SINCLAIR *v.* UNITED STATES.

CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 555. Argued February 18, 19, 1929.—Decided April 8, 1929.

1. The chairman and any of the members of the Committee on Public Lands and Surveys of the Senate are empowered to administer oaths to witnesses before the committee. Rev. Stats. § 101. P. 291.
2. Rev. Stats. § 102, prescribing punishment for refusal to answer before congressional committees, includes witnesses who voluntarily appear without being summoned. P. 291.
3. While the power of inquiry of the respective houses of Congress is an essential and appropriate auxiliary to the legislative function, it must be exerted with due regard for the rights of witnesses; a witness may rightfully refuse to answer where the bounds of the power are exceeded or where the questions asked are not pertinent to the matter under inquiry. *McGrain* v. *Daugherty*, 273 U. S. 135. P. 291.
4. A naval petroleum reserve, in charge of the Secretary of the Navy under the Act of June 4, 1920, 41 Stat. 812, was made the subject of an executive order purporting to give the administration and conservation of all oil and gas lands therein to the Secretary of the Interior under the supervision of the President. The two Secretaries, at the procurement of the defendant, leased lands in the reserve to a company of which he owned all the shares. Questions having arisen as to the legality and good faith of the lease and an attendant contract, and of others similar, and also as to the future policy of the Government regarding such matters, the Senate, by resolutions, directed its committee to investigate the entire subject of such leases, with particular reference to the protection of the rights and equities of the United States and the preservation of its natural resources, to ascertain what, if any, other or additional legislation might be advisable, and to report its findings and recommendations to the Senate. Congress, also, by joint resolution, reciting that the lease and contract were illegal and apparently fraudulent, directed the President to cause suit to be instituted for their cancellation, and to prosecute such other actions, civil or criminal, as were warranted. After suit had been begun against

his company pursuant to this resolution, and while criminal action was impending against himself, the defendant appeared before the committee and was asked a question which sought the facts within his knowledge concerning a contract executed by him for his company to pay certain persons for a release of rights in lands embraced in his company's lease. Defendant refused to answer, not upon the ground of self-incrimination, but for the reason that the investigation and the question were unauthorized. He was prosecuted for contumacy, under Rev. Stats. § 102, and convicted. *Held:*

(1) Neither the investigation authorized by the Senate's resolutions nor the question put by the committee related merely to the defendant's private affairs. P. 294.

(2) Under Art. IV, § 3 of the Constitution, Congress had plenary powers to dispose of and make all needful rules and regulations respecting the naval reserves; and the Senate had power to delegate authority to its committee to investigate and report what had been and was being done by executive departments under the leasing Act, the Naval Oil Reserve Act, and the President's order in respect of the reserves, and to make any other inquiry concerning the public domain. P. 294.

(3) The validity of the lease and the means by which it had been obtained under existing law were subjects that properly might be investigated in order to determine what, if any, legislation was necessary or desirable in order to recover the leased lands or to safeguard other parts of the domain. P. 294.

(4) Neither the joint resolution directing legal proceedings, nor the action taken under it, operated to divest the Senate or the committee of further power to investigate the actual administration of the land laws; the authority of Congress, directly or through its committees, to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits. P. 295.

(5) A refusal of the committee to pass a motion that the examination of defendant should not relate to controversies pending in court, and the statement of one of the members that there was nothing else to examine him about, were not enough to show that the committee intended to depart from the purpose to ascertain whether additional legislation might be advisable. Investigation of the matters involved in suits brought, or to be brought, under the joint resolution, might directly aid legislative action. P. 295.

(6) A resolution of the Senate, the purpose of which, as plainly shown by the context and circumstances, was to keep in force

through the next session of Congress an earlier resolution empowering the committee to summon and swear witnesses, should not be denied that effect because of mistakes in its references to the date and number of the earlier resolution. P. 295.

(7) The question propounded by the committee was pertinent to matters it was authorized to investigate, relating (a) to the rights and equities of the United States as owner of the land leased to the defendant, and (b) to the effect of existing laws concerning oil and other mineral lands and the need for further legislation. P. 297.

5. In a prosecution for the offence of refusing to answer a question put to the accused as a witness before a committee of the Senate (R. S. § 102), the burden is upon the United States to show that the question was pertinent to a matter under investigation; any presumption of regularity in that regard is overcome by the presumption of innocence attending the accused at the trial. P. 296.
6. In a prosecution for refusal to answer a question before a committee of the Senate, it is the province of the court, and not of the jury, to decide whether the question was pertinent to the subjects covered by the Senate resolutions authorizing the committee's investigation. P. 298.
7. In such a prosecution, the fact that the accused acted in good faith on the advice of competent counsel in refusing to answer a question put by the committee, is not a defense. P. 299.
8. A judgment imposing a single sentence on several counts of an indictment may be affirmed under one count without considering the others, if the conviction as to that count be sustained, and if the maximum punishment authorized for the offense charged in that count be not exceeded by the sentence. P. 299.

Affirmed.

REVIEW of a judgment of the Supreme Court of the District of Columbia sentencing the defendant, under Rev. Stats. § 102, for refusing to answer questions before a committee of the Senate. The case was appealed from the trial court to the Court of Appeals of the District. That court certified certain questions for instruction, and this Court, by order, brought up the entire record.

Messrs. Martin W. Littleton and *George P. Hoover* for Sinclair.

The indictment is bad for failure to state a crime, and for lack of certainty.

The power to compel testimony is in derogation of the Fourth Amendment. Its possession by the courts is justified upon the grounds of necessity. *Harriman* v. *Interstate Commerce Comm'n,* 211 U. S. 407; *Marshall* v. *Gordon,* 243 U. S. 521; *Boyd* v. *United States,* 116 U. S. 616; *Re Pacific R. Comm'n,* 32 Fed. 241; *Robinson* v. *Philadelphia & R. R. Co.,* 28 Fed. 340; *Matter of Barnes,* 204 N. Y. 108; 4, Wigmore on Evidence, 2d ed., pp. 648. 650, § 2192.

In the *Chapman* case, 166 U. S. 661, it was recognized that there was no general power of investigation, embracing the right to compel testimony, enjoyed by the Senate; that statutes should receive a sensible construction, such as will effectuate the legislative intention, and if possible so as to avoid an unjust or absurd conclusion; that the word "any" in § 102 R. S. refers to matters within the jurisdiction of the two houses of Congress before them for consideration and proper for their action; to questions pertinent thereto and to facts or papers bearing thereon.

The senatorial inquiry in the *Chapman* case related to charges of corruption on the part of Senators, so the investigation was obviously within the judicial functions of the Senate. The questions were obviously pertinent.

In *Kilbourn* v. *Thompson,* 103 U. S. 168, the situation was in many respects parallel to the one here. There were charges in each case concerning improper protection of the rights and interests of the United States, and, although the subject-matter of such charges was in litigation in the courts having jurisdiction to ascertain and determine the "rights and equities of the Government," the respective committees were authorized to investigate those matters.

In the *Kilbourn* case, the Court reached its conclusion not from the terms of the resolution itself, but from the nature of its subject-matter. The presence or absence of a clause similar to that embraced in the resolution of February 7, 1928 (S. R. 147), relating to possible legislation as

an objective, is not controlling, but, instead, the subject matter and nature of the investigation itself.

