

SUPREME COURT OF THE UNITED STATES

United States v. Saylor

322 U.S. 385 (1944) · No. Nos. 716, 717 · Decided May 29, 1944

OPINION

PER CURIAM.

322 U.S. 385 64 S. Ct. 1101 88 L. Ed. 1341 UNITED STATESv.SAYLOR et al. SAME v. POER et al. DN Nos. 716, 717. Argued April 28, 1944. Decided May 22, 1944. Rehearing Denied Oct. 9, 1944. See 65 S. Ct. 27. Appeals from the District Court of the United States for the Eastern District of Kentucky. Mr. Paul A. Freund, of Washington, D.C., for appellant. Mr. Harry B. Miller, of Lexington, Ky., for appellees. djQ Mr. Justice ROBERTS delivered the opinion of the Court.

These cases come here under the Criminal Appeals Act. The District Court sustained demurrers to indictments[386] for conspiracies forbidden by § 19 of the Criminal Code.¹ The section provides: 'If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, * * *' they shall be punished.

As the cases present identical questions it will suffice to state No. 716. The indictment charged that a general election was held November 3, 1942, in Harlan County, Kentucky, for the purpose of electing a Senator of the United States, at which election the defendants served as the duly qualified officers of election; that they conspired to injure and oppress divers citizens of the United States who were legally entitled to vote at the polling places where the defendants officiated, in the free exercise and enjoyment of the rights and privileges guaranteed to the citizens by the Constitution and laws of the United States, namely, the right and privilege to express by their votes their choice of a candidate for Senator and their right to have their expressions of choice given full value and effect by not having their votes impaired, lessened, diminished, diluted and destroyed by fictitious ballots fraudulently cast and counted, recorded, returned, and certified.

The indictment charged that the defendants, pursuant to their plan, tore from the official ballot book and stub book furnished them, blank unvoted ballots and marked, forged, and voted the same for the candidate of a given party, opposing the candidate for whom the injured voters had voted, in order to deprive the latter of their rights to have their votes cast, counted, certified and recorded and given full value and effect; that the defendants inserted the false ballots they had so prepared into the ballot box, and returned them, together with the other ballots lawfully cast, so as to create a false and fictitious return respecting the votes lawfully cast. -----¹ 18 U.S.C. § 51, 18 U.S.C.A. § 51.

[387] The appellees demurred to the indictment, as failing to state facts sufficient to constitute a crime against the United States. The demurrer attacked the indictment on other grounds raising questions which, if decided, would not be reviewable here under the Criminal Appeals Act, 18 U.S.C.A. § 682.

The District Court decided only that the indictment charged no offense against the laws of the United States. This ruling presents the question for decision. The appellees do not deny the power of Congress to punish the conspiracy described in the indictment.

In the light of our decisions, they could not well advance such a contention.² The inquiry is whether the provision of § 19 embraces a conspiracy by election officers to stuff a ballot box in an election at which a member of the Congress of the United States is to be elected.

In *United States v. Mosley*, 238 U.S. 383, 35 S. Ct. 904, 905, 59 L. Ed. 1355, this court reversed a judgment sustaining a demurrer to an indictment which charged a conspiracy of election officers to render false returns by disregarding certain precinct returns and thus falsifying the count of the vote cast.

After stating that § 19 is constitutional and validly extends 'some protection, at least, to the right to vote for Members of Congress,' the court added: 'We regard it as equally unquestionable that the right to have one's vote counted is as open to protection by Congress as the right to put a ballot in a box.'

The court then traced the history of § 19 from its origin as one section of the Enforcement Act of May 31, 1870,³ which contained other sections more specifically aimed at election frauds, and the survival of § 19 as a statute of the United States notwithstanding the repeal of those other sections.

The conclusion was that § 19 protected personal rights of a citizen including the right to cast his ballot, and held that to re- -----² *Ex parte Yarbrough*, 110 U.S. 651, 657, 658, 661, 663, 4 S. Ct. 152, 154, 155, 157, 158, 28 L. Ed. 274; *United States v. Classic*, 313 U.S. 299, 314, 315, 61 S. Ct. 1031, 1037, 1038, 85 L. Ed. 1368.³ c. 114, 16 Stat. 140, as amended by c. 99, 16 Stat. 433.

[388] fuse to count and return the vote as cast was as much an infringement of that personal right as to exclude the voter from the polling place. The case affirms that the elector's right intended to be protected is not only that to cast his ballot but that to have it honestly counted.

