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Blackmer Vs. United States

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Court : US Supreme Court

Decided On : Feb-15-1932

Appeal No. : 284 U.S. 421

Appellant : Blackmer

Respondent : United States

Judgement :

Blackmer v. United States - 284 U.S. 421 (1932)
U.S. Supreme Court Blackmer v. United States, 284 U.S. 421 (1932)

Blackmer v. United States

Nos. 200 and 201

Argued January 5, 6, 1932

Decided February 15, 1932

284 U.S. 421

CERTIORARI TO THE COURT OF APPEALS

OF HE DISTRICT OF COLUMBIA.

SYLLABUS

1. A citizen of the United States residing in a foreign country continues to owe allegiance to the United States and is bound by its laws made applicable to his situation. P. 284 U. S. 436 .

2. The power to require the return of absent citizens in the public interest is inherent in sovereignty, and what in England was the sovereign prerogative in this respect pertains, under our constitutional system, to the national authority, exercisable by Congress, to prescribe the duties of the citizens of the United States. P. 284 U. S. 437 .

3. One of the duties of such absent citizens to the United States is that of attending its courts to give testimony when properly summoned, and Congress may provide for the performance of this duty and prescribe penalties for disobedience. P. 284 U. S. 438 .

4. Questions of authority in such cases are not questions of international law, but of municipal law. P. 284 U. S. 437 .

5. The Act of July 3, 1926, provides that, when the testimony of a citizen of the United States residing in a foreign country is needed by the Government in a criminal case, the court in which the case is pending may issue a subpoena to be served upon him personally by an American consul with a tender of money to cover his necessary expenses of travel to and from, and attendance upon, the court; that, if he refuse or neglect to appear as directed by the subpoena, the same court, upon proof of service and default, may issue its order directing him to appear before it at a designated time to show cause why he should not be adjudged guilty of contempt

Page 284 U. S. 422

and be punished; that this order may direct that property of the witness in the United States be seized and held to satisfy any judgment that may be rendered in the contempt proceeding; that, after such seizure, the order to show cause and for

sequestration shall be served on the witness personally by such consul and shall be published in some newspaper of general circulation in the district where the court sits, and that, on the return day of the order, or later, proof shall be taken, and if the charge of recusancy shall be sustained, the court shall adjudge the witness guilty of contempt and impose upon him a fine not exceeding $100,000, which, with the costs, may be satisfied by sale of the property levied upon, to be conducted upon notice and in the manner provided for sales upon execution. In contempt proceedings for failure to obey subpoenas, *held:*

(1) The absent witness is bound with notice of the statute. P. 284 U. S. 438 .

(2) The method provided by the Act for acquiring judicial jurisdiction to render a personal judgment includes due notice and opportunity to be heard, and satisfies the due process clause of the Fifth Amendment. Pp. 284 U. S. 438 -439.

(3) Service of the subpoena in a foreign country invades no right of the foreign government, and the citizen has no standing to invoke such supposed right. P. 284 U. S. 439 .

(4) The function of a consul in serving the subpoena and the order to show cause is merely that of an agent of the government for conveying actual notice to one of its citizens; it need not be sanctioned by a treaty. Pp. 284 U. S. 439 -440.

(5) In criminal contempt proceedings, due process does not require that the respondent be present at the hearing and adjudication if he was duly notified and had adequate opportunity to appear and be heard. P. 284 U. S. 440 .

(6) The contempt proceeding being valid, the provisional remedy of seizing and applying property to secure payment of the penalty is also constitutional. P. 284 U. S. 441 .

(7) The fact that enforcement of the penalty may depend on seizure of property does not imply unconstitutional discrimination between those contumacious absentee witnesses who have property in this country and those who have not. *Id.*

(8) A provisional or final levy on property, as provided in the statute, to satisfy liability of the owner is not an unreasonable search and seizure. *Id.*

Page 284 U. S. 423

(9) The question whether the statute grants the right to subpoena foreign residents in criminal cases to the government only, and thereby violates the provision of the Sixth Amendment guaranteeing accused persons compulsory process for witnesses, will not be considered at the instance of a recalcitrant witness. P. 284 U. S. 442 .