The resolutions previous to that, by their very tenor, undertake an investigation falling squarely within the class involved in the *Kilbourn* case, namely, a judicial inquiry and an attempt at a determination "of the rights and equities of the United States." Indeed, as shown by Joint Resolution 54, Congress did "adjudicate" the validity of the leases and the charges of corruption, and, realizing that its own adjudication was of no validity, then " directed" the President to take the matters to the proper forums for enforceable adjudication.

Consequently, it is manifest that any proceedings under the resolutions preceding S. R. 147 would be absolutely in excess of the power of the Senate, as held in the *Kilbourn* case, and, so far as any further investigation even under S. R. 147 should be pursued to the same end, the committee would likewise be in excess of its constitutional power, notwithstanding, as was later decided by this Court in *McGrain* v. *Daugherty,* 273 U. S. 135, it had power to compel testimony when necessary for the effective discharge of its legislative function.

The situation in the *Daugherty* case was that the committee was at least dealing with a subject upon which Congress might very properly legislate, and to aid which an investigation of the character ordered might be very useful, whatever may have been the actual design or objective of the investigation. Had Daugherty appeared before the committee and had it attempted to pursue an inquiry of the nature he claimed to apprehend it intended, then he might rightfully have refused to answer, and he would have been protected under the Fourth Amendment.

In *People* v. *Webb,* 5 N. Y. Supp. 585, notwithstanding an avowal of legislative intent, the court, upon examination of the subject-matter sought to be investigated, reached the conclusion—as did this Court in the *Kilbourn*

case—that it clearly concerned "judicial questions," and that it was beyond the power of the Legislature to compel testimony.

It is of course obvious from what has been said by this Court in the *Kilbourn* and *Daugherty* cases, and from the statute itself, that even were the Senate proceeding upon an investigation within its constitutional sphere, not all questions which might be asked, but only "pertinent" questions are required to be answered; and "pertinent," as here used, has a considerably wider application than its technical application in the trial of causes in courts of law. There issues are framed, and the judge can readily determine with exactitude whether a question is pertinent. Here there are no issues; the only guide-post is the subject-matter of the inquiry. In this situation, it is to be recalled that the limits of the power are the necessity of the evidence to the effectual performance of the constitutional function. Obviously no court would compel a witness to answer a question concerning his private affairs over his objection on that ground, however relevant the matter might be, if such matter was already admitted by the answer. For, clearly, there would be no necessity for it, notwithstanding the pertinency. *Matter of Barnes*, 204 N. Y. 108. And because of the very vagueness which enshrouds a legislative inquiry where there are no issues and questions of pertinency are not susceptible of determination by the usual standards; and because the power, where it exists, is exercisable without the usual provision for resort to the courts for judicial determination of the necessity of the evidence, such as is frequently provided by state legislation affecting the same subject; and because the power is in its nature a direct invasion of one of the most sacred liberties of a freeman, it behooves the courts, when the exercise of the power is called in question, zeal-

ously to safeguard the rights of the citizen, to be sure that the power is exercised rightfully and not to allow sentiments of delicacy at interfering with another branch of the Government to intrude in the determination of that question. *Kilbourn* case, 103 U. S. at p. 192.

In a case like this, the indictment must show facts from which the court can determine as a matter of law that the inquiry where the witness refused to testify was one within the authority of the committee before which he appeared.

The indictment alleges that the committee was on March 22, 1924, proceeding under a resolution of February 7, 1924, and other resolutions, and that pursuant to the authority of all the resolutions an oath was administered to the witness December 4, 1923, at a time when there was no resolution in force authorizing the administration of an oath. It is therefore apparent that the indictment does not purport to charge that an oath was administered pursuant to any authority of the Senate.

Inquiries upon which the committee was engaged prior to S. R. 147 of February 7, 1924, were in their nature judicial in character, just as in the *Kilbourn* case, and quite beyond the power of the Senate. Consequently, it does not meet the requirements of a valid indictment to couple together S. R. 282 of April 21, 1922; S. R. 294 of June 5, 1922, and S. R. 434 of February 5, 1923, with S. R. 147 of February 7, 1924, which latter resolution for the first time avowed—along with the continuance of the judicial inquiry—a purpose in aid of legislation, as the source of the authority to require the giving of testimony. An inquiry pursuant to all the resolutions other than S. R. 147 would be clearly beyond the power of the Senate itself, to say nothing of the committee, and the committee itself was without authority to summon witnesses either December 4, 1923, or March 19, 1924, (when the accused

was "again summoned") under the earlier resolutions, although on the latter date it had such authorization pursuant to S. R. 147 of February 7, 1924.

It will be seen from an examination of each of the questions in the four remaining counts of the indictment that on their face there is no apparent pertinency to any conceivable legislation; and it will be further seen that the innuendoes completely fail to show any meaning to the questions which would render them pertinent to any possible legislation on the subject. It will not escape notice, however, that, given certain reasonable probable meanings, the questions would be quite pertinent to the judicial phase of the investigation.

The court erred in overruling the motion of the defendant to direct the jury to return a verdict of not guilty, because the questions propounded to the defendant called for testimony relating solely to his private business and the committee had no jurisdiction to make such an inquiry, and the witness rightfully refused to answer the questions. *Kilbourn* v. *Thompson,* 103 U. S. 168; *McGrain* v. *Daugherty,* 273 U. S. 135; *Re Pacific R. Comm'n,* 32 Fed. 241; *Interstate Commerce Comm'n* v. *Brimson,* 154 U. S. 447; *Harriman* v. *Interstate Commerce Comm'n,* 211 U. S. 407; *Ellis* v. *Interstate Commerce Comm'n,* 237 U. S. 434; *Federal Trade Comm'n* v. *P. Lorillard Tobacco Co.,* 264 U. S. 298.

We maintain that an inadmissible and unlawful object was affirmatively and definitely avowed by the committee. Cf. *McGrain* v. *Daugherty, supra,* at p. 180. It is conceivable that a witness appearing before a committee might be asked questions which, while directly relating to litigation pending in the courts, might at the same time bear upon some discernable contemplated legislation; but in the case here, if we take the unquestioned statement of Mr. Sinclair to the committee which shows his many

appearances and examinations between October, 1923, and March, 1924, with the production of his books and papers, which shows that prior to his appearance and declination to answer in March, 1924, Congress had passed Joint Resolution 54, referring all matters growing out of the lease of Teapot Dome to the courts, civil and criminal, for disposition; if we consider the colloquy between the members of the Committee in the presence of Mr. Sinclair, and the decision of the committee after the colloquy as to the line of inquiry intended and about to be proceeded with, and if we take the questions which followed and for the refusal to answer which Mr. Sinclair was convicted, the conclusion seems irresistible that the questions related to matters beyond the bounds of the committee's power; that the purpose of the committee in propounding the questions was affirmatively and definitely avowed, and the witness rightfully refused to answer.

The court erred in overruling the motion of the defendant to direct the jury to return a verdict of not guilty, because there was no proof of an authorized inquiry, a legal summons, or duly administered oath.

