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CRIMINAL LAW-NATIONAL STOLEN PROPERTY ACT--APPLICATION OF KANN v. UNITED STATES

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CRIMINAL LAW—NATIONAL STOLEN PROPERTY ACT—APPLICATION OF KANN V. UNITED STATES—Defendant, as payee, knowingly negotiated forged checks at Jackson, Michigan. The checks were forwarded to the drawee bank in Missouri for payment and were returned unpaid. Defendant was convicted for violation of the National Stolen Property Act.[1] The Circuit Court of Appeals for the Sixth Circuit reversed [2] on authority of *Kann v. United States*.[3] On certiorari to the United States Supreme Court, *held*, reversed. The circuit court erred in basing its interpretation of the National Stolen Property Act on *Kann v. United States*. Two justices dissented without opinion. *United States v. Sheridan*, (U.S. 1946) 67 S. Ct. 332.

That the Supreme Court's interpretation of the mail fraud statute [4] in *Kann*

[1] ". . . whoever with unlawful or fraudulent intent shall transport or cause to be transported in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities . . . shall be punished by a fine of not more than $10,000 or by imprisonment for not more than ten years, or both. . . ." 53 Stat. L. 1178, § 1 (1939), 18 U.S.C. (1940) § 415. The statute's definition of securities includes checks.

[2] 152 F. (2d) 57 (1945).

[3] 323 U.S. 88, 65 S. Ct. 148 (1944).

[4] "Whoever, having devised . . . any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretences . . . shall, for the purpose of executing such scheme or artifice . . . place, or cause to be placed, any letter . . . in any post office, or . . . cause to be delivered by mail . . . any such letter . . . shall

v. United States will not be extended to the National Stolen Property Act will hardly be consoling to those peripatetic persons whose profession is forgery and the confidence game. In the *Kann* case, defendants undertook to defraud the corporation of which they were officers by a plan which involved the drawing of checks of the corporation on out-of-state-banks. These checks were cashed at a local bank which mailed them to the drawee for payment. The court said that when the proceeds of the checks were obtained, the scheme was completely executed and the subsequent mailing by the bank contributed nothing to defendants' plan.[5] Accordingly, it was ruled as a matter of law that the mailing by the bank was not "for the purpose of executing such scheme" as required by the statute.[6] Prior to the *Kann* case it had not been doubted that a conviction under the National Stolen Property Act would be sustained under the facts of the principal case. However, that case appeared to present a golden opportunity to persons serving sentences under this section and they lost no time in attempting to apply the theory of the *Kann* case to the National Stolen Property Act.[7] The present defendant contended that he had not "caused" the transportation in interstate commerce and that if he had "caused" the transportation, it was not with "unlawful or fraudulent intent." The matter of causation gave the court little trouble since even in the *Kann* case it was felt that defendants had caused the mailing.[8] Defendant's primary contention, however, was that the transportation could not have been "with unlawful or fraudulent intent," as required by the statute, because he had received the fruits of his fraud, and was not, therefore, concerned with the subsequent disposition of the checks. In other words, defendant insisted that "unlawful or fraudulent intent" as used in the National Stolen Property Act be given the same meaning the court had given "for the purpose of executing such scheme" as used in the mail fraud statute. The court found, however, that the transportation in interstate commerce in the principal case was within the scope of the National Stolen Property Act because of the different purposes Congress had in mind in passing the two statutes. The primary purpose of the mail fraud statute was to prevent the use of the United States mail as an agency for carrying out a fraudulent scheme.[9] The National Stolen Prop-

be fined not more than one thousand dollars, or imprisoned for not more than five years or both." 35 Stat. L. 1130, § 215 (1909), 18 U.S.C. (1940) § 338.

[5] Four justices concurred in Justice Douglas' dissent on this point. It was felt that the fraudulent scheme was continuous, and smooth clearance of the checks was necessary to enable them to continue the plan and to prevent disclosure. For an interesting and critical comment on the Kann case see 31 VA L. REV. 671 (1945).

[6] Supra, note 4.

[7] The Kann case was decided December 4, 1944. On January 12, 1945, application for habeas corpus based on the Kann case against the Warden at Atlanta Penitentiary was rejected. Tolle v. Sanford, (D.C. Ga. 1945) 58 F. Supp. 695. A similar application based on the Kann case and the circuit court decision in the principal case was denied in Clarke v. Sanford, (C.C.A. 5th, 1946) 156 F. (2d) 115. In United States v. Wood, (D.C. W. Va. 1945) 58 F. Supp. 451, decided January 12, 1945, the Kann case was held to be a good defense. It was rejected in United States v. Lemons, (D.C. Mo. 1946) 67 F. Supp. 985.

[8] See Spillers v. United States, (C.C.A. 5th, 1931) 47 F. (2d) 893; United States v. Kenofsky, 243 U.S. 440, 37 S. Ct. 438 (1917).

[9] See Durland v. United States, 161 U.S. 306, 16 S. Ct. 508 (1896). The

erty Act, on the other hand, was aimed at preventing the pollution of interstate commerce [10] and implementing co-operation between local and federal law enforcement officials.[11] The court found that the words "unlawful or fraudulent intent" add nothing to the substantive offense, but merely prevent the act from covering transportation by innocent persons. Furthermore, it appears that the conviction in the principal case would have been sustained even though the act had contained the words "for the purpose of executing such scheme." The court recognized that defendant knew the checks would be dishonored and that the time consumed in transmitting them for payment would give him time to commit further frauds in the vicinity and also give him an opportunity to make his departure and avoid apprehension.[12] While the court's decision in the *Kann* case may be regretted in view of the narrow construction placed on the mail fraud statute, it is fortunate that the doctrine was not extended to the present act which has made possible a great deal of progress in the detection and apprehension of forgers and confidence men.

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history of the mail fraud statute is exhaustively reviewed by Compton in his comment on the Kann case, 31 VA. L. REV. 671 (1945).

[10] The theory of the act is the same as that of the National Motor Vehicle Theft Act, 41 Stat. L. 324, c. 89 (1919), 18 U.S.C. (1940) § 408, which was held to be constitutional in Brooks v. United States, 267 U.S. 432, 45 S. Ct. 345 (1925).

[11] The National Stolen Property Act as originally passed, 48 Stat. L. 794 (1934), was one of a series of acts passed at that time to curb the notorious felons of that period against whom local agencies seemed to be completely ineffective. Among those acts were 48 Stat. L. 781 (1934), 18 U.S.C. (1940) § 408a (kidnaping and extortion); 48 Stat. L. 782 (1934), 18 U.S.C. (1940) § 408e (flight in interstate commerce to avoid prosecution or testifying); 48 Stat. L. 783 (1934), 12 U.S.C. (1940) § 588 et seq. (bank robbery); 48 Stat. L. 979 (1934), 18 U.S.C. (1940) § 420d (anti-racketeering); 48 Stat. L. 1236 (1934), 26 U.S.C. (1940) §§ 2721 et seq. (National Firearms Act).

[12] Apparently the mailing in the Kann case was not to conceal the fraud because it was not discovered by return of the checks unpaid, but by an examination of the corporation books. In view of his dissent in the Kann case, it is interesting to note that Justice Douglas dissented without opinion in the principal case.