(10) Where the subpoena served was issued at the request of the government upon a statement as to the materiality and importance of the expected testimony sufficient to give the court jurisdiction to issue it, it binds the witness unless set aside upon proper petition, and the question whether the showing was otherwise sufficient cannot be raised in defense against proceedings to punish his disobedience as contempt. *Id.*

(11) It is not necessary that the subpoena issued under the statute show on its face that it was so issued. *Id.*

(12) Where a witness has been served with subpoena under the statute, and has defaulted, service of an order directing him to show cause, at a time and place stated, why he should not be adjudged guilty of contempt, and providing for seizure of his property to be held to satisfy any judgment that may be rendered against him in the proceeding, affords notice sufficient to inform him of the character of the charge and of the hearing at which he will have opportunity to present his defense. P. 284 U. S. 443 .

(13) Where two subpoenas are issued for appearances at different times, a seizure of property in connection with the first is not vacated by the seizure of the same property in connection with the second. *Id.*

(14) A witness subpoenaed to attend on a day named, and not to depart the court without leave of the court or the district attorney, cannot excuse his refusal to

come upon the ground that the trial did not begin on the day specified in the writ, but on a later day to which the case was continued. *Id.*

60 App.D.C. 141, 49 F.2d 523, affirmed.

Certiorari to review decrees sustaining fines imposed on the petitioner Blackmer as punishment for contemptuous disobedience of two subpoenas in a criminal case. The judgments provided that the fines be satisfied out of property seized after the subpoenas were served.

Page 284 U. S. 433

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

The petitioner, Harry M. Blackmer, a citizen of the United States resident in Paris, France, was adjudged guilty of contempt of the Supreme Court of the District of Columbia for failure to respond to subpoenas served upon him in France and requiring him to appear as a witness on behalf of the United States at a criminal trial in that court. Two subpoenas were issued, for appearances at different times, and there was a separate proceeding with respect to each. The two cases were heard together, and a fine of $30,000 with costs was imposed in each case, to be satisfied out of the property of the petitioner which had been seizer by order of the court. The decrees were affirmed by the Court of Appeals of the District, 49 F.2d 523, and this Court granted writs of certiorari.

The subpoenas were issued and served, and the proceedings to punish for contempt were taken, under the provisions of the Act of July 3, 1926, c. 762, 44 Stat. 835, U.S.C. Tit. 28, 711-718. [Footnote 1] The statute provided that,

Page 284 U. S. 434

whenever the attendance at the trial of a criminal action of a witness abroad, who is "a citizen of the United States or domiciled therein," is desired by the Attorney General or any assistant or district attorney acting under him, the judge of the court in which the action is pending may order a subpoena to issue, to be

addressed to a consul of the United States and to be served by him personally

Page 284 U. S. 435

upon the witness with a tender of traveling expenses. 2, 3. Upon proof of such service and of the failure of the witness to appear, the court may make an order requiring the witness to show cause why he should not be punished for contempt, and, upon the issue of such an order, the court may direct that property belonging to the witness and within the United States may be seized and held to satisfy any judgment which may be rendered

Page 284 U. S. 436

against him in the proceeding. 4, 5. Provision is made for personal service of the order upon the witness and also for its publication in a newspaper of general circulation in the district where the court is sitting. 6. If, upon the hearing, the charge is sustained, the court may adjudge the witness guilty of contempt and impose upon him a fine not exceeding $100,000, to be satisfied by a sale of the property seized. 7. This statute and the proceedings against the petitioner are assailed as being repugnant to the Constitution of the United States.

First. The principal objections to the statute are that it violates the due process clause of the Fifth Amendment. These contentions are: (1) that the "Congress has no power to authorize United States consuls to serve process except as permitted by treaty;" (2) that the Act does not provide "a valid method of acquiring judicial jurisdiction to render personal judgment against defendant and judgment against his property;" (3) that the Act "does not require actual or any other notice to defendant of the offense or of the government's claim against his property;" (4) that the provisions "for hearing and judgment in the entire absence of the accused and without his consent" are invalid, and (5) that the Act is "arbitrary, capricious and unreasonable."

