This reasoning is in harmony with the language of the court in the 1963 Georgia case on this point[16] where it is stated, "The interest of a creditor must be 'materially and adversely' affected by the plan before the creditor's acceptance becomes necessary for the confirmation of the plan. There must be more than a nominal or minute alteration in the creditor's interest."[17] The opposite position is taken in a recent Arkansas decision[18] where the court held that it was error to require a creditor which did not accept the plan to participate in it—even though the plan provided for payment of the full contract price—because the plan did not provide for any specific time limitation for bringing delinquent payments current.

The principal case held that the consent of every secured creditor who is not expressly designated for full payment by the trustee is not a condition precedent to confirmation of a plan. Adoption of this reasoning would take the whip from the hand of a secured creditor[19] who might otherwise arbitrarily reject the plan and prevent confirmation, and would remove what at times has been a source of frustration for those who seek to administer, as well as those who in good faith invoke the protection of, Chapter XIII of the Bankruptcy Act.

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CONSTITUTIONAL LAW—FIFTH AMENDMENT—SELF INCRIMINATION AND THE RIGHT NOT TO FILE A GAMBLING TAX RETURN

Proper assertion by the defendant of his privilege against self-incrimination was a complete defense to prosecution for conspiracy to evade payment of the federal occupational tax on wagering and failure to register and pay such tax,[1] where such wagering violates state criminal statutes[2] and

16. In re Wilder, 225 F. Supp. 67 (M.D. Ga. 1963).
17. *Id.* at 69.
18. In re Rutledge, 277 F. Supp. 933 (E.D. Ark. 1967).
19. Speaking of the decision of the district court in the *Cheetham* case, the court here said,

> The court's interpretation, requiring the consent of every secured creditor who is not expressly designated for full payment by the trustee, gives each secured creditor a whip hand. All must assent except those who have no reason to dissent; in consequence, the only plans that can be approved are those which expressly undertake to pay non-assentnig secured creditors in full. We do not believe this to have been Congress' intention.

1. 26 U.S.C. §4411 (1954), provides for a $500 occupational tax per annum on those subject to tax in §4401 and those who receive wagers on their behalf. 26 U.S.C. §4412 (1954) requires registration with the director of local internal revenue district each year, supplying (1) his name and place of residence, (2) whether he accepts wages, (3) names and addresses of persons receiving wagers for him, and (4) names and addresses of persons for whom he receives wagers. *See also* 26 U.S.C. §§4401, 4403, 4422, 4423, 6107, 6806(c) (1954).
2. CONN. GEN. STAT. REV. §§53-295, 53-289 (1958). *See also* CONN. GEN. STAT. REV. §§53-273, 53-290, 53-293, 54-197 (1958).

compliance with the tax law subjects the taxpayer to substantial hazards of self-incrimination.[3]

This decision represents some basic changes in the application of the fifth amendment protection, but leaves unchanged the "required records" doctrine and the freedom of the government to tax income illegally derived. Previously, in *United States v. Kahriger*,[4] where the Pennsylvania defendant was willing to pay the tax but not to fill out the required forms, the Court had said the federal tax disclosure requirements were neither an unconstitutional usurpation by the federal government of police powers reserved to the states by the tenth amendment nor violative of the fifth amendment protection against self-incrimination. The tax forms required statements of future intentions, while only statements as to past acts would be protected by the fifth amendment privilege. Kahriger's failure to register for the federal tax precluded his claim that disclosure of violations of law was required.