It is not even pretended that there is, by standing rule, or even practice, a general authorization on the part of the Senate to committees to summon witnesses. On the contrary, the uniform practice of the Senate is to adopt a resolution authorizing and instructing a committee to conduct an inquiry; such resolution either expressly authorizing the requiring of testimony, when such may be the will of the Senate, or containing no such authorization, if that may be its will.

The obvious purpose of § 101, R. S., is merely to capacitate the members of Congress to administer oaths. It is elementary that an oath to be legal, must be one authorized by law. The Senate alone cannot make laws. Consequently, it was necessary that a law be enacted by the

two Houses which would simply capacitate a certain class of persons to administer oaths in authorized circumstances.

What is relied upon for proof of the administration of an oath, is the oath administered December 4, 1923; and there is no proof of any summons having been issued or served prior to the administration of that oath. An oath taken before the commencement of a proceeding is extra-judicial as to such proceeding and of no effect.

Senate Resolution 147 broadened the scope of the inquiry directed to be made and absolutely superseded prior resolutions. An oath taken by a witness before the committee under the superseded resolutions would not survive the adoption of Resolution 147.

In order to bring the witness under the condemnation of § 102, R. S., he must have been summoned by the authority of one or the other of the Houses of Congress and must have been sworn as a witness to testify before a committee of one or the other of the Houses. The record is barren of any evidence that he was summoned regularly or irregularly to appear on December 4, 1923, and it is clear that this is the only date and appearance on which it is pretended any oath was administered.

It appears clearly from Senate Resolution 294, agreed to June 5, 1922, which was an amendment to Senate Resolution 282, that the committee then, for the first time, was authorized by the Senate to issue subpœnas for witnesses, compel their attendance and administer oaths. Resolution 294 was not continued in full force and effect, and without the authority conferred by it, the committee could not have summoned witnesses, compelled their appearance and administered oaths on December 4, 1923. The resolution under which it is claimed in the indictment and by the Government elsewhere that the committee continued to enjoy its authority under Resolutions 282 and 294 is Senate Resolution 434, agreed to February 5, 1923, from

which it appears without ambiguity that the Senate resolved "that Senate Resolution 282, agreed to April 21, 1922, and Senate Resolution 292, agreed to May 15, 1922," should be continued in full force and effect.

Nothing appears in the record to show the subject-matter of Senate Resolution 292. The claim that the Senate, in continuing that resolution, fell into a typographical or clerical error, is mere argument and finds no support in the record. This is fundamental.

We scarcely think that the second claim of the Government, that an oath was not necessary to bring the defendant within the operation of § 102, R. S., requires much discussion. There is no compulsion upon the person appearing before such a committee to testify until he has become a witness, and he cannot become a witness until he has been duly sworn.

Standing Rule XXV of the Senate provides (2) that the committee shall continue until their successors are appointed, and (1) that they shall be appointed at the commencement of each Congress (Senate Manual, pp. 27, 30, 67th Congress, 4th Sess., Sen. Docs., Vol. 9, No. 349); thus automatically, by the appointment of the new committee, with the new Congress, the old committee is dissolved. Presumably, resolutions unacted on by a committee at the expiration of the Congress die with the committee, and if it is desired that the result shall be otherwise, it may be so resolved. There is nothing in the holding of this Court in *McGrain* v. *Daugherty,* 273 U. S. 135, that the Senate is a continuing body, that conflicts with the foregoing view.

Even if it were supposed the original purpose of the resolution was legislative (which we deny), that had been completely accomplished, and the further activity of the committee was but in seeking evidence to support the litigation ordered instituted by Joint Resolution 54.

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S. R. 147 was co-extensive with S. R. 282 and S. R. 294 combined, an exact duplicate, save for the addition of the avowal of legislative intent. Why would a completely new resolution be passed, thus covering the entire field, instead of a mere amendment to add the legislative avowal, if it were not recognized by the Senate itself that Resolutions 282 and 294, having been acted upon, were no longer alive?

If there is insufficient ground definitely to draw the legal conclusion that these prior resolutions (S. R. 282 and S. R. 294) were still in force March 22, 1924, it follows that there could be no authorized inquiry pending in which the accused had been summoned and sworn as a witness—essential ingredients of the offense—on that date.

The inquiry under S. R. 282 was purely judicial. The rights and equities of the Government in these leases could not be affected by any valid legislation. Only the courts could deal with them. The contracts were executed, delivered, and in effect. If there was fraud in their negotiation; if they were in excess of the authority of the Government officials, the courts, and the courts alone, could remedy that.

One cannot read the debates in the Senate with respect to this inquiry and escape the conclusion that precisely what the Senate was doing was attempting to reach a legal opinion about whether the leases were invalid for want of authority, and attempting to assemble evidence to determine whether corruption had attended their negotiation. Clearly these were not matters that the Senate could adjudicate. It is obvious that the committee had constituted itself a grand jury. When they so far "forgot their high functions" and indulged in "such an utter perversion of their powers," *Kilbourn* v. *Thompson,* 103 U. S. 168, and showed such "an absolute disregard of discretion and a mere exertion of arbitrary power coming

within the reach of constitutional limitations," it is the duty of the courts to interfere. *Marshall* v. *Gordon,* 243 U. S. 521.

The burden of proof is on the prosecution, and the query is: Can this Court say beyond a reasonable doubt that the committee was engaged upon an inquiry in aid of legislation? It will not do to indulge a presumption to that effect. No presumption known to the law is as strong as the presumption of innocence. No presumption can be indulged in the place of proof to establish an essential ingredient of a crime. *Egan* v. *United States,* 52 App. D. C. 384; *Agnew* v. *United States,* 165 U. S. 36; *Clyatt* v. *United States,* 197 U. S. 207; *Lilienthal's Tobacco* v. *United States,* 97 U. S. 237; Underhill's Criminal Evidence, 2d ed., § 23; 3 Blashfield's Instructions to Juries, 2d ed., § 5675, p. 3599; *State* v. *Shelley,* 166 Mo. 616; *West* v. *State,* 1 Wis. 209; *Lucas* v. *United States,* 163 U. S. 612; *State* v. *McDaniel,* 84 N. C. 803; *Commonwealth* v. *Whitaker,* 131 Mass. 234; *People* v. *O'Brien,* 130 Cal. 1; *People* v. *Roderigas,* 49 Cal. 11; *People* v. *Krusick,* 93 Cal. 79; Lawson, Presumptive Evidence, 2d ed., pp. 525, 526; 2 Chamberlayne, Modern Law of Evidence, § 1228, pp. 1557, 1558.

The court erred in overruling the motion of the defendant to direct the jury to return a verdict of not guilty, because there was no proof that the questions propounded were questions of the committee, or were pertinent to any inquiry which the committee was authorized to conduct.

