SUPREME COURT OF UNITED STATES

United STATES, Piff. in Err.,

Vs.

William Rabinowich.

No. 748.

Argued April 7, 1915.

Decided June 1, 1915.

Assistant Attorney General Warren for plaintiff in error.

[Argument of Counsel from pages 79-80 intentionally omitted]

Messrs. William R. Harr and Charles H. Bates for defendant in error.

[Argument of Counsel from pages 81-83 intentionally omitted]

Mr. Justice Pitney delivered the opinion of the court:

This is a writ of error, taken under the criminal appeals act of March 2, 1907 (34 Stat. at L. 1246, chap. 2564, Comp. Stat. 1913, § 1704), to review a judgment of the district court sustaining, on demurrer, a special plea in bar to an indictment for conspiracy found June 24, 1912, and based upon § 37 of the Criminal Code of March 4, 1909 (35 Stat. at L. 1096, chap. 321, Comp. Stat. 1913, § 10,201), formerly § 5440, Rev. Stat. The indictment embraces six individuals, including defendant in error, and contains two counts, of which the first recites that three of the defendants, K., R., and

F., were doing business as copartners, and had on hand a large quantity of goods; that they and the other named defendants contemplated and planned that the copartners should commit an act of bankruptcy, an involuntary petition in bankruptcy should be filed against them, they should be adjudged bankrupts, and thereafter a trustee in bankruptcy should be appointed; and avers that, under these circumstances, the defendants named, including K., R., and F., conspired and agreed together that K., R., and F. should conceal, while bankrupts, from the trustee of the estate in bankruptcy, certain specified property belonging to said estate in bankruptcy. Overt acts are alleged. The second count differs in its recitals, but does not differ in any respect now material in setting forth the conspiracy. In each count the conspiracy and overt acts are stated to have taken place in March and April, 1911, more than a year before the finding of the indictment. Neither count avers a continuing conspiracy. The plea sets up the alleged bar of the statute of limitations contained in § 29d of the bankruptcy act (30 Stat. at L. 554, chap. 541, Comp. Stat. 1913, § 9613), in that the indictment was not found within one year after the commission of the alleged offenses. The district court held, upon a construction of the applicable statutes, that the prosecution upon the charges contained in the indictment was limited by the section thus invoked, and not by § 1044, Rev. Stat., Comp. Stat. 1913, § 1708.

The pertinent statutory provisions are set forth in the margin.1 Section 1044, which of course antedated the bankruptcy act, declares that no person shall be prosecuted for any offense (with exceptions not now material), unless the indictment is found or information instituted within three years next after such offense shall have been committed; while § 29d of the bankruptcy act limits to one year the prosecution 'for any offense arising under this act.' The narrow question presented is, whether a conspiracy having for its object the commission of an offense denounced as criminal by the bankruptcy act is, in itself, an offense 'arising under' that act, within the meaning of § 29d.

It is apparent from a reading of § 37, Crim. Code (§ 5440 Rev. Stat.), and has been repeatedly declared in decisions of this court, that a conspiracy to commit a crime is a different offense from the crime that is the object of the conspiracy. Callan v. Wilson, [1888] USSC 181; 127 U. S. 540, 555, 32 L. ed. 223, 228[1888] USSC 181; , 8 Sup. Ct. Rep. 1301; Clune v. United States, [1895] USSC 224; 159 U. S. 590, 595, 40 L. ed. 269, 271[1895] USSC 224; , 16 Sup. Ct. Rep. 125; Williamson v. United States, [1908] USSC 11; 207 U. S. 425, 447, 52 L. ed. 278, 290[1908] USSC 11; , 28 Sup. Ct. Rep. 163; United States v. Stevenson, 215 U. S. 200, 203, 54 L. ed. 157, 158, 30 Sup. Ct. Rep. 37. And see Burton v. United States, [1906] USSC 109; 202 U. S. 344, 377, 50 L. ed. 1057, 1069[1906] USSC 109; , 26 Sup. Ct. Rep. 688, 6 Ann. Cas. 362; Morgan v. Devine, No. 685, decided this day [1915] USSC 169; [237 U. S. 632, 59 L. ed. 1153[1915] USSC 169; , 35 Sup. Ct. Rep. 712]. The conspiracy, however fully formed, may fail of its object, however earnestly pursued; the contemplated crime may never be consummated; yet the conspiracy is none the less punishable. Williamson v. United States, [1908] USSC 11; 207 U. S. 425, 447, 52 L. ed. 278, 290[1908] USSC 11; , 28 Sup. Ct. Rep. 163. And it is punishable as conspiracy, though the intended crime be accomplished. Heike v. United States, [1913] USSC 37; 227 U. S. 131, 144, 57 L. ed. 450, 455[1913] USSC 37; , 33 Sup. Ct. Rep. 226, Ann. Cas. 1914C, 128.

