cannon.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

The Court of Appeals of the District of Columbia has certified the following questions:

"Question No. 1: Where on a criminal indictment a demurrer is sustained and the indictment quashed on two grounds, one involving a construction of the statute and the other the interpretation of the indictment as a pleading, will an appeal lie at the instance of the United States from the trial court of the District of Columbia to the Court of Appeals of the District of Columbia?"

"If Question No. 1 be answered in the affirmative, then

"Question No. 2: May the Court of Appeals of the District of Columbia on such appeal review the ruling of the trial court based on the construction of the statute?"

We are advised by the certificate that the defendants were indicted by a grand jury of the District of Columbia for violation of the Federal Corrupt Practices Act.¹ They interposed a demurrer asserting that the conduct imputed to them did not constitute the offense defined by the Act, and that, in any event, the indictment was insufficient as a pleading in omitting to aver knowledge on the part of the defendants, which was claimed to be an essential element of the crime. From a judgment of the Supreme Court of the District of Columbia sustaining the demurrer and quashing the indictment, the Government appealed to the Court of Appeals. The appellees contended that court lacked jurisdiction, since the Criminal Appeals Act² governs the right of review in such cases and permits only a direct appeal to this court. The solution of the questions propounded therefore requires that we answer another: Does the Criminal Appeals Act embrace cases triable in the Supreme Court of the District of Columbia?

In the absence of express statutory authority no appeal may be taken on behalf of the United States in any criminal case. *United States v. Sanges*, 144 U.S. 310; *United States v. Ainsworth*, 3 App.D.C. 483. March 3, 1901, Congress adopted the Code of Law for the District of Columbia,³ whereby it defined the jurisdiction of the Police Court and the Supreme Court of the District, sanctioned appeals from both to the Court of Appeals, and by § 935 enacted: ⁴

“In all criminal prosecutions the United States or the District of Columbia, as the case may be, shall have the

¹ Act of February 28, 1925; U.S.C., Tit. 2, Chap. 8.

² Act of March 2, 1907; 34 Stat. 1246; U.S.C., Tit. 18, § 682.

³ 31 Stat. 1189.

⁴ 31 Stat. 1341. By the Act of March 19, 1906, 34 Stat. 73, a Juvenile Court was established and appeals from its judgments to the Court of Appeals authorized and regulated.

same right of appeal that is given to the defendant, including the right to a bill of exceptions: *Provided*, That if on such appeal it shall be found that there was error in the rulings of the court during the trial, a verdict in favor of the defendant shall not be set aside."⁵

The Criminal Appeals Act was not adopted until 1907. It authorized a writ of error (now an appeal) "by and on behalf of the United States from the district or circuit courts direct to" this court "in all criminal cases, in the following instances." Three classes are enumerated: decisions quashing or sustaining a demurrer to an indictment, based upon the invalidity or construction of the statute on which the indictment is founded; decisions arresting judgment for insufficiency of the indictment, based upon such invalidity or construction of the statute; and decisions sustaining a special plea in bar when the defendant has not been put in jeopardy. No appeal is permitted where there has been a verdict in favor of the defendant. The Court of Appeals, holding this Act, so far as applicable, superseded § 935 of the District Code,⁶ desires a ruling as to its jurisdiction on appeal where a decision will involve both a construction of the statute on which the indictment is based and a ruling as to the validity of the indictment as a pleading. We think, however, the answer is clear; for we are of opinion that the Criminal Appeals Act is inapplicable to criminal cases tried in the Supreme Court of the District. These are regulated solely by § 935 of the Code.

It is said that the Criminal Appeals Act is pertinent because the Code provides that the Supreme Court is to

⁵ In *United States v. Evans*, 28 App.D.C. 264, approved 213 U.S. 297, it was held that the proviso was ineffective to afford the Government a review of alleged errors in the course of a trial resulting in acquittal.

⁶ See *United States v. Denison*, 47 F. (2d) 433; 60 App.D.C. 71.

be "deemed a court of the United States"⁷ (compare *Embry v. Palmer*, 107 U.S. 3), but designation of a tribunal as a court of the United States, does not constitute it a district court. *In re Mills*, 135 U.S. 263, 267-8; *Stephens v. Cherokee Nation*, 174 U.S. 445.

