Are Things Illegally Seized Admissible In Evidence?

By EMILIANO R. NAVARRO

WHAT has, in American law, been made so rich by a wealth of decisions is a subject upon which our Supreme Court has made no pronouncement. (See Wigmore on Evidence, Second Edition, Sections 2183, 2184). This is a little surprising when one finds that the right comprehended within our subject has been compared to the constitutional rights secured by the writ of habeas corpus, trial by jury, and due process of law. (Gouled v. United States, 255 U.S. 298, 65 L. ed. 647). It involves, in the language of Mr. Justice Bradley, "a very grave question of constitutional law, involving the personal security and privileges and immunities" of the citizens. (Boyd v. United States, 116 U.S. 616, 29 L. ed. 746). The situation becomes even more surprising when one realizes that our Supreme Court could have rendered this task of presumptuous prediction unnecessary did it choose to base its decision on the point under review in the case of People vs. Carlos. (47 Phil. 626). The court, evading the decision of the issue, said: "In the Silverthorne Lumber Co. case the United States Supreme Court adhered to its decision in the Weeks case. The doctrine laid down in these cases has been severely criticized and does not appear to have been generally accepted. But assuming, without deciding, that it prevails in this jurisdiction it is, nevertheless, under the decisions in the Weeks and Silverthorne cases, inapplicable to the present case. Here the illegality of the search and seizure was not directly litigated and established by a motion, made before trial, for the return of the things seized." The letter involved in this case, however, was excluded on another ground. It becomes important, therefore, to inquire into what direction the social power shall be exerted in future cases that may arise before our courts.

As constitutional rights that complement each other, we are quoting the provisions of our Bill of Rights. Article III, section 1, sub-section (3) of the Philippine Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized." Subsection (18) of the same provision says: "No person shall be compelled to be a witness against himself." Similar provisions can be found in the constitutions of the States of the American Union. The Constitution of the United States contains identical provisions. The Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation,

and particularly describing the place to be searched, and the persons or things to be seized." The Fifth Amendment says: "No person . . . shall be compelled, in any criminal case, to be a witness against himself." The highest and final expounder of our constitutional provisions cited is the Supreme Court of the United States whose decisions, delimiting the boundaries and defining the extent of the rights guaranteed, must be held controlling upon our courts. In so far, therefore, as the Supreme Court of the United States has expressed its opinion on the subject, to so much are we relieved of the task of interpretation; because, then, our obligation is one of dependence. This is necessarily so, not only because we are dealing with a subject that involves political law (Opinion of Mr. Justice Bradley in Boyd v. United States, *supra;* Chicago Rock Island & Pac. Ry. Co. v. McGlinn, 114 U.S. 542, 29 L. ed. 270; Vilas v. City of Manila, 220 U.S. 345, 55 L. ed. 481; Amer. Ins. Co. v. Canter, 1 Pet. 542; People vs. Perfecto, 43 Phil. 887; People vs. Lol-lo and Saraw, 43 Phil. 19) but also, because, the fundamental law which the United States Supreme Court administers in the Bill of Rights of the Philippine Constitution (See right of review of the United States Supreme Court over decisions of the Philippine Supreme Court in section 7, (6) of the Tydings-McDuffie Act) is to be enforced in the light of the construction of such limitations as it has recognized since the foundation of the government of the United States. (Yu Cong Eng v. Trinidad, 271 U. S. 500, 70 L. ed. 1059). Taken from this viewpoint our law on the subject is complete. (See also the dissent of Mr. Justice Abad Santos in People vs. Rubio, 57 Phil. 384, where referring to the Fourth Amendment to the American Constitution and similar provisions embodied in our organic and statute laws, he said: "We are thus fully justified in relying on American authorities and cases for the purpose of ascertaining the real intent, object and scope of such provisions").

Should a government officer without a search warrant or with one that is illegally obtained search your person or your house and later on file a criminal charge against you, based upon such search, and present the things thus illegally seized in evidence against you, will our courts admit the same in evidence?

