the Supreme Court has exercised broad powers of review,[6] even to the extent of allowing a trial *de novo*.[7] And apart from those doctrines bits of evidence have been seized to invalidate commission findings.[8] Since the issue involved in the instant case could hardly have been called "constitutional" or "jurisdictional," the decision seems wholly consistent with those doctrines; but it is certainly an inroad upon review of ordinary findings. It may even indicate a tendency to adopt the view, long advocated by a minority of the Court, that the conclusiveness of findings should be extended even to "jurisdictional" and "constitutional" issues.[9] The recent changes in the personnel of the Court seem to make this not wholly improbable. The compelling arguments of procedural necessity, advanced by Justice Brandeis and others, show such an extension to be highly desirable.[10]

Conflict of Laws—Jurisdiction *in rem*—Federal Court Required To Aid Collection of State Penal Forfeiture—[Federal].—Within four months after the State of Texas had instituted suit in its own courts to confiscate oil allegedly produced by the debtor in violation of the state oil conservation laws, the debtor, in good faith, filed its petition in a federal district court in Texas for reorganization under section 77B of the Bankruptcy Act.[1] The state suit was restrained by the federal court under section 77B (c) (10),[2] and the trustee of the debtor took possession of the oil from the state court receiver. The lower court[3] refused permission to the State of Texas to establish in a state court that its title to the oil arose at the time of unlawful production. On *certiorari* to the Supreme Court, *held* (Justices Cardozo and Stone dissenting) reversed. Possession of the oil was not essential to the jurisdiction of the state court and denial of the State's petition was an abuse of discretion. *State of Texas v. Donoghue*.[4]

By permitting the state court, in an action *in rem*, to adjudicate title to the oil while not within its possession, the Supreme Court of the United States has acted clearly

[6] See Crowell v. Benson, 285 U.S. 22 (1932) (Longshoremen's and Harbor Workers' Compensation Act); St. Joseph Stockyards Co. v. United States, 298 U.S. 38 (1936) (rate making); Ohio Valley Water Co. v. Ben Avon Borough, 253 U.S. 287 (1920) (rate making); International Shoe Co. v. Fed. Trade Comm., 280 U.S. 291 (1930) (restraint of trade).

[7] See Crowell v. Benson, 285 U.S. 22 (1932) (Longshoremen's and Harbor Workers' Compensation Act); Ohio Valley Water Co. v. Ben Avon Borough, 253 U.S. 287 (1920) (rate making); Ng Fung Ho v. White, 259 U.S. 276 (1922) (deportation of alien).

[8] See International Shoe Co. v. Fed. Trade Comm., 280 U.S. 291 (1930); Fed. Trade Comm. v. Curtis Pub. Co., 260 U.S. 568 (1923).

[9] See Justice Brandeis' dissenting opinions in Crowell v. Benson, 285 U.S. 22, 65 (1932); Ohio Valley Water Co. v. Ben Avon Borough, 253 U.S. 287, 292 (1920); Fed. Trade Comm. v. Gratz, 253 U.S. 421, 429 (1920); his concurring opinion in St. Joseph Stockyards Co. v. United States, 298 U.S. 38, 73 (1936); and Justice Stone's dissenting opinion in International Shoe Co. v. Fed. Trade Comm., 280 U.S. 291, 303 (1930).

[10] Note 9 *supra*. See also Dickinson, Crowell v. Benson: Judicial Review of Administrative Determinations of Questions of Constitutional Fact, 80 U. of Pa. L. Rev. 1055 (1932).

[1] 48 Stat. 911 (1934), 11 U.S.C.A. § 207 (1937).

[2] 48 Stat. 911, 917 (1934), 11 U.S.C.A. § 207(c) (10) (1937).

[3] See State of Texas v. Donoghue, 88 F. (2d) 48 (C.C.A. 5th 1937).

[4] 302 U.S. 284 (1937).

contrary to the doctrine of *Pennoyer v. Neff*[5]—that a judgment *in rem* requires prior control of the *res* by the court. Nor can the instant case be distinguished on the ground that the oil, being physically within the territorial confines of Texas, is within the territorial jurisdiction of the state court, since *Pennoyer v. Neff* also involved a *res* situated within the state. Furthermore, the oil sought to be forfeited was exclusively[6] within the jurisdiction of the federal court and, according to the previous weight of authority, could not be affected by proceedings in the state court.[7] The difficulty of jurisdiction could, however, have been avoided by requiring the federal court, not merely to grant the State of Texas permission to sue, but also to surrender possession of the oil to the state court pending the determination of title.

Assuming that the state court could interpret the conservation statutes of Texas[8] as vesting the State with title to illegally produced oil from the time of production,[9] the surrender of possession by the federal court leaves the question whether the federal court would thereby be enforcing the penal laws of Texas. Undoubtedly, the State of Texas could not have availed itself of the judicial machinery of a federal court, whether located in Texas[10] or in another state,[11] to secure *direct* enforcement of Texas penal law. Under the instant decision, however, the *surrender* of an illegally-produced *res* within the possession of a federal court, even though the surrender be for the sole purpose of making effective the penal decree of the state in which the federal court is located, would not be open to the objections[12] present when a state affirmatively attempts to enforce its penal laws or judgments through the judicial machinery of another state. Analogous is the use of interstate rendition[13] whereby one state, in the interest of common social policy, surrenders the accused—the *res* upon which criminal jurisdiction is founded[14]—for subjection to the penal laws of another state.