While it appears that the petitioner removed his residence to France in the year 1924, it is undisputed that he was, and continued to be, a citizen of the United States. He continued to owe allegiance to the United States. By virtue of the

obligations of citizenship, the United States retained its authority over him, and he was bound by its laws made applicable to him in a foreign country. Thus, although resident abroad, the petitioner remained subject to the taxing power of the United States. *Cook v. Tait,* 265 U. S. 47 , 265 U. S. 54 -56. For disobedience to its laws through conduct abroad, he was subject to punishment in the courts of the United States. *United States v. Bowman,*

Page 284 U. S. 437

260 U. S. 94 , 260 U. S. 102 . With respect to such an exercise of authority, there is no question of international law, [Footnote 2] but solely of the purport of the municipal law which establishes the duties of the citizen in relation to his own government. [Footnote 3] While the legislation of the Congress, unless the contrary intent appears, is construed to apply only within the territorial jurisdiction of the United States, the question of its application, so far as citizens of the United States in foreign countries are concerned, is one of construction, not of legislative power. *American Banana Co. v. United Fruit Co.,* 213 U. S. 347 , 213 U. S. 357 ; *United States v. Bowman, supra; Robertson v. Labor Board,* 268 U. S. 619 , 268 U. S. 622 . Nor can it be doubted that the United States possesses the power inherent in sovereignty to require the return to this country of a citizen, resident elsewhere, whenever the public interest requires it, and to penalize him in case of refusal. *Compare Bartue and the Duchess of Suffolk's Case,* 2 Dyer's Rep. 176b, 73 Eng.Rep. 388; *Knowles v. Luce,* Moore 109, 72 Eng.Rep. 473. [Footnote 4] What in England was the prerogative of the sovereign

Page 284 U. S. 438

in this respect pertains under our constitutional system to the national authority which may be exercised by the Congress by virtue of the legislative power to prescribe the duties of the citizens of the United States. It is also beyond controversy that one of the duties which the citizen owes to his government is to support the administration of justice by attending its courts and giving his testimony whenever he is properly summoned. *Blair v. United States,* 250 U. S. 273 , 250 U. S. 281 . And the Congress may provide for the performance of this

duty and prescribe penalties for disobedience.

In the present instance, the question concerns only the method of enforcing the obligation. [Footnote 5] The jurisdiction of the United States over its absent citizen, so far as the binding effect of its legislation is concerned, is a jurisdiction *in personam,* as he is personally bound to take notice of the laws that are applicable to him, and to obey them. *United States v. Bowman, supra.* But, for the exercise of judicial jurisdiction *in personam,* there must be due process, which requires appropriate notice of the judicial action and an opportunity to be heard. For this notice and opportunity, the statute provides. The authority to require the absent citizen to return and testify necessarily implies the authority to give him notice of the requirement. As his attendance is needed in court, it is appropriate that the Congress should authorize the court to direct the notice to be given, and that it should be in the customary form of a subpoena. Obviously, the requirement would be nugatory if provision could not be made for its communication to the witness in the foreign country.

Page 284 U. S. 439

The efficacy of an attempt to provide constructive service in this country would rest upon the presumption that the notice would be given in a manner calculated to reach the witness abroad. *McDonald v. Mabee,* 243 U. S. 90 , 243 U. S. 92 . The question of the validity of the provision for actual service of the subpoena in a foreign country is one that arises solely between the government of the United States and the citizen. The mere giving of such a notice to the citizen in the foreign country of the requirement of his government that he shall return is in no sense an invasion of any right of the foreign government, and the citizen has no standing to invoke any such supposed right. While consular privileges in foreign countries are the appropriate subjects of treaties, [Footnote 6] it does not follow that every act of a consul, as, *e.g.,* in communicating with citizens of his own country, must be predicated upon a specific provision of a treaty. The intercourse of friendly nations, permitting travel and residence of the citizens of each in the territory of the other, presupposes and facilitates such communications. In selecting the consul for the service of the subpoena, the Congress merely prescribed a method deemed to

assure the desired result, but in no sense essential. The consul was not directed to perform any function involving consular privileges or depending upon any treaty relating to them, but simply to act as any designated person might act for the government in conveying to the citizen the actual notice of the requirement of his attendance. The point raised by the petitioner with respect to the provision for the service of the subpoena abroad is without merit.