Noted writers on the law of evidence, expounding the common law rule, as being declaratory of a most salutary principle to be followed in such cases, declared that wisdom compels the courts to admit the evidence. (Wigmore on Evidence, *supra;* Greenleaf on Evidence, Sixteenth Edition, Section 254*a*). The "admissibility of evidence is not affected by the illegality of the means through which the party has been enabled to obtain the evidence." (The leading cases on the subject are: Com. v. Dana, 2 Metc. 329; Williams v. State, 100 Ga. 511; and Legatt v. Tollervy, 14 East 306). This principle has a universal acceptance not only in the United States (See Wigmore on Evidence, *supra;* Olmstead v. United States, 277 U.S. 438, 467, 72 L. ed. 944; Williams v. State, *supra*), but also in England (Bishop Atterbury's Trial, 16 How. St. Tr. 495) and in Canada. (R. v. Doyle 12 Ont. 350). It is, indeed, plain that the truth contained in the things illegally seized is not rendered false by such un-

lawful seizure. This is the basis of this doctrine.

The Supreme Court of the United States, however, while recognizing the force and wisdom that controls the common law rule (Adams v. New York, 192 U.S. 585, 48 L. ed. 575; Olmstead v. United States, *supra*) held an exception to have been established by the 4th and 5th Amendments. (Boyd v. United States, 116 U.S. 616, 29 L. ed. 746; Olmstead v. United States, *supra*).

The first case decided by the Supreme Court of the United States was that of Boyd v. United States on February 1, 1886. An information was filed against the plaintiffs in error for violating the 12th section of the Customs and Revenue Laws passed on June 22, 1874. The 5th section of the law provides as follows: ". . . and if the defendant or claimant shall fail or refuse to produce such book, invoice or paper in obedience to such notice, the allegation stated in the said motion shall be taken as confessed unless his failure or refusal to produce the same shall be explained to the satisfaction of the court." During the trial it became necessary to produce the goods which were alleged to have been imported in violation of the law. The district attorney offered in evidence an order made by the district judge under the 5th section of the Act directing notice to the claimants requiring them to produce the invoice of the goods. The defendants, claiming the nullity of the law, but obeying the notice, produced the invoice. When presented in evidence the defendants objected on the ground that evidence cannot be compelled from them. The court held the law obnoxious to the 4th and 5th Amendments to the Constitution of the United States and consequently excluded the evidence. Mr. Justice Bradley said: "It is our opinion, therefore, that a compulsory production of a man's private papers to establish a criminal charge against him or to forfeit his property is within the scope of the Fourth Amendment to the Constitution, in all cases in which a search and seizure would be; because it is a material ingredient and effects the sole object and purpose, of search and seizure." (116 U.S. 622, 29 L. ed. 748).

The principle as thus born was unlimited, unhedged in by any encumbering limitations. It sufficed to determine whether the 4th Amendment was violated, as affording a final verdict under the 5th. (Wigmore on Evidence, Second Edition, Section 2184).

The law echoes the experience of the age in which it is enacted; so the historian, on reading the law, correctly discovers the episodes during which that age had passed. Such is the Fourth Amendment to the American Constitution. When James Otis, in 1761, argued the first writs of assistance, he hardly appreciated the fact that he was laying the foundations of one of the most fundamental human rights. One of the most beautiful speeches and eulogies on this right, picturing the same situation that the mother country suffered with the colony, delivered by Lord Chatham, said: "The poorest man may, in his cottage, bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England may not enter; all his force dares not cross the threshold of the ruined tenement." On both sides of the Atlantic were born identical principles giving shape to the demands of the

social force—in the United States, as embodied in the Fourth Amendment and in England, as first expounded by Lord Camden in Entick v. Carrington. (19 How. St. Tr. 1029). In the Philippines the novels of Rizal proclaimed to the world what seemed to be a universal fate. While the corresponding provisions of our Constitution breathe the spirit of the common law, having been borrowed from the American Constitution, yet it is aptly declaratory of a principle against the tyranny of the Spanish domination and her Inquisition. (Similar declarations can be found in U. S. vs. De los Reyes and Esguerra, 20 Phil. 467, 469, 470; People vs. Veloso, 48 Phil. 169). The Supreme Court of the United States has a very high reverence for the Fourth Amendment, the most emphatic declaration having been made by Mr. Justice Holmes in the Silverthorne Lumber Co. case. It is for this reason that, in the Boyd case, a violation of the Fourth Amendment cannot pass as legal under the sanction of the Fifth Amendment. (Wigmore says that this is misguided sentimentalism).