Appellees further urge the statement in the Code⁸ that the Supreme Court "shall possess the same powers and exercise the same jurisdiction as the district courts of the United States" has the effect of making it a district court as that phrase is used in the Criminal Appeals Act. Where a statute uses this or similar language to define the jurisdiction of a court, such a court is authorized to try statutory actions declared to be cognizable by district courts, as if the tribunal were in fact a district court of the United States. And the same rule is applicable to appellate proceedings. Compare *In re Cooper*, 143 U.S. 472, 494; *Hine v. Morse*, 218 U.S. 493; *Federal Trade Commission v. Klesner*, 274 U.S. 145, 154; *United States v. California Coöperative Canneries*, 279 U.S. 553, 558. But vesting a court with "the same jurisdiction as is vested in district courts" does not make it a district court of the United States. This has been repeatedly said with reference to territorial courts. *Reynolds v. United States*, 98 U.S. 145, 154; *Stephens v. Cherokee Nation*, *supra*, p. 476; *Summers v. United States*, 231 U.S. 92, 101.

The Criminal Appeals Act, in naming the courts from which appeals may be taken to this court, employs the phrase "district courts"; not "courts of the United States," or "courts exercising the same jurisdiction as district courts." We need not, however, determine whether the statute should be construed to embrace criminal cases tried in the Supreme Court of the District if § 935 of the District Code were not in effect. That

⁷ Code, District of Columbia, Tit. 18, § 43.

⁸ *Ibid.*

section deals comprehensively with appeals in criminal cases from all of the courts of first instance of the District and confers on the Court of Appeals jurisdiction of appeals by the Government seeking review of the judgments of those courts. The Criminal Appeals Act, on the other hand, affects only certain specified classes of decisions in district courts, contains no repealing clause, and no reference to the courts of the District of Columbia or the territorial courts, upon many of which jurisdiction is conferred by language quite similar to that of the Code of Law of the District.⁹ We cannot construe it as impliedly repealing the complete appellate system created for the District of Columbia by § 935 of the Code, in the absence of expression on the part of Congress indicating that purpose. Implied repeals are not favored; and if effect can reasonably be given to both statutes, the presumption is that the earlier is intended to remain in force. *Frost v. Wenie*, 157 U.S. 46, 58; *United States v. Healey*, 160 U.S. 136, 147; *United States v. Greathouse*, 166 U.S. 601, 605; *Petri v. Creelman*

⁹ *Alaska*: "There is established a district court for the Territory of Alaska, with the jurisdiction of district courts of the United States . . ." U.S. Code, Tit. 48, § 101.

Hawaii: "There shall be . . . a district court . . ." "The said court shall have the jurisdiction of district courts of the United States . . ." U.S. Code, Tit. 48, §§ 641, 642.

Puerto Rico: "Porto Rico shall constitute a judicial district to be called 'the district of Porto Rico.' . . . Such district court shall have jurisdiction of all cases cognizable in the district courts of the United States . . ." U.S. Code, Tit. 48, § 863.

Congress has expressly provided for direct appeal from the District Court of Puerto Rico to this court, thus: "The said district court shall be attached to and included in the first circuit of the United States, with the right of appeal and review by said circuit court of appeals in all cases where the same would lie from any district court to a circuit court of appeals of the United States, and with the right of appeal and review directly by the Supreme Court of the United States in all cases where a direct appeal would be from such district courts." U.S. Code, Tit. 48, § 864.

Lumber Co., 199 U.S. 487, 497; *Ex parte United States*, 226 U.S. 420, 424; *Washington v. Miller*, 235 U.S. 422, 428.

The Court of Appeals has jurisdiction of both issues presented by the appeal from the decree of the Supreme Court.

Question No. 1 answered "Yes."

Question No. 2 answered "Yes."

MR. JUSTICE CARDOZO concurs in the result.

ROYAL INDEMNITY CO. ET AL. v. AMERICAN
BOND & MORTGAGE CO.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
SEVENTH CIRCUIT

Nos. 585 and 586. Argued March 21, 1933.—Decided April 10, 1933

1. The principal place of business of a corporation does not cease to be such, for the purposes of jurisdiction in bankruptcy, because its assets and affairs were in the custody and control of equity receivers for the greater portion of six months preceding the filing of the petition. P. 167.
 2. This is equally true whether the purpose of the receivership is to wind up, or is merely to rehabilitate, the business. P. 169.
 3. A state statute forbidding the transfer, except in the usual course of business, of the franchises or assets of a corporation, without the assent of stockholders, does not prevent the filing of a voluntary petition in bankruptcy by authority of a resolution of the board of directors. P. 170.
 4. Creditors of a corporation have no standing to attack an adjudication in bankruptcy based on a petition filed by authority of the directors, although a statute of the State of incorporation forbids transfer, except in the usual course of business, of the franchises or assets of the company, without the assent of stockholders. P. 171.
- 61 F. (2d) 875, affirmed.

CERTIORARI, 288 U.S. 596, to review a decree affirming orders of the district court refusing to vacate an adjudication of bankruptcy.