As the Congress could define the obligation, it could prescribe a penalty to enforce it. And as the default lay in disobedience to an authorized direction of the court, it

Page 284 U. S. 440

constituted a contempt of court, and the Congress could provide for procedure appropriate in contempt cases. The provision of the statute for punishment for contempt is applicable only "upon proof's being made of the service and default." 4. That proof affords a proper basis for the proceeding, and provision is made for personal service upon the witness of the order to show cause why he should not be adjudged guilty. For the same reasons as those which sustain the service of the subpoena abroad, it was competent to provide for the service of the order in like manner. It is only after a hearing pursuant to the order to show cause, and upon proof sustaining the charge, that the court can impose the penalty. The petitioner urges that the statute does not require notice of the offense, but the order to show cause is to be issued after the witness has failed to obey the subpoena demanding his attendance and the order is to be made by the court before which he was required to appear. This is sufficient to apprise the witness of the nature of the proceeding, and he has full opportunity to be heard. The further contention is made that, as the offense is a criminal one, it is a violation of due process to hold the hearing, and to proceed to judgment, in the absence of the defendant. The argument misconstrues the nature of the proceeding.

"While contempt may be an offense against the law and subject to appropriate punishment, certain it is that, since the foundation of our government proceedings to punish such offenses have been regarded as *sui generis,* and not 'criminal prosecutions' within the Sixth Amendment or common understanding."

Myers v. United States, 264 U. S. 95 , 264 U. S. 104 -105. *See also Bessette v. Conkey,* 194 U. S. 327 , 194 U. S. 336 -337; *Michaelson v. United States,* 266 U. S. 42 , 266 U. S. 65 -66; *Ex parte Grossman,* 267 U. S. 87 , 267 U. S. 117 -118. The requirement of due process in such a case is satisfied by suitable notice and adequate opportunity to appear and to be heard. *Cf. Cooke v. United States,* 267 U. S. 517 , 267 U. S. 537 .

Page 284 U. S. 441

The authorization of the seizure of the property belonging to the defaulting witness and within the United States, upon the issue of the order to show cause why he should not be punished for contempt (5 of the Act) affords a provisional remedy, the propriety of which rests upon the validity of the contempt proceeding. As the witness is liable to punishment by fine if, upon the hearing, he is found guilty of contempt, no reason appears why his property may not be seized to provide security for the payment of the penalty. The proceeding conforms to familiar practice where absence or other circumstance makes a provisional remedy appropriate. *See* *Cooper v. Reynolds,* 10 Wall. 308, 77 U. S. 318 . The order that is to be served upon the witness contains the direction for the seizure. The property is to be held pending the hearing, and is to be applied to the satisfaction of the fine if imposed and unless it is paid. Given the obligation of the witness to respond to the subpoena, the showing of his default after service, and the validity of the provision for a fine in case default is not excused, there is no basis for objection to the seizure upon constitutional grounds. The argument that the statute creates an unreasonable classification is untenable. The disobedience of the defaulting witness to a lawful requirement of the court, and not the fact that he owns property, is the ground of his liability. He is not the subject of unconstitutional discrimination simply because he has property which may be appropriated to the satisfaction of a lawful claim.

Second. What has already been said also disposes of the contention that the statute provides for an unreasonable search and seizure in violation of the Fourth Amendment. It authorizes a levy upon property of the witness at any place within

the United States in the manner provided by law or rule of court for levy or seizure under execution. A levy in such a manner, either provisionally

Page 284 U. S. 442

or finally, to satisfy the liability of the owner, is not within the constitutional prohibition.

The petitioner raises the further and distinct point that the statute limits the availability of the subpoena to the government, and that, "by excluding defendants in criminal prosecutions" from the right to such a subpoena, it violates the provision of the Sixth Amendment that the accused shall have "compulsory process for obtaining witnesses in his favor." We need not consider whether the statute requires the construction for which the petitioner contends, as, in any event, the petitioner, a recalcitrant witness, is not entitled to raise the question. *Nelson v. United States,* 201 U. S. 92 , 201 U. S. 115 ; *Southern Railway Co. v. King,* 217 U. S. 524 , 217 U. S. 534 ; *Jeffrey Manufacturing Co. v. Blagg,* 235 U. S. 571 , 235 U. S. 576 ; *Blair v. United States, supra,* at p. 250 U. S. 282 .

