

United States Vs. Murdock

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Court : US Supreme Court

Decided On : Nov-23-1931

Appeal No. : 284 U.S. 141

Appellant : United States

Respondent : Murdock

Judgement :

United States v. Murdock - 284 U.S. 141 (1931)

U.S. Supreme Court United States v. Murdock, 284 U.S. 141 (1931)

United States v. Murdock

No. 38

Argued October 23, 26, 1931

Decided November 23, 1931

284 U.S. 141

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF ILLINOIS

SYLLABUS

1. A judgment of the district court sustaining, on demurrer, a plea to an indictment, and the effect of which, if not reversed, will be to bar further prosecution for the offense charged, is within the jurisdiction of this Court under the Criminal Appeals Act, without regard to the particular designation or form of the plea or its propriety. P. [284 U. S. 147](#) .

2. The offense of willfully failing to supply information for the purposes of computing and assessing taxes, under the Revenue Acts of 1926, 114(a) and of 128, 146(a), is complete when the information, lawfully demanded, is refused, and prosecution may thereupon be had without first determining, in proceedings to compel

Page 284 U. S. 142

answer, the question whether the witness' claim of privilege under the Fifth Amendment was well taken. P. [284 U. S. 147](#) .

3. To justify under the Fifth Amendment a refusal to give information in an investigation under a federal law in respect of a federal matter, the privilege from self-incrimination must be claimed at the time when the information is sought and refused, and must be invoked as a protection against federal prosecution; danger and claim that disclosure may lead to prosecution by a state is not enough. P. [284 U. S. 148](#) .

4. In a prosecution for willful failure to supply information for the computation, etc., of a tax (Revenue Acts, *supra*,) the claim that defendant was privileged to keep silent by the Fifth Amendment is a matter of defense under the general issue of not guilty, and the use of a special plea to single this question out for determination in advance of trial is improper. P. [284 U. S. 150](#) .

51 F.2d 389 reversed.

Appeal, under the Criminal Appeals Act, from a judgment of the district court sustaining a special plea in bar and discharging the defendant.

Page 284 U. S. 146

MR. JUSTICE BUTLER delivered the opinion of the Court.

Appellee filed his individual federal income tax returns for 1927 and 1928, and in each year deducted \$12,000 which he claimed to have paid to others. An authorized revenue agent summoned appellee to appear before him and disclose the recipients. Appellee appeared, but refused to give the information on the ground that to do so might incriminate and degrade him.

He was indicted for such refusal, and interposed a special plea averring that he ought not to be prosecuted under the indictment because, if he had answered the questions

Page 284 U. S. 147

put to him, he would have given information that would have compelled him to become a witness against himself in violation of the Fifth Amendment and caused him to be subjected to prosecution in the court below for violation of various laws of the United States, as shown by a transcript of the questions asked and answers given which he included in his plea. The United States demurred to the plea on the grounds that it fails to show that the information demanded would have incriminated or subjected defendant to prosecution under federal law, and that defendant waived his privilege under the Fifth Amendment. The court overruled the demurrer and entered judgment discharging defendant.

The judgment necessarily determined that to require defendant to supply the information called for would be to compel him to incriminate himself, and that therefore he did not unlawfully or willfully refuse to answer. Its effect, unless reversed, is to bar further prosecution for the offense charged. It follows unquestionably that, without regard to the particular designation or form of the plea or its propriety, this Court has jurisdiction under the Criminal Appeals Act. [

[Footnote 1](#)] *United States v. Barber*, [219 U. S. 72](#) , [219 U. S. 78](#) ; *United States v. Oppenheimer*, [242 U. S. 85](#) ; *United States v. Thompson*, [251 U. S. 407](#) , [251 U. S. 412](#) ; *United States v. Storrs*, [272 U. S. 652](#) , [272 U. S. 655](#) ; *United States v. Goldman*, [277 U. S. 229](#) , [277 U. S. 236](#) .

The offense charged is defined:

"Who willfully fails to . . . supply such information [for the computation of any tax imposed by the Act] at the time or times required

Page 284 U. S. 148

by law or regulations, shall . . . be guilty of a misdemeanor. [[Footnote 2](#)]"

Other provisions authorize resort to the district courts to compel attendance, testimony, and production of books. [[Footnote 3](#)] While undoubtedly the right of a witness to refuse to answer lest he incriminate himself may be tested in proceedings to compel answer, there is no support for the contention that there must be such a determination of that question before prosecution for the willful failure so denounced. By the very terms of the definition, the offense is complete at the time of such failure.

Immediately in advance of the examination, appellee's counsel discussed with counsel for the Internal Revenue Bureau the matter of appellee's privilege against self-incrimination, and stated that he had particularly in mind incrimination under state law. And, at the hearing, appellee repeatedly stated that, in answering, "I might incriminate or degrade myself;" he had in mind "the violation of a state law and not the violation of a federal law." The transcript included in the plea plainly shows that appellee did not rest his refusal upon apprehension of, or a claim for protection against federal prosecution. The validity of his justification depends not upon claims that would have been warranted by the facts shown, but upon the claim that actually was made. The privilege of silence is solely for the benefit of the witness, and is deemed waived unless invoked. *United States ex rel. Vajtauer v. Commissioner of Immigration*, [273 U. S. 103](#) , [273 U. S. 113](#) .