The decision was not reached without a strong dissent, which emphasized the probability that Congress did not intend to cover by § 6 of the Act (now § 19) the right to cast a ballot and to have it counted, but to deal with those rights in other sections of the act. And it was thought this view was strengthened by the repeal, February 8, 1894,⁴ of the sections which dealt with bribery and other election frauds, including § 4, which, to some extent, overlapped § 6, if the latter were construed to comprehend the right to cast a ballot and to have it counted.

Notwithstanding that dissent, the Mosley case has stood as authority to the present time.⁵ The court below thought the present cases controlled by *United States v. Bathgate*, 246 U.S. 220, 38 S. Ct. 269, 62 L. Ed. 676. That case involved an indictment charging persons with conspiring to deprive a candidate for office of rights secured to him by the Constitution and laws of the United States, in violation of § 19, and to deprive other voters of their rights, by the bribery of voters who participated in an election at which members of Congress were candidates.

This court affirmed a decision of the district court sustaining a demurrer to the indictment, and distinguished the Mosley case on several first, that, in the Enforcement Act, bribery of voters had been specifically made a criminal offense but the section so providing had been repealed; secondly, that the ground on which the Mosley case went -----4 c. 25, 28 Stat. 36.⁵ *United States v. Gradwell*, 243 U.S. 476, 37 S. Ct.

407, 61 L. Ed. 857; *Ex parte Roberts*, 244 U.S. 650, 37 S. Ct. 744, 61 L. Ed. 1372; *Hague v. C.I.O.*, 307 U.S. 496, 527, 59 S. Ct. 954, 969, 83 L. Ed. 1423; *United States v. Classic*, supra, 313 U.S. 321, 61 S. Ct. 1040, 85 L. Ed. 1368.

[389] was that the conspiracy there was directed at the personal right of the elector to cast his own vote and to have it honestly counted, a right not involved in the Bathgate case. If the voters' rights protected by § 19 are those defined by the Mosley case, the frustration charged to have been intended by the defendants in the present cases violates them.

For election officers knowingly to prepare false ballots, place them in the box, and return them, is certainly to prevent an honest count by the return board of the votes lawfully cast. The mathematical result may not be the same as would ensue throwing out or frustrating the count of votes lawfully cast. But the action pursuant to the conspiracy here charged constitutes the rendering of a return which, to some extent, falsifies the count of votes legally cast.

We are unable to distinguish a conspiracy so to act from that which was held a violation of § 19 in the Mosley case. It is urged that any attempted distinction between the conduct described in the Bathgate case and that referred to in the Mosley case is illogical and insubstantial; that bribery of voters as badly distorts the result of an election and as effectively denies a free and fair choice by the voters as does ballot box stuffing or refusal to return or count the ballots.

Much is to be said for this view. The legislative history does not clearly disclose the Congressional purpose in the repeal of the other sections of the Enforcement Act, while leaving § 6 (now § 19) in force. Section 19 can hardly have been inadvertently left on the statute books. Perhaps Congress thought it had an application other than that given it by this court in the Mosley case.

On the other hand, Congress may have intended the result this court reached in the Mosley decision. We think it unprofitable to speculate upon the matter for Congress has not spoken since the decisions in question were an- [390] nounced, and the distinction taken by those decisions has

stood for over a quarter of a century. Observance of that distinction places the instant case within the ruling in the Mosley case and outside that in the Bathgate case.

Our conclusion is contrary to that of the court below and requires that the judgments be reversed. So ordered. Reversed. *per* Mr. Justice DOUGLAS, with whom Mr. Justice BLACK and Mr. Justice REED concur, dissenting. The question is not whether stuffing of the ballot box should be punished. Kentucky has made that reprehensible practice a crime. See Ky.Rev.Stat.1942, § 124.220; *Commonwealth v. Anderson*, 151 Ky. 537, 152 S.W.

552; *Tackett v. Commonwealth*, 285 Ky. 83, 146 S.W.2d 937. Cf. Ky.Rev.Stat.1942, § 124.180(8). And it is a crime under Kentucky law whether it occurs in an election for state officials or for United States Senator. *Id.*, § 124.280(2).

The question here is whether the general language of § 19 of the Criminal Code should be construed to superimpose a federal crime on this state crime. Under § 19 of the Enforcement Act of May 31, 1870, 16 Stat. 144, the stuffing of this ballot box would have been a federal offense.¹ That provision was a part of the comprehensive 'reconstruction' legislation passed after the Civil War.