Nor do we forget that a mere conspiracy, without overt act done in pursuance of it, is not criminally punishable under § 37, Crim. Code. United States v. Hirsch, [1879] USSC 180; 100 U. S. 33, 34, 25 L. ed. 539, 540; Hyde v. Shine, [1905] USSC 137; 199 U. S. 62, 76, 50 L. ed. 90, 94[1905] USSC 137; , 25 Sup. Ct. Rep. 760; Hyde v. United States, [1911] USSC 121; 225 U. S. 347, 359, 56 L. ed. 1114, 1123[1911] USSC 121; , 32 Sup. Ct. Rep. 793, Ann. Cas. 1914A, 614. There must be an overt act; but this need not be of itself a criminal act; still less need it constitute the very crime that is the object of the conspiracy. United States v. Holte, [1915] USSC 36; 236 U. S. 140, 144, 59 L. ed. 504, 35 Sup. Ct. Rep. 271; Joplin Mercantile Co. v. United States, [1915] USSC 47; 236 U. S. 531, 535, 536, 59 L. ed. 705[1915] USSC 47; , 35 Sup. Ct. Rep. 291. Nor need it appear that all the conspirators joined in the overt act. Bannon v. United States, [1895] USSC 40; 156 U. S. 464, 468, 39 L. ed. 494, 496[1895] USSC 40; , 15 Sup. Ct. Rep. 467, 9 Am. Crim. Rep. 338. A person may be guilty of conspiring, although incapable of committing the objective offense. Williamson v. United States, and United States v. Holte, supra. And a single conspiracy might have for its object the violation of two or more of the criminal laws, the substantive offenses having, perhaps, different periods of limitation. (See Joplin Mercantile Co. v. United States, [1915] USSC 47; 236 U. S. 531, 547, 548, 59 L. ed. 705[1915] USSC 47; , 35 Sup. Ct. Rep. 291, for an instance of a conspiracy with manifold objects.)

It is at least doubtful whether the crime of concealing property belonging to the bankrupt estate from the trustee, as defined in § 29b (1) of the bankruptcy act, can be perpetrated by any other than a bankrupt or one who has received a discharge as such. Counsel for defendant in error refers to § 1, subdivision 19, of the act, which gives the following definition: '(§9) 'Persons' SHALL INCLUDE CORPORATIONS, EXCEPT WHERe otherwise specified, and officers, partnerships, and women, and when used with reference to the commission of acts which are herein forbidden shall include persons who are participants in the forbidden acts, and the agents, officers, and members of the board of directors or trustees, or other similar controlling bodies of corporations.' But the circuit court of appeals for the eighth circuit has held that this does not broaden the interpretation of § 29b (1) and that present or past bankruptcy is an attribute of every person who may commit the offense therein denounced. Field v. United States, 69 C. C. A. 568, 137 Fed. 6. And see Kaufman v. United States, 129 C. C. A. 149, 212 Fed. 613, 617.

But, if there be doubt about this, we are not now called upon to solve it. For, as appears from what has been said, the defendants here accused include six individuals, only three of whom (not including defendant in error) were the owners of the property that was to be unlawfully concealed; and the conspiracy, as alleged in each count, was that these three, and they only, should, while bankrupt, conceal the property. Of course, an averment that the others were parties to the conspiracy is by no means equivalent to an averment that they were to participate in the substantive offense. And so we have the typical case of a conspiracy that is in every way distinct from the contemplated crime that formed its object.