The plea does not rest upon any claim that the inquiries were being made to discover evidence of crime against state law. Nothing of state concern was involved. The investigation was under federal law in respect of federal matters. The information sought was appropriate to enable the Bureau to ascertain whether appellee had in fact made deductible payments in each year, as stated in his return, and also to determine the tax liability of the recipients. Investigations for federal purposes may not be prevented by matters depending upon state law. Constitution, Art. VI, cl. 2. The English rule of evidence against compulsory self-incrimination, on which historically that contained in the Fifth Amendment rests, does not protect witnesses against disclosing offenses in violation of the laws of another country. *King of the Two Sicilies v. Willcox*, 7 St.Tr. (N.S.) 1050, 1068; *Queen v. Boyes*, 1 B. & S. 311, 330. This Court has held that immunity against state prosecution is not essential to the validity of federal statutes declaring that a witness shall not be excused from giving evidence on the ground that it will incriminate him, and also that the lack of state power to give witnesses protection against federal prosecution does not defeat a state immunity statute. The principle established is that full and complete immunity against prosecution by the government compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination. *Counselman v. Hitchcock*, [142 U. S. 547](#) ; *Brown v. Walker*, [161 U. S. 591](#) , [161 U. S. 606](#) ; *Jack v. Kansas*, [199 U. S. 372](#) , [199 U. S. 381](#) ; *Hale v. Henkel*, [201 U. S. 43](#) , [201 U. S. 68](#) . As appellee, at the hearing, did not invoke protection against federal prosecution, his plea is without merit, and the government's demurrer should have been sustained.

We are of opinion that leave to file the plea should have been withheld. The proceedings below are indicated

by a chronological statement printed in the margin. [[Footnote 4](#)] After demurrer -- not shown by the record to have been disposed of -- and motions for a bill of particulars and to suppress evidence which were denied, a plea of not guilty was entered. The case should then have been tried without further form or ceremony. 18 U.S.C. 564. The matters set forth in the plea were mere matters of defense determinable under the general issue. Federal criminal procedure is governed not by state practice, but by federal statutes and decisions of the federal courts. [United States v. Reid](#), 12 How. 361; *Logan v. United States*, [144 U. S. 263](#) , [144 U. S. 301](#) ; *Jones v. United States*, 162 F. 417, 419; *United States v. Nye*, 4 F. 888, 890. Neither require such piecemeal consideration of a case.

Page 284 U. S. 151

A special plea in bar is appropriate where defendant claims former acquittal, former conviction, or pardon,² Bishop New Criminal Procedure (2d ed.) 742, 799, 805 *et seq.*, but there is no warrant for its use to single out for determination in advance of trial matters of defense either on questions of law or fact. That such a practice is inconsistent with prompt and effective administration of the law, and is likely to result in numerous hearings, waste of courts' time, and unnecessary delays is well illustrated by the record in this case. The indictment was returned January 23, 1930, the judgment before us was entered more than a year later, and it seems certain that more than two years will have elapsed after indictment before the case can be reached for trial.

Judgment reversed.

[[Footnote 1](#)]

"A writ of error may be taken by and on behalf of the United States from the district courts direct to the Supreme Court of the United States in all criminal cases, in the following instances, to-wit:"

" * * * *"

"From the decision or judgment sustaining a special plea in bar, when the defendant has not been put in jeopardy."

"8 U.S.C. 682, 34 Stat. 1246. *See also* 28 U.S.C. 345(2)."

[[Footnote 2](#)]

"Any person required . . . to . . . supply any information for the purposes of the computation, assessment, or collection of any tax imposed by this title, who willfully fails to . . . supply such information at the time or times required by law or regulations, shall . . . be guilty of a misdemeanor. . . ."

26 U.S.C. 1265, Revenue Act of 1926, 44 Stat. 116; 26 U.S.C. 2146(a), 146(a), Revenue Act of 1928, 45 Stat. 835.

[[Footnote 3](#)]

26 U.S.C. 1257, 1258, 1122(a)(b), Revenue Act of 1926, 44 Stat. 121. Superseded by 26 U.S.C. 2617, 617, Revenue Act of 1928, 45 Stat. 877.

[[Footnote 4](#)]

1930

January 23 Indictment returned.

February 6 Demurrer to indictment.

February 19 Additional special ground for demurrer.

February 25 Motion for bill of particulars.

May 27 Motion to suppress evidence and to restrain its use
at trial.

Motion for bill of particulars denied.

Arraignment and plea of not guilty.

June 10 Argument on motion to suppress.

June 21 Motion to suppress denied.

July 1 Leave granted to file special plea.

Special plea filed.

October 1 Demurrer to plea filed and hearing thereon set for

October 13.

October 13 Second and third special pleas filed.

October 17 Demurrer to second and third special pleas filed.

Hearing on demurrers.

October 18 Demurrer to first special plea overruled; demurrers to second and third special pleas sustained.

October 28 Opinion on demurrers.

1931

February 3 Plea of not guilty withdrawn.

Judgment for defendant on first special plea.

March 4 Appeal allowed.