It was repealed by the Act of February 8, 1894, 28 Stat. 36—an Act which was designed to restore control of election frauds to the States. The Committee Report (H.Rep.No. No. 18, 53d Cong., 1st Sess., p. 7) which sponsored the repeal stated: 'Let every trace of the reconstruction measures be wiped from the statute books; let the States of this great Union understand that the elections are in their own hands, and if there be fraud, coercion, or force used they will be the first to feel it.

Responding to a universal sentiment throughout the country for greater purity in elections many of our States have enacted laws to protect the voter and to purify the ballot. These, under the guidance of State officers, have worked efficiently, satisfactorily, and beneficently; and if these Federal statutes are repealed that sentiment will receive an impetus which, if the cause ----- from freely exercising the right of suffrage, or by any such means induce any voter to refuse to exercise such right; or compel or induce by any such means, or otherwise, any officer of an election in any such State or Territory to receive a vote from a person not legally qualified or entitled to vote; or interfere in any manner with any officer of said elections in the discharge of his duties; or by any of such means, or other unlawful means, induce any officer of an election, or

officer whose duty it is to ascertain, announce, or declare the result of any such election, or give or make any certificate, document, or evidence in relation thereto, to violate or refuse to comply with his duty, or any law regulating the same; or knowingly and wilfully receive the vote of any person not entitled to vote, or refuse to receive the vote of any person entitled to vote; or aid, counsel, procure, or advise any such voter, person, or officer to do any act hereby made a crime, or to omit to do any duty the omission of which is hereby made a crime, or attempt to do so, every such person shall be deemed guilty of a crime, and shall for such crime be liable to prosecution in any court of the United States of competent jurisdiction, and, on conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment for a term not exceeding three years, or both, in the discretion of the court, and shall pay the costs of prosecution.'

[392] still exists, will carry such enactments in every State in the Union.' This Court now writes into the law what Congress struck out 50 years ago. The Court now restores federal control in a domain where Congress decided the States should have exclusive jurisdiction. I think if such an intrusion on historic states' rights is to be made, it should be done by the legislative branch of government.

I cannot believe that Congress intended to preserve by the general language of § 19 the same detailed federal controls over elections which were contained in the much despised 'reconstruction' legislation. The Court, of course, does not go quite that far. It recognizes that bribery of voters is not a federal offense. *United States v. Bathgate*, 246 U.S. 220, 38 S. Ct.

269, 62 L. Ed. 676. But he who bribes voters and purchases their votes corrupts the electoral process and dilutes my vote as much as he who stuffs the ballot box. If one is a federal crime under § 19, I fail to see why the other is not also. Congress has ample power to legislate in this field and to protect the election of its members from fraud and corruption.

United States v. Classic, 313 U.S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368. I would leave to Congress any extension of federal control over elections. I would restrict § 19 to those cases where a voter is deprived of his right to cast a ballot or to have his ballot counted. *United States v. Mosley*, 238 U.S. 383, 35 S. Ct. 904, 59 L. Ed. 1355. That is the 'right or privilege' the 'free exercise' of which is protected by § 19.

If it is said that that distinction is not a logical one, my answer is that it is nevertheless a practical one. Once we go beyond that point, logic would require us to construe § 19 so as to make federal offenses out of all frauds which corrupt the electoral process, distort the count, or dilute the honest vote.

The vast interests involved in that proposal emphasize the legislative quality of an expansive construction of § 19. We should leave that expansion to Congress. [393] That view is supported by another consideration.

The double jeopardy provision of the Fifth Amendment does not bar a federal prosecution even though a conviction based on the same acts has been obtained under state law. *Jerome v. United States*, 318 U.S. 101, 105, 63 S. Ct. 483, 486, 87 L. Ed. 640, and cases cited.

Therefore when it is urged that Congress has created offenses which traditionally have been left for state action and which duplicate state crimes, we should be reluctant to expand the defined federal offenses 'beyond the clear requirements of the terms of the statute.' *Id.* I know of no situation where that principle could be more appropriately recognized than in the field of the elections where there is comprehensive state regulation.

Keefe v. Clark [64SCt1072,322US393,88LEd1346] 64 S. Ct. 1072 322 U.S. 393 88 L. Ed. 1346
KEEFE et al. v. CLARK, Drain Com'r, et al. (CITY OF ROYAL OAK, Intervener). No. 634.
Argued April 27, 28, 1944. Decided May 22, 1944.