Not a shred of evidence was introduced to establish the innuendoes. With respect to the first count, the Government offered in evidence the contracts referred to by the innuendo, and Senator Walsh testified that the contracts in question had been before the committee, but nothing further in relation to it; nothing about any "facts . . . touching the execution and delivery" of the

contracts which the innuendo alleges were meant to be elicited by the question. The plain, reasonable inference from the situation is that there were no such known facts, but that the Senator was conducting " a fishing expedition . . . upon the chance that something disagreeable might turn up," (Mr. Justice Holmes in *Ellis* v. *Interstate Commerce Comm'n,* 237 U. S. 434,) and manifestly a fishing expedition for evidence to aid in the prosecution of the civil and criminal proceedings then pending and about to be instituted in the courts.

The position confronting the trial court at the close of the evidence was entirely different from that subsisting on demurrer. By the failure to make any proof of the innuendoes, the averment of pertinency then remained unsupported by anything but the naked questions; just as though the innuendoes had been stricken from the indictment. *Searles* case, 25 W. L. R. 384; *Shriver* case, 25 W. L. R. 414.

There would be no authority to presume the pertinency of the questions here involved, for the simple reason that it would violate the very fundamentals of the law of presumptions. Immediately any evidence appears to undermine a presumption, it disappears, and proof must be produced. 5 Wigmore, Evidence, 2d. ed., §§ 2490, 2491, 2493, pp. 448–454.

If we assume that a fact is pertinent only when it is so connected, directly or indirectly, with a fact in issue, that evidence given respecting it may reasonably be expected to assist in proving or disproving the fact in issue, then the question of pertinency is a question of fact, to be determined by logical reasoning and not by legal rules. But, when the question of its pertinency is the essential ingredient of the crime charged, we maintain that the question is one which must be submitted to a jury along with all of the other facts in the case, to the end that the ac-

cused may be afforded a trial by jury under the Sixth Amendment of the essential ingredients of the crime charged.

Distinguishing *Chapman* v. *United States,* 5 App. D. C. 122; and citing Thayer's Preliminary Treatise on Evidence, Part II, pp. 264, 265; Jones' Commentaries on Evidence, 2d ed., p. 1086, *et seq.*

Every essential ingredient of the crime must be proven to the satisfaction of the jury beyond a reasonable doubt. *Egan* case, 52 App. D. C. 384; *Agnew* case, 165 U. S. 36.

Conceding, for the moment, that a situation may exist where an essential ingredient of an offense involves a question of law for determination by the Court, there being no conflict of evidence or other ambiguity attendant upon the facts which are the basis upon which such legal conclusion is predicated, still the court can not legally withdraw from the jury the determination of the ultimate fact upon which rests the question of the guilt or innocence of the accused. In such case the court should instruct the jury that if they believe the facts, the predicate of their conclusion, the legal effect of them is to establish the essential ingredient to which they relate. *Sparf & Hansen* v. *United States,* 156 U. S. 51; 2 Brickwood Sackett's Instructions, 3256–3267; *People* v. *Clemenshaw,* 59 Cal. 385; 3 Thompson on Trials, 2d ed., § 5397, p. 3220; 1 Cooley's Const. Lim., 8th ed., p. 678.

The court erred in excluding evidence offered to prove that the witness rightfully refused to answer the questions.

The decision in *McGrain* v. *Daugherty,* 273 U. S. 135, has, in effect, spelled into § 102, R. S., the element of wilfulness, or, at the very least, of *scienter,* and it must now be given that construction to avoid running afoul of the Fifth and Sixth Amendments.

A statute must not be so vague and uncertain in its terms, lacking in definable standards, as to make it im-

possible for the citizen to know that in doing an act (entirely free of moral turpitude) he is committing a crime or has committed one. *United States* v. *Fox,* 95 U. S. 670; *United States* v. *Cohen Grocery Co.,* 255 U. S. 81.

In an inquiry in aid of legislation, we have no issues and no standard to measure pertinency save the subject matter; perhaps not even any settled tendency, trend or direction of the proposed legislation. There may be vast differences of opinion as to the nature of legislation that should be enacted, which will ultimately be reconciled or settled only long after the inquiry is completed. It may be that there is in a Senator's mind, entirely unexpressed, an idea, a theory for legislation concerning a subject within the competence of Congress, to which a question might be entirely pertinent and legitimate once such theory was disclosed, without which, however, no relevancy could be conjectured by any one other than the particular Senator. Again, much evidence may have been taken before the question was asked, and it may have developed facts pointing very reasonably in the direction of legislation concerning the subject-matter, and to those facts or that state of facts the question now asked might be clearly enough pertinent to one conversant with such antecedent testimony; yet, any indication of relevancy would be entirely wanting to one not conversant therewith. How could the defendant know what was in the Senator's mind—unexpressed by the question—unless it would be through a knowledge of extraneous circumstances referred to that would make the meaning of the question evident?

Under *McGrain* v. *Daugherty, supra,* which announces that " a witness rightfully may refuse to answer where the bounds of the power are exceeded or the questions are not pertinent to the matter under inquiry," in what manner may a witness be advised as to whether the questions

asked are beyond the bounds of the power of the committee or are not pertinent to the matter under inquiry? Must he exercise that right without advice and at his peril, and must the jury who are the triers of the ultimate fact of his guilt be denied the evidence that he had endeavored to exercise this right in accordance with the established law?

Where the honesty of purpose and good faith of the defendant is in issue, evidence as to the advice of counsel is proper and should be received and considered. *Williamson* v. *United States,* 207 U. S. 453.

It is submitted that when in *McGrain* v. *Daugherty, supra,* this Court used the words "rightfully refuse," it wrote into this statute the antonym of "rightfully," i. e., "wrongfully" or "wilfully."

Whatever conclusion this Court may reach upon the foregoing contention of the necessity of reading into the statute the word "wilful," in situations such as here present, it will at least recognize the necessity of *scienter* to constitute a crime. And although it is the rule in *malum prohibitum* statutes that, a knowledge of the facts existing, one may be presumed to intend the consequences of his acts, this is not an absolutely irrebuttable presumption. *Lehigh Coal & N. Co.* v. *United States,* 250 U. S. 556.

Messrs. Atlee Pomerene and *Owen J. Roberts* for the United States.

Congress has power to compel the attendance of witnesses and the production of books and papers, in order that it may wisely administer the public domain and pass such legislation as may prove necessary for the protection of the rights of the United States therein. *McGrain* v. *Daugherty,* 273 U. S. 135; *Henry* v. *Henkel,* 207 Fed. 805, s. c. 235 U. S. 219; Const. Art. IV, § 3; *United States* v. *Midwest Oil Co.,* 236 U. S. 459. See also *Light* v.

United States, 220 U. S. 523; *United States* v. *Grimaud,* 220 U. S. 506; *Camfield* v. *United States,* 167 U. S. 518.

The several Senate Resolutions show beyond peradventure that Congress was exercising its proprietary as well as its legislative power over the naval reserves. Congress was interested as a proprietor in obtaining recovery of possession of those portions that had been fraudulently and illegally leased, and as a legislature in the adoption of legislation aimed to prevent a possible recurrence of such fraud and illegality. Insofar as the unleased portions are concerned, Congress was interested as a proprietor in having them properly administered, and as a legislature, in having them protected against possible future frauds and illegality.