Third. The statute being valid, the question remains as to the procedure in its application against the petitioner. He insists that the showing for the issue of the subpoenas requiring him to attend was inadequate. But the "proper showing" required was for the purpose of satisfying the court that the subpoenas should issue. The petitions in the instant cases were presented to the judge of the court by the official representatives of the government, and their statement as to the materiality and importance of the testimony expected from the witness was unquestionably sufficient to give the court jurisdiction to issue the subpoenas, and, unless they were vacated upon proper application, the petitioner was bound to obey. Nor was it necessary that the subpoenas should "identify" themselves with the statute under which they were issued. The petitioner, as a citizen of the United States, was chargeable with knowledge of the law under which his attendance as a witness could be required. It was sufficient that the subpoenas required his attendance to testify on behalf of the United States at the time and place stated.

Equally unavailing is the objection that, after the petitioner had refused to appear in response to the subpoenas, the orders to show cause why he should not be punished for contempt did not specify the offense. As the statute prescribed, he had been served with the subpoenas and had defaulted, and he had also been served with the order which directed him to show cause why he should not be adjudged guilty of contempt and provided for the seizure of his property to be held to satisfy any judgment that might be rendered against him in the proceeding. The notice which he thus received was sufficient to inform him of the character of the charge against him and of the hearing at which he would have opportunity to present his defense. The petitioner also insists that the seizure which was made in case No. 200 was abandoned by virtue of the seizure of the same property under the order issued in No. 201. But the second levy was not antagonistic to the first. The proceedings were consistent.

In No. 201, the contention is made that the petitioner was subpoenaed to attend on April 2, 1928, and that the case in which his testimony was desired was not tried until April 9, 1928. There is no suggestion that the petitioner appeared on April 2, 1928, in compliance with the subpoena, and the record shows that the case in which he was subpoenaed was continued by the court until the later date. The subpoena contained the usual provision that the witness was "not to depart the court without leave of the court or district attorney." *Cf.* R.S. 877, U.S.C. Tit. 28, 655. It was the duty of the petitioner to respond to the subpoena and to remain in attendance until excused by the court or by the government's representatives.

Decrees affirmed.

MR. JUSTICE ROBERTS took no part in the consideration and decision of this case.

[Footnote 1]

The Act is as follows:

" *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever letters rogatory shall issue out of any court of the United States, either with or without interrogatories addressed to any court of any foreign country, to take the testimony of any witness, being a citizen of the United States or domiciled therein, and such witness, having been personally notified by it according to the practice of such court, to appear and testify pursuant to such letters rogatory and such witness shall neglect to appear, or having appeared shall decline, refuse or neglect to answer to any question which may be propounded to him by or under the authority of such court, to which he would be required to make answer were he being examined before the court issuing such letters, the court out of which said letters issued may upon proper showing order that a subpoena issue addressed to any consul of the United States within any country in which such witness may be, commanding such witness to appear before the said court at a time and place therein designated."

"Sec. 2. Whenever the attendance at the trial of any criminal action of a witness, being a citizen of the United States or domiciled therein, who is beyond the jurisdiction of the United States, is desired by the Attorney General or any assistant or district attorney acting under him, its judge of the court before which such action is pending, or who is to sit in the trial of the same, may, upon proper showing, order that a subpoena issue, addressed to any consul of the United States within any country in which such witness may be, commanding such witness to appear before the said court at a time and place therein designated."

"Sec. 3. It shall be the duty of any consul of the United States within any country is which such witness may be at the request of the clerk of the court issuing any subpoena under this Act or at the request of the officer causing such subpoena to be issued, to serve the same personally upon such witness and also to serve any orders to show cause, rules, judgments, or decrees when requested by the court or United States marshal, and to make a return thereof to the court out of which the same issued, first tendering to the witness the amount of his necessary expenses in traveling to and from the place at which the court sits and his attendance thereon, which amount shall be determined by the judge on issuing the

order for the subpoena and supplied to the consul making the service."