On Appeal from the Supreme Court of the State of Michigan. Mr. Irvin Long, of Detroit, Mich. for appellants. Messrs. Harry J. Merritt and Wm. Clarence Hudson, both of Royal Oak, Mich., for appellees. Mr. Justice BLACK delivered the opinion of the Court. 1 In this case appellants argue that certain provisions of two Acts passed by the Michigan legislature in 1937 are void in that, contrary to Art. I, sec. 10 of the United States Constitution, they impair the obligation of special assessment drain bonds issued in 1927, some of which are owned by appellants.

The case is here on appeal from the Supreme Court of Michigan. 28 U.S.C. § 344(a), 28 U.S.C.A. § 344(a).¹ 2 So far as here relevant, the two Acts² said to be unconstitutional provide that parcels of land subject to special assessment for drain projects may be sold for unpaid taxes, and also provide that the purchaser at such a sale shall be granted a title free of all encumbrances, including all assessments for drain projects already constructed.

The proceeds of each tax sale are applied towards payment of the unpaid drain assessment on the particular parcel of land, as well as towards payment of other delinquent taxes. Pursuant to these Acts, the State of Michigan has sold tax delinquent properties located in the drain district which issued appellants' bonds.

The deeds of sale purport to release the properties from all encumbrances, including all assessments on account of the 1927 drain project. 3 Appellants do not contend that the challenged Acts impair any term of the contract printed on the face of the drain bonds. What they contend is that the Acts impair a right secured to them by a statutory provision which was the law of Michigan at the time their bonds were issued and which, they say, became a part of the bond contract.

See *Von Hoffman v. City of Quincy*, 4 Wall. 535, 550, 11 L. Ed. 403. The statutory provision upon which they rely reads: 4 'If there is not sufficient money in the fund in a particular drain at the time of the maturity of the bonds last to mature to pay all outstanding bonds with interest, * * * it

shall be the duty of the commissioner to at once levy an additional assessment as hereinbefore provided in such an amount as will make up the deficiency.'

Chapter X, § 18, Act 316, Mich.Pub. Acts of 1923, as amended by Act 331, Mich.Pub. Acts of 1927. 5 Appellants' argument is that this statute has given them an indefeasible right to have a deficiency assessment levied on each privately owned parcel of land in the drain district, regardless of whether a particular parcel already has been sold at a tax sale and the proceeds applied toward payment of the drain bonds.

In practical effect, they assert that by this statute lands subject to assessment for their drain bonds are subject to be sold not just once, but twice, for payment of the single benefit which the lands received from the original drain project. Consequently, their argument runs, the Michigan legislature was powerless to provide that purchasers of tax-delinquent property in the drain district be exempt from a deficiency drain assessment.

6 This argument the Supreme Court of Michigan refused to accept. Emphasizing the serious consequences of such a hobbling of the State's powers to meet pressing problems, the Court pointed out that the power of the State to sell tax-delinquent lands free of the burden of assessments for completed drain projects was essential not only to protect the bondholders themselves but to protect the public interest.

Without power in the State to offer an attractive title to prospective purchasers, the Court found, many of such lands would remain tax-delinquent and thereby be rendered valueless for all public revenue purposes, including drain assessments.

The Court declined to read into the statute relied upon by appellants any purpose to permit drain districts to surrender the State's sovereign power to provide for the sale of tax-delinquent property free of encumbrances. It held that under Michigan law in effect when appellants' special assessment drain bonds were issued the bondholders' 'maximum security' for payment of assessments against drain district lands was the parcels of land themselves, and that when the bondholders received their fair share of the proceeds derived from the tax sale of any particular parcel they had received everything to which their bond contracts entitled them.

Keefe v. Drain Com'r of Oakland County, 306 Mich. 503, 511, 512, 11 N.W.2d 220. 7 Before we can find impairment of a contract we must find an obligation of the contract which has been impaired. Since the contract here relied upon is one between a political subdivision of a state and private individuals, settled principles of construction require that the obligation alleged to have been impaired be clearly and unequivocally expressed.

This rule of construction applies with special force in the case at bar, for the interpretation of the bond contract urged by appellants would result in a drastic limitation upon the power of Michigan to enact legislation designed to remedy a situation obviously inimical to the interests of both

municipal creditors and the general public.³ 'The continued existence of a government would be of no great value, if, by implications and presumptions, it was disarmed of the powers necessary to accomplish the ends of its creation.'