We have an express declaration and avowal by Congress that one of the main purposes of the present inquiry was legislative. This declaration is entitled to full faith and credit by this Court. This Court should indulge the presumption that legislation was the real object of the inquiry. It would be an unwarranted invasion of another branch of the Government if our courts were to lay down lines of demarcation beyond which Congress might not advance in the pursuit of facts necessary to achieve the purpose of its existence. Legislative functions are not to be controlled by a capricious, petty analysis of the objects of an inquiry instituted and maintained by Congress.

The demurrer to the indictment was properly overruled. It is difficult to understand how appellant can argue that the indictment discloses on its face that the inquiry was judicial and not legislative. Distinguishing *Kilbourn* v. *Thompson,* 103 U. S. 168.

Under § 101 R. S. the chairman of the committee could lawfully swear appellant, as he did on December 4, 1923, regardless of the several resolutions of Congress authorizing present inquiry.

Although Resolution 147 was not passed until February 7, 1924, yet Resolution 294, passed on June 5, 1922, was still in force and effect, and it specifically provided for the administration of oaths to witnesses by the chairman of the committee or any member thereof.

Counsel for appellant blocked the committee from reswearing his client as a witness by his insistence that appellant had been sworn by the committee, and was "already under oath before the committee." It hardly lies in his mouth now to argue that the indictment was defective because appellant was not properly sworn as a witness.

The questions propounded by the committee were pertinent to possible legislation touching the public domain.

Until the leased lands were recovered by appropriate judicial proceedings, Congress could not legislate in regard thereto. But that did not prevent Congress from adopting in the meantime new and further legislation for the protection of the remaining portions of the public domain from fraud and illegality; nor from enacting legislation to regulate and preserve the leased lands upon their restoration to the United States.

The so-called private business of the witness was impressed with a public interest, since it related to the administration of the naval oil reserves as part of the public domain. The language of the questions which appellant refused to answer shows without other evidence that they relate to all phases of the dealings whereby appellant succeeded in procuring a fraudulent and illegal lease of Naval Petroleum Reserve No. 3.

So long as the information sought to be elicited is pertinent to a legislative inquiry, it is no defense that the information relates to the private business of the witness. *In re Chapman,* 166 U. S. 661, s. c., 8 App. D. C. 313; *McGrain* v. *Daugherty,* 273 U. S. 135.

Reference to the courts of the question of the validity of the leases upon the naval oil reserves did not preclude Congress from investigating further, for legislative purposes, the facts and circumstances attending the negotiation and execution of said leases. Cf. *McDonald* v. *Keeler,* 99 N. Y. 463.

The objection that there was no proof of an authorized inquiry is founded upon the contention that Senate Resolution 434, which was adopted on February 5, 1923, inadvertently referred to the earlier Senate Resolution 294 of June 5, 1922, as Senate Resolution 292, and therefore did not re-enact the earlier resolution. We call attention to the fact that this typographical error does not appear in the original Senate Resolution 434, and is attributable solely to a subsequent error in reprinting. This Court will take judicial notice of the correct wording of the original Senate Resolution.

The enactment of Senate Resolution 147 on February 7, 1924, cured any possible defect in the earlier Resolution 434, since it repeated all the matters contained in Senate Resolutions 282 and 294, and added the further direction that the committee should "ascertain what, if any other or additional legislation may be advisable." A reading of all the resolutions will demonstrate that the insertion of "Resolution 292" in Senate Resolution 434 was a clerical and typographical error; and that what the Senate undoubtedly intended to do was to bring forward "Resolution 294." The manifest intention of Congress was to carry on the investigation and, therefore, the inquiry was a duly authorized one even if the defect had not been corrected by the subsequent Resolution. See *Brunswick-Balke-Collender Co.* v. *Evans,* 228 Fed. 991; *School District* v. *Chapman,* 152 Fed. 887; *Northern Pacific Export Co.* v. *Metschan,* 90 Fed. 80; *Ross* v. *Schooley,* 257 Fed. 290.

Resolution 147, which was in force on March 22, 1924, and pursuant to which appellant was subpœnaed to appear, expressly authorized the committee to "require the attendance of witnesses, by subpœna or otherwise." Furthermore, under a proper interpretation of Senate Resolution 434, Senate Resolution 294 was in full force and effect at the earlier hearing on December 4, 1923, and therefore authorized the service of a subpœna on appellant for that hearing. However, § 102, R. S., does not require a witness to be summoned by subpœna in order to entitle a committee of Congress to compel his testimony.

The record shows that appellant was personally served on March 19, 1924; also that he was served to appear on December 21, 1923; and that he was thus subpœnaed for both hearings.

Resolution 294 was re-enacted by Resolution 434 and there was specific authority in the committee to swear witnesses at the hearing on December 4, 1923, as well as general authority under § 101, R. S.

The uncontradicted evidence showed that the questions propounded were questions of the committee. The proofs clearly establish that they were pertinent to a legislative inquiry respecting the administration of the public domain.

The pertinency of the questions was a question of law for the court. *In re Chapman,* 166 U. S. 661, s. c. 5 App. D. C. 137, 164 U. S. 436.

Almost all perjury statutes make the materiality of the alleged false testimony a substantive part of the offense. The courts have held without exception in a great many cases that the question of the materiality of the alleged false testimony is one of law for the court, and that it is error for the court to submit the question to the jury. *Cothran* v. *State,* 39 Miss. 541. See *Mulane* v. *United States,* 20 F. (2d) 903; *Jones* v. *United States,* 18 F. (2d)

573; *Brown* v. *United States,* 16 F. (2d) 682; *Horning* v. *District of Columbia,* 254 U. S. 135.

The scope of the investigation being conducted by the committee was not an issuable fact. The trial court determined that scope pursuant to its duty of interpreting the four Senate resolutions offered in evidence, and of which it took judicial notice. Having determined the scope of the investigation, it became the further duty of the trial court to determine whether the questions were pertinent to the inquiry. Having answered the question of pertinency in the affirmative, an issue of fact for the jury was presented, *viz,* were the questions propounded by the committee, and did appellant refuse to answer them? This issue of fact was left to the jury in the present case together with the other issues of fact.

No error was committed in excluding evidence of appellant's alleged lack of wilfulness in refusing to answer the questions of the committee. The same argument was unsuccessfully made in the *Chapman* case, and the Court of Appeals there held that proof of wilfulness in the sense of bad faith or evil intent was unnecessary.

MR. JUSTICE BUTLER delivered the opinion of the Court.

Appellant was found guilty of violating R. S., § 102; U. S. C., Tit. 2, § 192. He was sentenced to jail for three months and to pay a fine of $500. The case was taken to the Court of Appeals of the District of Columbia; that court certified to this court certain questions of law upon which it desired instruction for the proper decision of the case. We directed the entire record to be sent up. Judicial Code, § 239, U. S. C., Tit. 28, § 346.

Section 102 follows: "Every person who having been summoned as a witness by the authority of either House of Congress, to give testimony or to produce papers upon any matter under inquiry before either House, or any

committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100, and imprisonment in a common jail for not less than one month nor more than twelve months."

By way of inducement the indictment set forth the circumstances leading up to the offense, which in brief substance are as follows:

For many years, there had been progressive diminution of petroleum necessary for the operation of naval vessels; consequently the Government was interested to conserve the supply and especially that in the public domain.