The Supreme Court of the United States in Weeks v. United States (232 U. S. 383, 58 L. ed. 652) attached a limitation to the principle broadly stated in the Boyd case by requiring that a motion or petition for the return of the things illegally seized be filed before trial. (Wigmore on Evidence, *supra*). This limitation to the rule was justified under the familiar and beneficent rule of practice that a "collateral issue will not be raised to ascertain the source from which testimony, competent in a criminal case, comes". Mr. Justice Day, excluding the evidence on proper application before trial and upon objection after the jury was sworn and before evidence was admitted, said: "If letters and private documents can thus be seized and used in evidence against a citizen accused of an offense, the protection of the 4th Amendment, declaring his right to be secure against such seizures, is of no value, and, so far as those placed are concerned, might as well be stricken from the Constitution." The court cleared the doubt among many that Adams v. New York (192 U.S. 585, 48 L. ed. 575) had changed the rule announced in the Boyd case. There could have been no issue under the 5th Amendment, as in the Adams case, unless the 4th were first violated.

Silverthorne Lumber Co. v. United States (251 U. S. 385, 391, 392, 64 L. ed. 319, 321) was decided on January 26, 1920. It involved a seasonable petition before trial for the return of the things that were illegally seized. The lower court ordered the return of the originals but impounded the photographs and copies. Upon refusal to obey a later order of the court to produce the originals petitioners were held in contempt. The Supreme Court denied the power of the lower court to order by compulsory process the production of the originals, and held the contempt an error. The scope of the doctrine laid down is not at once definable, as the facts of the case fall under those already considered in the Weeks case. Mr. Justice Holmes, in a sweeping language, said: "Weeks v. United States, 232 U. S. 383, 58 L. ed. 652, L. R. A. 1915B, 834, 34 Sup. Ct. Rep. 341, Am. Cas. 1915 C. 1117, to be sure, had established that laying the paper directly before the grand jury was unwarranted, but it is taken to mean only that two

steps are required instead of one. In our opinion such is not the law. It reduces the 4th Amendment to a form of words. 232 U. S. 393. The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the court, but that it shall not be used at all." The court held further that the protection extends to corporations as well as to natural persons. As establishing an exception to the common law rule, the decision could not have been much clearer. The facts obtained illegally were not rendered sacred and inaccessible. If gained in a different way, they could have been proved as any other facts; but the government could not make use of facts obtained in violation of the 4th Amendment.

The case of Amos v. United States (255 U. S. 313, 65 L. ed. 654), decided on February 28, 1921, in turn modified the Weeks case, stating in what case the motion before trial need not be filed. The facts were conclusively established by the testimony of the prosecution itself that there was no search warrant of any kind issued under which the things involved could be seized. The illegality of the search and seizure could not be denied; it was literally thrust upon the court by the government itself. (255 U. S. 315, 316, 65 L. ed. 656). The search was a plain violation of the 4th and 5th Amendments to the Constitution of the United States. It was, therefore, held that a petition, duly sworn to, presented after the jury was sworn but before the evidence was presented, praying for the return of the things illegally seized, was sufficient in law to accomplish the same result as in the Weeks case, under a different and more stringent requirement.

