

United States Vs. Sullivan

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Court : US Supreme Court

Decided On : May-16-1927

Appeal No. : 274 U.S. 259

Appellant : United States

Respondent : Sullivan

Judgement :

United States v. Sullivan - 274 U.S. 259 (1927)

U.S. Supreme Court United States v. Sullivan, 274 U.S. 259 (1927)

United States v. Sullivan

No. 851

Argued April 27, 1927

Decided May 16, 1927

274 U.S. 259

CERTIORARI TO THE CIRCUIT COURT OF APPEALS

FOR THE FOURTH CIRCUIT

SYLLABUS

1. Gains from illicit traffic in liquor are subject to the income tax. P. [274 U. S. 263](#)

2. The Fifth Amendment does not protect the recipient of such income from prosecution for willful refusal to make any return under the income tax law. P. [274 U. S. 263](#) .

3. If disclosures called for by the return are privileged by the Amendment, the privilege should be claimed in the return. P. [274 U. S. 264](#) .

15 F.2d 809 reversed.

Certiorari (273 U.S. 689) to a judgment of the circuit court of appeals which reversed a judgment of the district court sentencing Sullivan for willfully refusing to make a return of net income under the Revenue Act of 1921.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

The defendant in error was convicted of willfully refusing to make a return of his net income as required by the Revenue Act of 1921, Act Nov. 23, 1921, c. 136, 223(a), 253, 42 Stat. 227, 250, 268. The judgment was reversed by the circuit court of appeals. *Sullivan v. United States*, 15 F.2d 809. A writ of certiorari was granted by this Court.

We may take it that the defendant had sufficient gross income to require a return under the statute unless he was exonerated by the fact that the whole or a large

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part of it was derived from business in violation of the National Prohibition Act. The circuit court of appeals held that gains from illicit traffic in liquor were subject to the income tax, but that the Fifth Amendment to the Constitution protected the

defendant from the requirement of a return.

The Court below was right in holding that the defendant's gains were subject to the tax. By 213(a), gross income includes

"gains, profits, and income derived from . . . the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever."

"These words are also those of the earlier Act of October 3, 1913, c. 16, II, B, 38 Stat. 114, 167, except that the word 'lawful' is omitted before 'business' in the passage just quoted. By 600, 42 Stat. 285, and by another Act approved on the same day, Congress applied other tax laws to this forbidden traffic. Act of Nov. 23, 1921, c. 134, 5, 42 Stat. 222, 223. *United States v. One Ford Coupe*, [272 U. S. 321](#) , [272 U. S. 327](#) ; *United States v. Stafoff*, [260 U. S. 477](#) , [260 U. S. 480](#) . We see no reason to doubt the interpretation of the Act, or any reason why the fact that a business is unlawful should exempt it from paying the taxes that, if lawful, it would have to pay."

As the defendant's income was taxed, the statute, of course, required a return. See *United States v. Sischo*, [262 U. S. 165](#) . In the decision that this was contrary to the Constitution, we are of opinion that the protection of the Fifth Amendment was pressed too far. If the form of return provided called for answers that the defendant was privileged from making, he could have raised the objection in the return, but could not on that account refuse to make any return at all. We are not called on to decide what, if anything, he might have withheld. Most of the items warranted no complaint. It would be an extreme, if not an extravagant, application

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of the Fifth Amendment to say that it authorized a man to refuse to state the amount of his income because it had been made in crime. But if the defendant desired to test that or any other point, he should have tested it in the return, so that it could be passed upon. He could not draw a conjurer's circle around the whole matter by his own declaration that to write any word upon the government blank

would bring him into danger of the law. *Mason v. United States*, [244 U. S. 362](#) ; *United States ex rel. Vajtauer v. Commissioner of Immigration*, [273 U. S. 103](#) . In this case, the defendant did not even make a declaration, he simply abstained from making a return. See further the decision of the Privy Council, *Minister of Finance v. Smith* [1927] A.C.193.

It is urged that, if a return were made, the defendant would be entitled to deduct illegal expenses, such as bribery. This by no means follows, but it will be time enough to consider the question when a taxpayer has the temerity to raise it.

Judgment reversed.

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