Pursuant to the Act of June 25, 1910, 36 Stat. 847, the President, by executive orders dated September 2, 1912, December 13, 1912, and April 30, 1915, ordered that certain oil and gas bearing lands in California and Wyoming be held for the exclusive use of the navy. These areas were designated Naval Petroleum Reserves 1, 2 and 3, respectively.

The Act of February 25, 1920, 41 Stat. 437, provided for the leasing of public lands containing oil and other minerals. And the Act of June 4, 1920, 41 Stat. 812, directed the Secretary of the Navy to take possession of all properties in the naval reserves " on which there are no pending claims or applications for permits or leases under the " Leasing Act of February 25, 1920, " or pending applications for United States patent under any law," to conserve, develop, use and operate the same by contract, lease or otherwise, and to use, store, exchange or sell the oil and gas products thereof for the benefit of the United States. And it was declared that the rights of any claimants under the Leasing Act were not thereby adversely affected.

May 31, 1921, the President promulgated an executive order purporting to give the administration and conservation of all oil and gas bearing lands in the naval reserves to the Secretary of the Interior subject to supervision by the President.

April 7, 1922, the Secretary of the Navy and the Secretary of the Interior made a lease of lands in Reserve No. 3 to the Mammoth Oil Company. This was done by the procurement of the appellant acting as the president of the company. The lease purported to grant to the company the right to take oil and gas and contained a provision selling royalty oils to the company. And February 9, 1923, a supplemental contract was made by which the company agreed to furnish storage facilities for the Navy. [*Mammoth Oil Company* v. *United States,* 275 U. S. 313.]

April 25, 1922, the same Secretaries made a contract with the Pan American Petroleum and Transport Company for the sale to it of royalty oils from Reserves 1 and 2. December 11, 1922, another contract was made by them. The purpose of these agreements was to arrange that the company furnish storage facilities for the Navy in exchange for royalty oils to be received by the United States under leases then in force and thereafter to be made. December 11, 1922, the same Secretaries made a lease to the Pan American Petroleum Company purporting to grant to it the right to take oil and gas from Reserve No. 1. [*Pan American Co.* v. *United States,* 273 U. S. 456.]

The lease to the Mammoth Company and the contract with the Transport Company came to the attention of the Senate, and it was charged that there had been fraud and bad faith in the making of them. Questions arose as to their legality, the future policy of the Government as to them and similar leases and contracts, and as to the necessity and desirability of legislation upon the subject.

April 29, 1922, the Senate adopted Resolution 282, calling upon the Secretary of the Interior for information and containing the following: "That the Committee on Public Lands and Surveys be authorized to investigate this entire subject of leases upon naval oil reserves with particular reference to the protection of the rights and equities of the Government of the United States and the preservation of its natural resources, and to report its findings and recommendations to the Senate."

June 5, 1922, Resolution 282 was amended by Resolution 294 by adding a provision that the committee "is hereby authorized . . . to require the attendance of witnesses by subpoenas or otherwise; to require the production of books, papers and documents . . . The chairman of the committee, or any member thereof, may administer oaths to witnesses and sign subpoenas for witnesses."

February 5, 1923, the Senate passed Resolution 434, which continued in force and effect until the end of the Sixty-eighth Congress and until otherwise ordered, "Senate Resolution 282 agreed to April 21 [29], 1922, and Senate Resolution 292, agreed to May 15, 1922." [The Government suggests that, instead of the resolution last mentioned there was meant Resolution 294 adopted June 5, 1922.]

February 7, 1924, the Senate passed Resolution 147, directing in substance the same as it had theretofore done by the two resolutions first above mentioned and also that the committee "ascertain what, if any, other or additional legislation may be advisable, and to report its findings and recommendations to the Senate."

The committee proceeded to exercise the authority conferred upon it and for that purpose held hearings at which witnesses were examined and documents produced. Appellant was summoned, appeared and was sworn December 4, 1923.

And the indictment charges that, on March 22, 1924, the matters referred to in these resolutions being under inquiry, and appellant having been summoned to give testimony and having been sworn as aforesaid did appear before the committee as a witness. The first count alleges that Senator Walsh, a member of the committee, propounded to him a question which appellant knew was pertinent to the matters under inquiry: "Mr. Sinclair, I desire to interrogate you about a matter concerning which the committee had no knowledge or reliable information at any time when you had heretofore appeared before the committee and with respect to which you must then have had knowledge. I refer to the testimony given by Mr. Bonfils concerning a contract that you made with him touching the Teapot Dome. I wish you would tell us about that."

And, to explain that question, the indictment states: "said Hon. Thomas J. Walsh thereby meaning and intending, as said Harry F. Sinclair then and there well knew and understood, to elicit from him the said Harry F. Sinclair, facts, which then were within his knowledge, touching the execution and delivery of a certain contract bearing date September 25, 1922, made and executed by and between said Mammoth Oil Company, one F. G. Bonfils and one John Leo Stack, which was executed on behalf of said Mammoth Oil Company by said Harry F. Sinclair as President of said Mammoth Oil Company, and which, among other things, provided for the payment, by said Mammoth Oil Company, unto said F. G. Bonfils and said John Leo Stack, of the sum of $250,000.00, on or before October 15, 1922, in consideration of the release, by said F. G. Bonfils and said John Leo Stack, of rights to lands described in said Executive Order of April 30, 1915, and embraced in the aforesaid lease of April 7, 1922." And that count concluded: "and that said Harry

F. Sinclair then and there unlawfully did refuse to answer said question . . ."

Senate Joint Resolution 54 was approved February 8, 1924. 43 Stat. 5. It recited that the leases and contracts above mentioned were executed under circumstances indicating fraud and corruption, that they were without authority, contrary to law, and in defiance of the settled policy of the Government; and the resolution declared that the lands embraced therein should be recovered and held for the purposes to which they were dedicated. It directed the President to cause suit to be instituted for the cancellation of the leases and contracts, to prosecute such other actions or proceedings, civil and criminal, as were warranted by the facts, and authorized the appointment of special counsel to have charge of the matter.

Prior to March 22, 1924, appellant, at the request of the committee, appeared five times before it, and was sworn as alleged. March 19, 1924, a United States marshal at New York served upon him a telegram, which was in form a subpoena signed by the chairman of the committee, requiring him to appear as a witness; and he did appear on March 22. Before any questions were put, he submitted a statement.

He disclaimed any purpose to invoke protection against self-incrimination and asserted there was nothing in the transaction which could incriminate him. He emphasized his earlier appearances, testimony, production of papers and discharge from further attendance. He called attention to Joint Resolution 54, discussed its provisions, and stated that a suit charging conspiracy and fraud had been commenced against the Mammoth Company and others and that the Government's motion for injunction and receivers had been granted, and that application had been made for a special grand jury to investigate the making

of the lease. He asserted that the committee could not then investigate the matters covered by the authorization because the Senate by the adoption of the joint resolution had exhausted its power and Congress and the President had made the whole matter a judicial question which was determinable only in the courts. The statement concluded: "I shall reserve any evidence I may be able to give for those courts to which you and your colleagues have deliberately referred all questions of which you had any jurisdiction and shall respectfully decline to answer any questions propounded by your committee."