Defendant in error, while conceding, for the purposes of the argument, that the conspiracy and the substantive offense are separate and distinct, insists that the question still remains whether such a conspiracy offense as is here charged 'arises under' the bankruptcy act, within the meaning of the

special statute of limitations contained therein. The argument is that this bar is not by its terms limited to offenses enumerated or fully defined in the act, but extends to all offenses 'arising under' it; that without a law creating the substantive offense of 'concealing,' etc., a conspiracy to do the acts contemplated by the present defendants would not be a crime; and hence, that it is this law, rather than the conspiracy statute, which 'gives rise' to the conspiracy offense.

The argument is ingeniously elaborated, but it has not convinced us. We deem it more reasonable to interpret 'any offense arising under this act' as limited to offenses created and defined by the same enactment. In reaching this conclusion, we have not merely had regard to the proximity of the clause to the context, but have attributed to Congress a tacit purpose—in the absence of any inconsistent expression—to maintain a long-established distinction between offenses essentially different,—a distinction whose practical importance in the criminal law is not easily overestimated.

We cannot agree that there is anything unreasonable, or inconsistent with the general policy of the bankruptcy act, in allowing a longer period for the prosecution of a conspiracy to violate one of its penal clauses than for the violation itself. For two or more to confederate and combine together to commit or cause to be committed a breach of the criminal laws is an offense of the gravest character, sometimes quite outweighing, in injury to the public, the mere commission of the contemplated crime. It involves deliberate plotting to subvert the laws, educating and preparing the conspirators for further and habitual criminal practices. And it is characterized by secrecy, rendering it difficult of detection, requiring more time for its discovery, and adding to the importance of punishing it when discovered.

United States v. Hirsch, [1879] USSC 180; 100 U. S. 33, 34, 25 L. ed. 539, 540, is in principle quite like the case at bar. There the indictment contained four counts, of which the first and second, drawn under § 5440, Rev. Stat., charged a conspiracy to defraud the United States out of the duties on certain merchandise theretofore imported and thereafter to be imported. The other counts were drawn under § 5445, and charged the entry of goods at the customhouse by fraudulent invoice and false classification. The question was as to the validity of a plea that the offenses charged had been committed more than three years before the finding of the indictment, and this turned upon whether § 1044 (Comp. Stat. 1913, § 1708), applied, or § 1046 (Comp. Stat. 1913, § 1710), which prescribed a limitation of five years for a prosecution 'for any crime arising under the revenue laws.' This court held that, with respect to the first two counts, the three-year limitation prescribed by § 1044 was applicable, saying (100 U. S. p. 35): 'Specific acts which are violations of the laws made to protect the revenue may be said to be crimes arising under the revenue laws, as are those in the third and fourth counts; but a conspiracy to defraud the government, though it may be directed to the revenue as its object, is punishable by the general law against all conspiracies, and can hardly be said, in any just sense, to arise under the revenue laws.' This was said in spite of the fact, pointed out in the opinion, that § 5440 was originally § 30 of the act of March 2, 1867 (14 Stat. at L. 484, chap. 169, Comp. Stat. 1913, § 10,201), which was a revenue law.

It is not necessary to extend the discussion. In our opinion, a conspiracy to commit an offense made criminal by the bankruptcy act is not of itself an offense 'arising under' that act within the meaning of § 29d, and hence the prosecution is not limited by that section.

Judgment reversed, and the cause remanded for further proceedings in accordance with this opinion.

Mr. Justice McReynolds took no part in the consideration or decision of this case.

Section 37 of the Criminal Code is as follows:

Sec. 37. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both.

Section 29 of the bankruptcy act, so far as material, is as follows:

b. A person shall be punished, by imprisonment for a period not to exceed two years, upon conviction of the offense of having knowingly and fraudulently (1) concealed while a bankrupt, or after his discharge, from his trustee any of the property belonging to his estate in bankruptcy; . . .

d. A person shall not be prosecuted for any offense arising under this act unless the indictment is found or the information is filed in court within one year after the commission of the offense.

Section 1044 of the Revised Statutes as amended April 13, 1876 [19 Stat. at L. 32, chap. 56, Comp. Stat. 1913, § 1708], is as follows: No person shall be prosecuted, tried, or punished for any offense, not capital, except as provided in section one thousand and forty-six, Comp. Stat. 1913, § 1710 [referring to the revenue laws] unless the indictment is found, or the information is instituted within three years next after such offense shall have been committed. But this act shall not have effect to authorize the prosecution, trial or punishment for any offense, barred by the provisions of existing laws.