In *Lewis v. United States*[5] a similar situation arose concerning a Washington, D.C. resident subject to federal anti-gambling laws. There the Court said the disclosure requirements of the federal taxing scheme did not violate his fifth amendment privilege, because:

> If a petitioner desires to engage in an unlawful business, he does so only on his own volition. The fact that he may elect to pay the tax and make the prescribed disclosures required by the Act is a matter of his choice. There is nothing compulsory about it, and, consequently, there is nothing violative of the Fifth Amendment. If he does not pay the occupational tax, proceeds to accept wagers, and is prosecuted therefor, as in this case, he cannot be compelled to testify and may claim his privilege.[6]

Although Mr. Justice Black pointed out in his dissent that petitioner would have to list the names of persons accepting his wagers and whose wagers he accepts in answering questions 5 and 6 on the Special Tax Return and Application for Registry-Wagering forms, the Court reiterated its assertion that the statutes required no admissions as to past acts. In the principal case Mr. Justice Black's *Lewis* dissent prevailed.

The case was distinguished from *Shapiro v. United States*,[7] where peti-

5. Marchetti v. United States, 88 S.Ct. 697 (1968). The court on the same day decided Grosso v. United States 88 S.Ct. 709 (1968), where the facts were essentially the same except that Grosso resided in Pennsylvania and was subject to prosecution under Pennsylvania anti-gambling statutes.
4. 345 U.S. 22 (1953).
5. 348 U.S. 419 (1955).
6. *Id.* at 422.
7. 335 U.S. 1 (1947).

tioner was convicted of violating the Price Control Act on evidence from his own records, though he had claimed his constitutional privilege when complying with requirements to produce them. Since Marchetti was not required to keep and preserve records "of a kind he has customarily kept," and his records related to criminal activities, the required records doctrine of *Shapiro* was not applicable.

The Court distinguished *United States v. Sullivan*,[8] where the claiming of the fifth amendment privilege against the filing of federal income tax returns was called "extreme, if not extravagant," because most of the questions asked on the income tax forms would not have required incriminating disclosures, as did those asked Marchetti.

The main standard for the application of the privilege remains unchanged after *Marchetti*. That standard is whether "the claimant is confronted by substantial and real, and not merely trifling or imaginary, hazards of incrimination."[9] Georgia makes compliance with federal wagering tax laws prima facie evidence of guilt of illegal gambling.[10] Here, the danger of self-incrimination is obviously "substantial and real." Compliance with the federal law under such circumstances would almost "surely prove a significant link in the chain of evidence tending to establish his guilt," and the assertion of the constitutional privilege would probably constitute a complete defense.[11]

Congress may still obtain information of the type desired of Marchetti by following the example of the Court in *Counselman v. Hitchcock*,[12] which held that to be valid such a statute would have to grant "absolute immunity against future prosecution for the offense to which it relates." This immunity would, of course, have to be co-extensive with the constitutional privilege, as outlined by the Court in *Murphey v. Waterfront Comm'n* in 1963.[13]

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8. 274 U.S. 259 (1926).
9. Marchetti v. United States, 88 S.Ct. 697, 705 (1968).
10. "The holding, owning, having in possession of or paying the tax for a wagering occupational tax stamp, as provided in 26 U.S.CODE section 4411, issued by the internal revenue authorities of the United States after July 1, 1966, shall be held in all courts of this State as prima facie evidence of guilt of the person paying the tax or holding, owning or possessing such stamp in any prosecution of such person for violation of the gambling or lottery laws of this State, as the same appear in sections 26-6401 through 26-6409 (inclusive) Georgia Code of 1933, and an Act relating to the gambling on athletic contests, approved March 27, 1947, (§§26-6410 through 26-6412), and the lottery laws of this State as the same appear in sections 26-6501 through 26-6503 (inclusive) of the Georgia Code of 1933. This section shall apply only with respect to alleged violations of such laws occuring after July 1, 1966. (Acts 1966, p. 559)." GA. CODE ANN. §26-6413 (Supp. 1967). *See also* GA. CODE ANN. 26-6414 (1966) for similar provisions regarding coin-operated gaming devices.
11. Marchetti v. United States, 88 S.Ct. 697, 703 (1968).
12. 142 U.S. 547 (1891).
13. 378 U.S. 52 (1963).