After appellant's statement, his counsel asked the privilege of presenting to the committee reasons why it did not have authority further to take testimony of appellant. In the course of his remarks he said: "Mr. Sinclair is already under oath before the committee. . . . He is on the stand now in every sense of the word, and the objection really is to any further examination of him on the subjects involved in this resolution." Discussion followed, and a motion was made: "That in the examination the inquiry shall not relate to pending controversies before any of the Federal courts in which Mr. Sinclair is a defendant, and which questions would involve his defense." During a colloquy that followed, one of the members said: "Of course we will vote it [the motion] down. . . . If we do not examine Mr. Sinclair about those matters, there is not anything else to examine him about." The motion was voted down. Then the appellant was asked the question set forth in the first count, and he said: "I decline to answer on the advice of counsel on the same ground."

Appellant contends that his demurrer to the several counts of the indictment should have been sustained and that a verdict of not guilty should have been directed. To support that contention he argues that the questions related to his private affairs and to matters cognizable only in the courts wherein they were pending, and that

the committee avowedly had departed from any inquiry in aid of legislation.

He maintains that there was no proof of any authorized inquiry by the committee or that he was legally summoned or sworn or that the questions propounded were pertinent to any inquiry it was authorized to make, and that because of such failure he was entitled to have a verdict directed in his favor.

He insists that the court erred in holding that the question of pertinency was one of law for the court and in not submitting it to the jury and also erred in excluding evidence offered to sustain his refusal to answer.

1. The Committee on Public Lands and Surveys is one of the standing committees of the Senate. No question is raised as to the validity of its organization and existence. Under § 101 of the Revised Statutes, U. S. C., Tit. 2, § 191, its chairman and any of its members are empowered to administer oaths to witnesses before it. Section 102 plainly extends to a case where a person voluntarily appears as a witness without being summoned as well as to the case of one required to attend.

By our opinion in *McGrain* v. *Daugherty,* 273 U. S. 135, 173, decided since the indictment now before us was found, two propositions are definitely laid down: "One, that the two houses of Congress, in their separate relations, possess not only such powers as are expressly granted to them by the Constitution, but such auxiliary powers as are necessary and appropriate to make the express powers effective; and, the other, that neither house is invested with 'general' power to inquire into private affairs and compel disclosures, but only with such limited power of inquiry as is shown to exist when the rule of constitutional interpretation just stated is rightly applied." And that case shows that, while the power of inquiry is an essential and appropriate auxiliary to the legislative function, it must be exerted with due regard

for the rights of witnesses, and that a witness rightfully may refuse to answer where the bounds of the power are exceeded or where the questions asked are not pertinent to the matter under inquiry.

It has always been recognized in this country, and it is well to remember, that few if any of the rights of the people guarded by fundamental law are of greater importance to their happiness and safety than the right to be exempt from all unauthorized, arbitrary or unreasonable inquiries and disclosures in respect of their personal and private affairs. In order to illustrate the purpose of the courts well to uphold the right of privacy, we quote from some of their decisions.

In *Kilbourn* v. *Thompson,* 103 U. S. 168, this court, speaking through Mr. Justice Miller, said (p. 190): ". . . we are sure that no person can be punished for contumacy as a witness before either House, unless his testimony is required in a matter into which that House has jurisdiction to inquire, and we feel equally sure that neither of these bodies possesses the general power of making inquiry into the private affairs of the citizen." And referring to the failure of the authorizing resolution there under consideration to state the purpose of the inquiry (p. 195): "Was it to be simply a fruitless investigation into the personal affairs of individuals? If so, the House of Representatives had no power or authority in the matter more than any other equal number of gentlemen interested for the government of their country. By 'fruitless' we mean that it could result in no valid legislation on the subject to which the inquiry referred."

In *Re Pacific Railway Commission,* (Circuit Court, N. D., California) 32 Fed. 241, Mr. Justice Field, announcing the opinion of the court, said (p. 250): "Of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves, not merely protec-

tion of his person from assault, but exemption of his private affairs, books, and papers from the inspection and scrutiny of others. Without the enjoyment of this right, all other rights would lose half their value." And the learned Justice, referring to *Kilbourn* v. *Thompson, supra,* said (p. 253): "This case will stand for all time as a bulwark against the invasion of the right of the citizen to protection in his private affairs against the unlimited scrutiny of investigation by a congressional committee." And see concurring opinions of Circuit Judge Sawyer, p. 259 at p. 263, and of District Judge Sabin, p. 268 at p. 269.

In *Interstate Commerce Commission* v. *Brimson,* 154 U. S. 447, Mr. Justice Harlan, speaking for the court said (p. 478): "We do not overlook these constitutional limitations which, for the protection of personal rights, must necessarily attend all investigations conducted under the authority of Congress. Neither branch of the legislative department, still less any merely administrative body, established by Congress, possesses, or can be invested with, a general power of making inquiry into the private affairs of the citizen. . . . We said in *Boyd* v. *United States,* 116 U. S. 616, 630,—and it cannot be too often repeated,—that the principles that embody the essence of constitutional liberty and security forbid all invasions on the part of the government and its employés of the sanctity of a man's home and the privacies of his life."

Harriman v. *Interstate Commerce Commission,* 211 U. S. 407, illustrates the unwillingness of this court to construe an Act of Congress to authorize any examination of witnesses in respect of their personal affairs. And see *United States* v. *Louisville & Nashville R. R.,* 236 U. S. 318, 335.

In *Federal Trade Commission* v. *American Tobacco Co.,* 264 U. S. 298, this court said (pp. 305-306): "Anyone who respects the spirit as well as the letter of the Fourth

Amendment would be loath to believe that Congress intended to authorize one of its subordinate agencies to sweep all our traditions into the fire (*Interstate Commerce Commission* v. *Brimson,* 154 U. S. 447, 479), and to direct fishing expeditions into private papers on the possibility that they may disclose evidence of crime. We do not discuss the question whether it could do so if it tried, as nothing short of the most explicit language would induce us to attribute to Congress that intent. . . . It is contrary to the first principles of justice to allow a search through all the respondents' records, relevant or irrelevant, in the hope that something will turn up."

2. But it is clear that neither the investigation authorized by the Senate resolutions above mentioned nor the question under consideration related merely to appellant's private or personal affairs. Under the Constitution (Art. IV, § 3) Congress has plenary power to dispose of and to make all needful rules and regulations respecting the naval oil reserves, other public lands and property of the United States. And undoubtedly the Senate had power to delegate authority to its committee to investigate and report what had been and was being done by executive departments under the Leasing Act, the Naval Oil Reserve Act, and the President's order in respect of the reserves, and to make any other inquiry concerning the public domain.

While appellant caused the Mammoth Oil Company to be organized and owned all its shares, the transaction purporting to lease to it the lands within the reserve can not be said to be merely or principally the personal or private affair of appellant. It was a matter of concern to the United States. The title to valuable government lands was involved. The validity of the lease and the means by which it had been obtained under existing law were subjects that properly might be investigated in order

to determine what if any legislation was necessary or desirable in order to recover the leased lands or to safeguard other parts of the public domain.