Charles River Bridge v. Proprietors of Warren Bridge, 11 Pet. 420, 548, 9 L. Ed. 773; and see *Gilman v. City of Sheboygan*, 2 Black 510, 513, 17 L. Ed. 305; *Fisher v. New Orleans*, 218 U.S. 438, 31 S. Ct. 57, 54 L. Ed. 1099. ⁸ We do not find in the provision of the drain statute relied upon by appellants a clear and unequivocal purpose of Michigan to permit drain districts to bargain away the State's power to sell tax-delinquent lands free of encumbrances.

Long before the date when appellants' bonds were issued, the Michigan Supreme Court had held that, 'The general rule is that a sale and a conveyance (by the State) in due form for taxes extinguishes all prior liens, whether for taxes or otherwise. This rule is one of necessity, growing out of the imperative nature of the demand of the government for its revenues.'

Auditor General v. Clifford, 143 Mich. 626, 630, 107 N.W. 287, 289; and see *Municipal Investors Ass'n v. City of Birmingham*, 298 Mich. 314, 325, 326, 299 N.W. 90, and cases there cited. The provision of the drain statute upon which appellants rest their case does not expressly purport to alter this 'rule of necessity.'

On its face it deals only with the levy of an additional assessment in the event that drain bonds are not paid in full at maturity, and does not assume to deal with the manner of selling tax-delinquent properties in drain districts or the kind of title that can be conveyed at such sales. 'The language falls far short of subjecting lots which have been sold to pay tax or assessment liens to an additional assessment for the deficit.

Such a construction would defeat the remedy of tax sales as a means of realizing the assessment lien.' *Municipal Investors Ass'n v. Birmingham*, 316 U.S. 153, 159, 62 S. Ct. 975, 978, 86 L. Ed. 1341. ⁹ Affirmed. ¹⁰ Mr. Justice ROBERTS concurs in the result. ¹¹ Mr. Justice MURPHY took no part in the consideration or decision of this case. ¹ Appellees have moved to dismiss the appeal on the grounds that a federal question was not properly raised in the state courts.

The record fails to sustain the motion and it is denied. See *Whitney v. California*, 274 U.S. 357, 360, 47 S. Ct. 641, 643, 71 L. Ed. 1095. ² Act 114, Mich. Pub. Acts of 1937, as amended by Act 282, Mich. Pub. Acts of 1939 and Act 234, Mich. Pub. Acts of 1941. Act 155, Mich. Pub. Acts of 1937, as amended by Acts 29, 244, and 329 of Mich. Pub. Acts of 1939 and Act 363 of Mich. Pub.

Acts of 1941. ³ The Michigan Supreme Court has described vividly the intimate relation between the power of the State remove encumbrances from tax-delinquent lands and the welfare of the public. *Baker v. State Land Office Board*, 294 Mich. 587, 592-594, 293 N.W. 763. Land speculation ran riot in Michigan in the 1920's, bringing with it construction of subdivisions, paving and drainage projects, etc. Inflated land values produced their inevitable consequences.

In the early 1930's a large part of Michigan lands had a market value far less than the unpaid property and improvement taxes accumulated upon them. Attempting to remedy the situation, the legislature tried tax collection moratoriums, and for six years no tax sales were held, but still unpaid taxes continued to amass. Property owners abandoned their heavily encumbered real estate; the state and local governments could get no revenue from the delinquent property; and municipal creditors could get neither principal nor interest.

All suffered alike. Finally in 1937, upon the recommendation of legislative committees and planning commissions, Acts 114 and 155, *supra*, Note 1, together with Act 325, were passed by the legislature in an attempt to collect unpaid taxes and to free property of its accumulated tax burden.

ROBERTS, J.

Mr. Justice Roberts delivered the opinion of the Court. These cases come here under the Criminal Appeals Act. The District Court sustained demurrers to indictments *386for conspiracies forbidden by § 19 of the Criminal Code.¹ The section provides: "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States,.. they shall be punished.

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The indictment charged that the defendants, pursuant to their plan, tore from the official ballot book and stub book furnished them, blank unvoted ballots and marked, forged, and voted the same for the candidate of a given party, opposing the candidate for whom the injured voters had voted, in order to deprive the latter of their rights to have their votes cast, counted, certified and recorded and given full value and effect; that the defendants inserted the false ballots they had so prepared into the ballot box, and returned them, together with the other ballots lawfully cast, so as to create a false and fictitious return respecting the votes lawfully cast. *387The appellees demurred to the indictment, as failing to state facts sufficient to constitute a crime against the United States.

