United States Vs. Johnston

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Court : US Supreme Court

Decided On : Apr-30-1925

Appeal No. : 268 U.S. 220

Appellant : United States

Respondent : Johnston

Judgement :

United States v. Johnston - 268 U.S. 220 (1925)
U.S. Supreme Court United States v. Johnston, 268 U.S. 220 (1925)

United States v. Johnston

No. 111

Argued April 30, 1925

Decided, May 11, 1925

268 U.S. 220

CERTIORARI TO THE CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

SYLLABUS

1. Under the provision of the "Revenue Act of 1918," taxing admission fees (Feb. 24, 1919, c. 18, 800, 802, 40 Stat. 1057, 1120), a person who has collected such fees at a pubic exhibition and is required to pay the tax to the United States is a debtor, and not a bailee, so that failure to pay the tax is not indictable as an embezzlement of money of the United States within 47 Criminal Code. P. 268 U. S. 226 .

2. A person who collects admission fees to boxing matches is liable to punishment under 1308b of the above Revenue Act for failure to pay the taxes to the United States if he really acts on his own behalf in giving the exhibitions, collecting the fees and undertaking to pay taxes, even though, to comply with a state law, the exhibitions are given nominally by a corporate licensee of which he is technically but the agent. P 268 U. S. 227 .

290 F. 120 reversed.

Certiorari to a judgment of the circuit court of appeals which reversed a sentence of the district court in a criminal prosecution for failure to pay over admission fees taxes and for embezzlement.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

The respondent, Johnston, was convicted on an indictment charging in separate counts a failure to pay over the tax upon admission fees received at certain boxing matches and a failure to make return to the collector of internal revenue of the money so received, contrary to the Act of February 24, 1919, c. 18, 800, 802, 1308(b), 40 Stat. 1057, 1120, 1143. He also was convicted under 47 of the Criminal Code of embezzling the amounts collected as taxes on the same occasions. Act of March 4, 1909, c. 321, 47, 35 Stat. 1097. The judgment was reversed, and the district court was directed to dismiss the indictment by the circuit court of appeals. 290 F. 120. A writ of certiorari was granted by this Court as the decision was said to be of grave importance to the administration of the revenue laws. 263 U.S. 692.

So far as the charge of embezzlement goes, we think that the court below and the intimation of the Treasury Department that it followed were clearly right. However it may have been under other statutes (*United States v. Thomas,* 15 Wall. 337), it seems to us that, under this law, the person required to pay over the tax is a

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debtor, and not a bailee. The money paid for the tax is not identified at the outset, but is paid with the price of the ticket that belongs to the owner of the show. We see no ground for requiring the ticket office of a theater to create a separate fund by laying aside the amount of the tax on each ticket and to keep it apart, either in a strong box or as a separate deposit in a bank. Reports are required only once a month, 802, 502, which does not look as if the government were dealing with these people otherwise than with others answerable for a tax. Further argument seems unnecessary upon this point.

On the other counts, we are of opinion that the court below was wrong. We do not grant a certiorari to review evidence and discuss specific facts. But the court seems to have regarded the formal relations of Johnston to the Central Manhattan Boxing Club, Inc., made necessary by the laws of New York, as conclusive upon his relations to the United States. The laws of New York permitted a license only to a corporation, and so Johnston may have assumed the technical position of agent and manager for the club. But if, as a matter of fact, all this was machinery to enable Johnston to give exhibitions, collect the entrance fees, and make himself liable for the tax, it properly might be alleged that he collected the fees and, if he willfully failed to pay, that he refused and failed to pay the tax. As the jury found Johnston guilty, although with an earnest recommendation of mercy, we are of opinion that the sentence and judgment of the district court, which was much less than it might have been under 1308(b), must be affirmed.

Judgment of the circuit court of appeals reversed.

Judgment of the district court affirmed.