Neither Senate Joint Resolution 54 nor the action taken under it operated to divest the Senate, or the committee, of power further to investigate the actual administration of the land laws. It may be conceded that Congress is without authority to compel disclosures for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees, to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits.

The record does not sustain appellant's contention that the investigation was avowedly not in aid of legislation. He relies on the refusal of the committee to pass the motion directing that the inquiry should not relate to controversies pending in court, and the statement of one of the members that there was nothing else to examine appellant about. But these are not enough to show that the committee intended to depart from the purpose to ascertain whether additional legislation might be advisable. It is plain that investigation of the matters involved in suits brought or to be commenced under Senate Joint Resolution 54 might directly aid in respect of legislative action.

3. There is no merit in appellant's contention that a verdict should have been directed for him because the evidence failed to show that the committee was authorized to make the inquiry, summon witnesses and administer oaths. Resolutions 282 and 294 were sufficient until the expiration of the Sixty-seventh Congress during which they were adopted, but it is argued that Resolution 434 was not effective to extend the power of the committee. As set out in the indictment and shown by the record,

Resolution 434 does not mention 294 or refer to the date of its adoption. The former so far as material follows: "Resolved, That Senate Resolution 282, agreed to April 21, 1922, and Senate Resolution 292, agreed to May 15, 1922, authorizing and directing the Committee on Public Lands and Surveys to investigate the entire subject of leases upon naval oil reserves, with particular reference to the protection of the rights and equities of the Government of the United States and the preservation of its natural resources, and to report its findings and recommendations to the Senate . . . be . . . continued in full force and effect until the end of the Sixty-eighth Congress. The committee . . . is authorized to sit . . . after the expiration of the present Congress until the assembling of the Sixty-eighth Congress and until otherwise ordered by the Senate."

There is enough in that resolution to show that where "292" appears 294 was meant. The subject of the investigation is specifically mentioned. That is the only matter dealt with. The sole purpose was to authorize the committee to carry on the inquiry. It would be quite unreasonable, if not indeed absurd, for the Senate to direct investigation by the committee and to allow its power to summon and swear witnesses to lapse. The context and circumstances show that Resolution 294 was intended to be kept in force. See *School District No. 11* v. *Chapman,* 152 Fed. 887, 893-894.

4. Appellant earnestly maintains that the question was not shown to be pertinent to any inquiry the committee was authorized to make. The United States suggests that the presumption of regularity is sufficient without proof. But, without determining whether that presumption is applicable to such a matter, it is enough to say that the stronger presumption of innocence attended the accused at the trial. It was therefore incumbent upon the United States to plead and show that the question

pertained to some matter under investigation. Appellant makes no claim that the evidence was not sufficient to establish the innuendo alleged in respect of the question; the record discloses that the proof on that point was ample.

Congress, in addition to its general legislative power over the public domain, had all the powers of a proprietor and was authorized to deal with it as a private individual may deal with lands owned by him. *United States* v. *Midwest Oil Co.*, 236 U. S. 459, 474. The committee's authority to investigate extended to matters affecting the interest of the United States as owner as well as to those having relation to the legislative function.

Before the hearing at which appellant refused to answer, the committee had discovered and reported facts tending to warrant the passage of Senate Joint Resolution 54 and the institution of suits for the cancellation of the naval oil reserve leases. Undoubtedly it had authority further to investigate concerning the validity of such leases, and to discover whether persons, other than those who had been made defendants in the suit against the Mammoth Oil Company, had or might assert a right or claim in respect of the lands covered by the lease to that company.

The contract and release made and given by Bonfils and Stack related directly to the title to the lands covered by the lease which had been reported by the committee as unauthorized and fraudulent. The United States proposed to recover and hold such lands as a source of supply of oil for the Navy. S. J. Res. 54. It is clear that the question so propounded to appellant was pertinent to the committee's investigation touching the rights and equities of the United States as owner.

Moreover, it was pertinent for the Senate to ascertain the practical effect of recent changes that had been made

in the laws relating to oil and other mineral lands in the public domain. The leases and contracts charged to have been unauthorized and fraudulent were made soon after the executive order of May 31, 1921. The title to the lands in the reserves could not be cleared without ascertaining whether there were outstanding any claims or applications for permits, leases or patents under the Leasing Act or other laws. It was necessary for the Government to take into account the rights, if any there were, of such claimants. The reference in the testimony of Bonfils to the contract referred to in the question propounded was sufficient to put the committee on inquiry concerning outstanding claims possibly adverse and superior to the Mammoth Oil Company's lease. The question propounded was within the authorization of the committee and the legitimate scope of investigation to enable the Senate to determine whether the powers granted to or assumed by the Secretary of the Interior and the Secretary of the Navy should be withdrawn, limited, or allowed to remain unchanged.

5. The question of pertinency under § 102 was rightly decided by the court as one of law. It did not depend upon the probative value of evidence. That question may be likened to those concerning relevancy at the trial of issues in court, and it is not essentially different from the question as to materiality of false testimony charged as perjury in prosecutions for that crime. Upon reasons so well known that their repetition is unnecessary it is uniformly held that relevancy is a question of law. Greenleaf on Evidence (13th ed.) § 49. Wigmore on Evidence, §§ 2549, 2550. And the materiality of what is falsely sworn, when an element in the crime of perjury, is one for the court. *Carroll* v. *United States,* 16 F. (2d) 948, 950. *United States* v. *Singleton,* 54 Fed. 488. *Cothran* v. *State,* 39 Miss. 541, 547.

The reasons for holding relevancy and materiality to be questions of law in cases such as those above referred to apply with equal force to the determination of pertinency arising under § 102. The matter for determination in this case was whether the facts called for by the question were so related to the subjects covered by the Senate's resolutions that such facts reasonably could be said to be "pertinent to the question under inquiry." It would be incongruous and contrary to well-established principles to leave the determination of such a matter to a jury. *Interstate Commerce Commission* v. *Brimson, supra,* 489. *Horning* v. *District of Columbia,* 254 U. S. 135.

6. There is no merit in appellant's contention that he is entitled to a new trial because the court excluded evidence that in refusing to answer he acted in good faith on the advice of competent counsel. The gist of the offense is refusal to answer pertinent questions. No moral turpitude is involved. Intentional violation is sufficient to constitute guilt. There was no misapprehension as to what was called for. The refusal to answer was deliberate. The facts sought were pertinent as a matter of law, and § 102 made it appellant's duty to answer. He was bound rightly to construe the statute. His mistaken view of the law is no defense. *Armour Packing Co.* v. *United States,* 209 U. S. 56, 85. *Standard Sanitary Mfg. Co.* v. *United States,* 226 U. S. 20, 49.

7. The conviction on the first count must be affirmed. There were ten counts, demurrer was sustained as to four, *nolle prosequi* was entered in respect of two, and conviction was had on the first, fourth, fifth and ninth counts. As the sentence does not exceed the maximum authorized as punishment for the offense charged in the first count, we need not consider any other count. *Abrams* v. *United States,* 250 U. S. 616, 619.

Judgment affirmed.