"Sec. 4. If the witness so served shall neglect or refuse to appear as in such subpoena directed, the court out of which it was issued shall, upon proof being made of the service and default, issue an order directing the witness to appear before the court at a time in such order designated to show cause why he should not be adjudged guilty of contempt and be punished accordingly."

"Sec. 5. Upon issuing such order, the court may, upon the giving of security for any damages which the recusing witness may have suffered, should the charge be dismissed (except that no security shall be required of the United States), direct as a part of such order that the property of the recusing witness at any place within the United States, or so much thereof in value as the court may direct shall be levied upon and seized by the marshal of said court in the manner provided by law or the rule of the court for a levy or seizure under execution, to be held to satisfy any judgment that may be rendered against such witness in the proceeding so instituted."

"Sec. 6. The marshal, having made such levy, shall thereupon forward to the consul of any country where the recusing witness may be a copy of the order to show cause why such witness should not be adjudged guilty of contempt with the request that said consul make service of the same personally upon the recusing witness, and shall cause to be published such order to show cause and for the sequestration of the property of such witness, in some newspaper of general circulation in the district within which the court issuing such order sits, once each week for six consecutive weeks."

"Sec. 7. On the return day of such order or any later day to which the hearing may by the court be continued, proof shall be taken, and if the charge of recusancy against the witness shall be sustained, the court shall adjudge him guilty of contempt and, notwithstanding any limitation upon the power of the court generally to punish for contempt, impose upon him a fine not exceeding $100,000 and direct that the amount thereof, with the costs of the proceeding, be satisfied, unless paid, by a sale of the property of the witness so seized or levied upon, such sale to be

conducted upon the notice required and in the manner provided for sales upon execution."

"Sec. 8. Any judgment rendered pursuant to this Act upon service by publication only may be opened for answer within the time and in the manner provided in 57 of the Judicial Code."

[Footnote 2]

"The law of Nations does not prevent a state from exercising jurisdiction over its subjects traveling or residing abroad, since they remain under its personal supremacy."

Oppenheim, International Law (4th ed.) vol. 1, 145, p. 281; Story, Conflict of Laws (8th ed.) 540, p. 755; Moore's International Law Digest, vol. 2, pp. 255, 256; Hyde, International Law, vol. 1, 240, p. 424; Borchard, Diplomatic Protection of Citizens Abroad, 13, pp. 21, 22.

[Footnote 3]

Compare *13 U. S.* 9 Cranch 388, 13 U. S. 422 -423; *Rose v. Himely,* 4 Cranch 241, 8 U. S. 279 ; *The Apollon,* 9 Wheat. 362, 22 U. S. 370 ; *Schibsby v. Westenholz,* L.R. 6 Q.R. 155, 161. Illustrations of acts of the Congress applicable to citizens abroad are the provisions found in the chapter of the Criminal Code relating to "Offenses against operations of government" (U.S.C. Tit. 18, c. 4; *United States v. Bowman,* 260 U. S. 94 , 260 U. S. 98 -102) and the provisions relating to criminal correspondence with foreign governments, Act of January 30, 1799, 1 Stat. 613, U.S.C. Tit. 18, 5.

[Footnote 4]

See also Hyde, *op. cit.,* vol. 1, 381, pp. 668, 669.

[Footnote 5]

The instant case does not present the questions which arise in cases where obligations inherent in allegiance are not involved. *See Pennoyer v. Neff,* 95 U. S. 714 ; *Galpin v. Page,* 18 Wall. 350, 85 U. S. 369 ; *Harkness v. Hyde,* 98 U. S. 476 , 98 U. S. 478 ; *Riverside & Dan River Cotton Mills v. Menefee,* 237 U. S. 189 , 237 U. S. 193 ; *McDonald v. Mabee,* 243 U. S. 90 , 243 U. S. 92 ; *Wuchter v. Pizzutti,* 276 U. S. 13 .

[Footnote 6]

Cf. Dainese v. Hale, 91 U. S. 13 , 91 U. S. 15 -16; *In re Ross,* 140 U. S. 453 , 140 U. S. 462 -463. *See also* U.S.C. Tit. 22, 71 *et seq.;* Hyde, *op. cit.,* 488, pp. 828-832.

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