The demurrer attacked the indictment on other grounds raising questions which, if decided, would not be reviewable here under the Criminal Appeals Act. The District Court decided only that the indictment charged no offense against the laws of the United States. This ruling presents the question for decision.

The appellees do not deny the power of Congress to punish the conspiracy described in the indictment. In the light of our decisions, they could not well advance such a contention.² The inquiry is whether the provision of § 19 embraces a conspiracy by election officers to stuff a ballot box in an election at which a member of the Congress of the United States is to be elected.

In *United States v. Mosley*, 238 U. S. 383, this court reversed a judgment sustaining a demurrer to an indictment which charged a conspiracy of election officers to render false returns by disregarding certain precinct returns and thus falsifying the count of the vote cast.

After stating that § 19 is constitutional and validly extends “some protection at least to the right to vote for Members of Congress,” the court added: “We regard it as equally unquestionable that the right to have one’s vote counted is as open to protection by Congress as the right to put a ballot in a box.” The court then traced the history of § 19 from its origin as one section of the Enforcement Act of May 31, 1870,³ which contained other sections more specifically aimed at election frauds, and the survival of § 19 as a statute of the United States notwithstanding the repeal of those other sections.

The conclusion was that § 19 protected personal rights of a citizen including the right to cast his ballot, and held that to refuse to count and return the vote as cast was as much an infringement of that personal right as to exclude the voter from the polling place.

The case affirms that the elector’s right intended to be protected is not only that to cast his ballot but that to have it honestly counted. The decision was not reached without a strong dissent, which emphasized the probability that Congress did not intend to cover by § 6 of the Act (now § 19) the right to cast a ballot and to have it counted, but to deal with those rights in other sections of the act.

And it was thought this view was strengthened by the repeal, February 8, 1894,⁴ of the sections which dealt with bribery and other election frauds, including § 4, which, to some extent, overlapped § 6, if the latter were construed to comprehend the right to cast a ballot and to have it counted. Notwithstanding that dissent, the *Mosley* case has stood as authority to the present time.⁵ The court below thought the present cases controlled by *United States v. Bathgate*, 246 U. S. 220.

That case involved an indictment charging persons with conspiring to deprive a candidate for office of rights secured to him by the Constitution and laws of the United States, in violation of § 19, and to deprive other voters of their rights, by the bribery of voters who participated in an election at which members of Congress were candidates. This court affirmed a decision of the

district court sustaining a demurrer to the indictment, and distinguished the Mosley case on several grounds: first, that, in the Enforcement Act, bribery of voters had been specifically made a criminal offense but the section so providing had been repealed; secondly, that the ground on which the Mosley case went *389 was that the conspiracy there was directed at the personal right of the elector to cast his own vote and to have it honestly counted, a right not involved in the Bathgate case.

If the voters' rights protected by § 19 are those defined by the Mosley case, the frustration charged to have been intended by the defendants in the present cases violates them. For election officers knowingly to prepare false ballots, place them in the box, and return them, is certainly to prevent an honest count by the return board of the votes lawfully cast.

The mathematical result may not be the same as would ensue throwing out or frustrating the count of votes lawfully cast. But the action pursuant to the conspiracy here charged constitutes the rendering of a return which, to some extent, falsifies the count of votes legally cast.

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On the other hand, Congress may have intended the result this court reached in the Mosley decision. We think it unprofitable to speculate upon the matter for Congress has not spoken since the decisions in question were an*390nounced, and the distinction taken by those decisions has stood for over a quarter of a century. Observance of that distinction places the instant case within the ruling in the Mosley case and outside that in the Bathgate case.

Our conclusion is contrary to that of the court below and requires that the judgments be reversed. Reversed. 18 U. S. C. § 51. *Ex parte Yarbrough*, 110 U. S. 651, 657, 658, 661, 663; *United States v. Classic*, 313 U. S. 299, 314, 315. e. 114,16 Stat. 140, as amended by c. 99,16 Stat. 433. c. 25, 28 Stat. 36. *United States v. Gradwell*, 243 U. S. 476; *In re Roberts*, 244 U. S. 650; *Hague v. C. I. O.*, 307 U. S. 496, 527; *United States v. Classic*, *supra*, 321.