[5] 95 U.S. 714 (1877).

[6] 48 Stat. 911, 912 (1934), 11 U.S.C.A. § 207(a) (1937).

[7] Hebert v. Crawford, 228 U.S. 204 (1913); Murphy v. John Hofman Co., 211 U.S. 562 (1909); Isaacs v. Hobbs Tie and Timber Co., 282 U.S. 734 (1931); Havner v. Hegnes, 269 Fed. 537 (C.C.A. 8th 1920); White v. Schloerb, 178 U.S. 542 (1900).

[8] 17 Vernon's Ann. Tex. Civ. Stat. 1937, art. 6066a, § 10(a) (b).

[9] This interpretation seems doubtful in view of the statutory language: § 10(a). "All unlawful oil. . . . regardless of the date of production or manufacture thereof. . . . shall be forfeited to the state as hereinafter provided." § 10(b). ". . . . it shall be . . . . duty [of the Attorney General] to institute a suit in rem against such unlawful oil. . . . ." See note 8 *supra*.

[10] Gwin v. Breedlove, 2 How. (U.S.) 29 (1844); Gwin v. Barton, 6 How. (U.S.) 7 (1848).

[11] Moore v. Mitchell, 30 F. (2d) 600 (C.C.A. 2d 1929), aff'd on another ground, 281 U.S. 18 (1930); Wisconsin v. Pelican Insurance Co., 127 U.S. 265 (1888) (original jurisdiction of U.S. Sup. Ct. invoked). *Cf.* Bankr. Act § 57(j), 30 Stat. 544, 561 (1898), 11 U.S.C.A. § 93(j) (1927).

[12] Leflar, Extrastate Enforcement of Penal and Governmental Claims, 46 Harv. L. Rev. 193, 201–202 (1932).

[13] U.S. Const., art. IV, § 2, cl. 2; 1 Stat. 302 (1793), 18 U.S.C.A. § 662 (1927). See Larremore, Inadequacy of the Present Federal Statute Regulating Interstate Rendition, 10 Col. L. Rev. 208 (1910).

[14] The constitutional requirement of confrontation makes the prisoner's presence a jurisdictional matter. U.S. Const., 6th Amend.

A possible theory upon which to give effect to the state policy in the conservation of natural resources would be that the State of Texas had a right in the nature of an inchoate lien to subject the illegal oil to subsequent forfeiture proceedings. This inchoate right, arising at the time of production rather than at the time of a decree of forfeiture, would not be void even though perfected within the four month period.[15] This theory would be of aid, however, only if the actual production of the illegal oil had occurred more than four months prior to bankruptcy or reorganization. Debtors on the verge of bankruptcy or reorganization would be able to evade the conservation laws of the state by going into the federal courts for "bona fide" bankruptcy or reorganization within four months of the illegal production. And it is precisely the debtor on the verge of insolvency or reorganization who, in trying to make ends meet, will attempt to produce more oil than is legal. The state statutes, therefore, should make it clear that forfeiture occurs and title passes to the State upon production.

The widespread public policy for conservation of natural resources[16] might well be used as justification for requiring the federal court in bankruptcy or reorganization to surrender the oil to the state court pending forfeiture proceedings. Certainly it would be against public policy to allow either the creditors or the stockholders of the guilty corporation to derive a profit from oil illegally produced. The decision, therefore, is in line with the trend toward increasing the efficacy of penal laws in order to further state policy,[17] and is another reasonable inroad upon the doctrine that the courts of one jurisdiction will not aid in enforcing the penal provisions of another.[18] The Supreme Court, however, might well have gone further and held that the State of Texas, having commenced its proceedings prior to the petition for reorganization, should be entitled to complete them irrespective of whether the particular state statute declared the oil forfeited as of the date of production or only upon rendition of the decree of forfeiture.

Criminal Law—Conspiracy To Defraud under Unconstitutional Statute—[Federal]. —The defendants were indicted under a statute which made it a felony to conspire to defraud the United States. The government charged that they had made false statements to the Secretary of Agriculture in order to secure benefit payments under the Agricultural Adjustment Act. At trial they demurred upon the ground that the acts set forth in the indictment did not constitute an offense against the laws of the United States since the Agricultural Adjustment Act had been declared unconstitutional. The court sustained the demurrer and in substance held that the false claims statute does not apply to an attempt to defraud the United States by obtaining the approval of claims and benefit payments through false representations, if the statute providing for such claims and payments is later found to be invalid. On appeal, *held*, reversed and remanded. The defendants were not indicted for a conspiracy to violate the Agricul-

[15] Henderson v. Mayer, 225 U.S. 631 (1912); *In re* Bennett, 153 Fed. 673 (C.C.A. 6th 1907); Metcalf v. Barker, 187 U.S. 165 (1902); Pickens v. Roy, 187 U.S. 177 (1902).

[16] Champlin Refining Co. v. Corp. Comm'n. of Okla., 286 U.S. 210 (1932); 45 Harv. L. Rev. 557 (1932); see Fly, The Role of the Federal Government in the Conservation and Utilization of Water Resources, 86 U. of Pa. L. Rev. 274 (1938).

[17] Hall, Strict or Liberal Construction of Penal Statutes, 48 Harv. L. Rev. 748 (1935).

[18] Huntington v. Attrill, 146 U.S. 657 (1892); Milwaukee County v. White, 296 U.S. 268 (1935), noted 3 Univ. Chi. L. Rev. 500 (1936).