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).

tural Adjustment Act, but for a conspiracy to violate the statute protecting the United States against frauds. *United States v. Kapp.*[1]

The current popularity of the plea of unconstitutionality in the federal courts has not been confined to civil suits. In criminal cases where the statute, under which defendants acted, has either been declared unconstitutional before the indictment,[2] or has not been before the United States Supreme Court at the time of the trial,[3] the plea has been overruled. The gist of the offense is said to be a conspiracy to defraud the government and any attack on the statute which gave the defendant an opportunity to perpetrate the fraud is collateral to the issue.[4] The false claims statute,[5] under which these indictments are brought, aims to protect the government against those who have the intention to defraud it, regardless of the constitutional authority of the government to participate in activity which gives the defendant his opportunity to attempt the fraud.

A different problem arises, however, if the defendants in these cases are indicted under an act which either had been declared, or is alleged to be, unconstitutional. The intent to defraud, coupled with the unsuccessful attempt to defeat the operations of an apparently valid statute, would seem to be sufficient to impose criminal liability.[6] On the other hand, the doctrine that an act must be a crime at the time of its occurrence *and* at the time of trial in order to be punishable,[7] would seem to negative liability in the cases where the statute has been declared unconstitutional prior to the trial.

Evidence—Self-Incrimination—Searches and Seizures—[Federal].—Defendants, under the authority of the Securities Act of 1933,[1] sought by subpoenas *duces tecum* to obtain copies of all telegrams sent or received by the plaintiffs and others between certain dates relating to specified transactions. Suits were brought to restrain the defendants from enforcing the subpoenas. On appeals from orders granting interlocutory injunctions, *held*, reversed. The subpoenas were not a violation of the privilege against self-incrimination,[2] nor did they constitute an unreasonable search and seizure.[3] *Newfield v. Ryan et al.* (two cases) and *Ballentine v. Florida Tex Oil Co. et al.*[4]

[1] 58 S. Ct. 182 (1937).

[2] United States v. Harding *et al.*, 81 F. (2d) 563 (App. D.C. 1936) (National Industrial Recovery Act).

[3] Ranger v. United States, 76 F. (2d) 817, 824 (C.C.A. 8th 1935)(Reconstruction Finance Corp. Act); Madden v. United States, 80 F. (2d) 672, 674 (C.C.A. 8th 1935) (Public Works Administration); United States v. Soeder *et al.*, 10 F. Supp. 944 (Mo. 1935) (Agricultural Adjustment Act); United States v. MacDonald *et al.*, 10 F. Supp. 948 (Mo. 1935) (Agricultural Adjustment Act).

[4] Ranger v. United States, 76 F. (2d) 817 (C.C.A. 8th 1935).

[5] 40 Stat. 1015 (1918), 18 U.S.C.A. § 80 (1927).

[6] See People v. Moran, 123 N.Y. 254, 25 N.E. 412 (1890).

[7] Commonwealth v. Marshall, 28 Mass. 350 (1831).

[1] 48 Stat. 74 *et seq.* (1933), 15 U.S.C.A. § 77a *et seq.* (1937).

[2] U.S. Const. 5th Amend., ". . . . nor shall (any person) be compelled in any criminal case to be a witness against himself. . . . ."

[3] U.S. Const. 4th. Amend., "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . . ."

[4] 91 F. (2d) 700 (C.C.A. 5th 1937), *cert. denied*, 58 S. Ct. 54 (1937), petition for rehearing denied, 58 S. Ct. 137 (1937).