

frauds. It is cheating the Government at which the statute aims and Congress was entitled to protect the Government against those who would swindle it regardless of questions of constitutional authority as to the operations that the Government is conducting. Such questions cannot be raised by those who make false claims against the Government. See *Langer v. United States*, 76 F. (2d) 817, 824, 825; *Madden v. United States*, *supra*; *United States v. Harding*, 65 App. D. C. 161; 81 F. (2d) 563, 568; *United States v. MacDonald*, 10 F. Supp. 948.

The judgment is reversed and the cause is remanded for further proceedings in conformity with this opinion.

Reversed.

HARRY FLEISHER ET AL. *v.* UNITED STATES.*

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

No. 202. Argued November 15, 1937.—Decided December 6, 1937.

1. Registration of stills for the production of distilled spirits should be with the District Supervisor of the Alcohol Tax Unit in the Bureau of Internal Revenue. P. 219.

A count charging conspiracy to commit the offense of possessing such stills "without having the same registered with the Collector of Internal Revenue, as required by law," is therefore bad. (Cf. Rev. Stats. § 3258; 26 U. S. C. § 1162.)

2. When the first of several counts upon which consecutive sentences are based is defective the sentences should be corrected so as to fix a definite date for their commencement. P. 220.

91 F. (2d) 404, reversed.

CERTIORARI, *post*, p. 673, to review judgments affirming judgments sentencing petitioners after conviction upon four counts of a joint indictment for conspiracy.

* Together with No. 203, *Sam Fleisher v. United States*; and No. 204, *Stein v. United States*, also on writs of certiorari to the Circuit Court of Appeals for the Sixth Circuit.

Messrs. Isadore G. Stone, Alfred A. May, and Arthur H. Ratner were on the brief and submitted the case for the petitioners.

Mr. Bates Booth, with whom *Solicitor General Reed*, *Assistant Attorney General McMahon*, and *Messrs. Mahlon D. Kiefer and W. Marvin Smith* were on the brief, for the United States.

PER CURIAM.

Judgments of conviction on four counts of an indictment charging conspiracies to violate provisions of the internal revenue laws were affirmed by the Circuit Court of Appeals. 91 F. (2d) 404. Certiorari was granted, limited to the question whether the first count of the indictment states an offense under federal law.

The first count alleged that defendants from October 1, 1934, to the date of the indictment, October 30, 1935, unlawfully conspired to possess, and cause to be possessed, stills and apparatus for the production of distilled spirits without having the same registered with the Collector of Internal Revenue as required by law. The Government concedes that under the applicable law the charge should have been that there was failure to register the stills with the District Supervisor of the Alcohol Tax Unit in the Bureau of Internal Revenue. The first count failed to state an offense. Act of March 3, 1927, c. 348, 44 Stat. 1381; 5 U. S. C. 281 c; Prohibition Reorganization Act of May 27, 1930, c. 342, 46 Stat. 427; Regulations No. 3, Bureau of Industrial Alcohol, Treasury Department (March 24, 1931), Article 14; Act of March 3, 1933, c. 212, § 16, 47 Stat. 1518; Executive Order No. 6639, March 10, 1934, 5 U. S. C. 132 note; Treasury Decision No. 4432, May 10, 1934. *Scott v. United States*, 78 F. (2d) 791; *Benton v. United States*, 80 F. (2d) 162.

The sentence upon count two provides that it shall run "from and after expiration of term of imprisonment im-

posed on count one." Each of the sentences on the remaining counts runs from the expiration of the term of imprisonment imposed on the preceding count. In view of the invalidity of the sentence on count one, the sentences on the remaining counts should be amended so as to fix a definite date for their commencement.

The judgments on count one are severally reversed and the causes are remanded for further proceedings in conformity with this opinion.

Reversed.

FORTE *v.* UNITED STATES.

CERTIFICATE FROM THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA.

No. 459. Argued November 15, 1937.—Decided December 6, 1937.

1. A bill of exceptions agreed to by counsel and filed with the clerk of the District Court within the time allowed for settlement by No. IX of the Criminal Appeals Rules, but not settled and signed by the judge until afterwards, is not settled in time. P. 223.

If the trial judge is absent from the district, the rule permits settlement by any other judge assigned to hold, or holding, the court in which the case was tried.

2. Where the Court of Appeals decides a criminal appeal for the appellant upon the assumption that the bill of exceptions is properly before it, and the objection that the bill was not settled in time is first made by the Government's petition for rehearing, that court, exercising its broad authority under Rule No. IV, may, in the interest of justice, refuse to strike the bill of exceptions and may approve the settlement and filing theretofore had. P. 223.

Mr. Henry A. Schweinhaut, with whom *Solicitor General Reed*, *Assistant Attorney General McMahon* and *Messrs. William W. Barron* and *W. Marvin Smith* were on the brief, for the United States.

No brief filed on behalf of Forte.