A case analogous to that of Amos was Gouled v. United States (255 U. S. 298, 65 L. ed. 647), decided on the same day. The papers involved were seized by an intelligence officer, pretending to make a friendly call and without a search warrant, during the absence of the defendant. The defendant did not know that this officer carried away the papers until on the day of the trial when he made a detailed account of the facts with respect thereto. It was only then that objection was interposed to the reception of the evidence. The court, in holding the objection timely, further stated that the rule of practice enunciated as a limitation to the Boyd case by the Weeks case had no application to the facts of the instant case. Reception of the evidence was, therefore, an error, being violative of the 5th Amendment; because, in "practice the result is the same to one accused of crime, whether he be obliged to supply evidence against himself, or whether such evidence be obtained by an illegal search of his premises and seizure of his private papers. In either case he is the unwilling source of the evidence, and the 5th Amendment forbids that he shall be compelled to be a witness against himself in a criminal case." (255 U. S. 306, 65 L. ed. 651). This case furnishes a more liberal requirement, consonant with the facts, than the Amos case, because objection was interposed actually during the presentation of the evidence.

Of more recent date is the case of Agnello v United States (269 U. S. 20, 70 L. ed. 145), decided on October 12, 1925. The precise limit of the doctrine here enunciated is not at once clear. In

the two cases above cited we find the Supreme Court laboring hard to establish exceptions to the stringent requirement decided in the Weeks case. Between the extreme rules of the Boyd and Weeks cases the Court was finding a happy mean. Dispositive of the case was this sweeping statement: "Where, by uncontroverted facts, it appears that a search and seizure were made in violation of the 4th Amendment, there is no reason why one whose rights have been so violated, and who is sought to be incriminated by evidence so obtained, may not invoke protection of the 5th Amendment immediately and without any application for the return of the thing seized." A rule of practice must not be allowed for any technical reason to prevail over a constitutional right. This statement of the court shows a departure from the Weeks case and a decided tendency to re-establish the orthodox doctrine in the Boyd case. One would suggest that the rule should be limited to the precise facts of the case as the same court suggested of the Gouled case. (See Olmstead v. United States, *supra*). The only fact that could be shown to strengthen the rule is that "there is nothing to show that in advance of its offer in evidence, he knew that the government claimed it had searched his house and found cocaine there, or that the prosecutor intended to introduce evidence of any search or seizure." It would, indeed, be hard and most shocking to the sensibilities to deny one the protection of the 4th and 5th Amendments, when, knowing the search, he failed to avail himself of the remedy suggested in the Weeks case. Such a strict rule would be a plain negation of the principle already announced that a "rule of practice must not be allowed for any technical reason to prevail over a constitutional right." We see no moment warranting a change of the rule, applicable to those ignorant of the facts, when applied to those having full knowledge of the exact situation. We submit that the rule in both cases must be the same.

It should be observed that the three cases which established exceptions or limitations to the application of the Weeks case were those of plain violations of the 4th and 5th Amendments. It seems unreasonable to limit the enjoyment of the right broadly expounded in the Boyd case. Suppose the violation not to be clear, will the courts require the filing of a motion before trial? The only reason for the Weeks case is the rule of practice already adverted to that a collateral issue will not be raised to ascertain the source from which testimony, competent in a criminal case, comes. Again, will not this be a case of a rule of practice prevailing over a constitutional right? It is not reasonable for a defendant to suppose before trial that a search and seizure is a plain violation of the 4th and 5th Amendments, as this fact is established only in the trial of the case. If the courts will strictly follow the Weeks case, then it becomes a part of prudence on the part of the defense to file a motion always before the trial of the case. Here, again, I see no reason why a motion filed before trial can delay the proceedings or the prosecution of the case, while an objection interposed during the trial to determine the legality of the search and seizure cannot. I am not inclined to believe that the Supreme Court of the United States in those three cases mentioned was laying a rule exclusively applicable to an accident, where the prosecution estab-

lishes by its own evidence the illegality of the search and seizure. It seems much wiser to give the same effect to the other as the Supreme Court of the United States has given to the one. As very aptly stated by Mr. Justice Holmes in the Silverthorne case, "The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the court, but that it shall not be used at all."

There is, however, another consideration which has not been touched by the critics of the Supreme Court of the United States. (For an extensive criticism, see Wigmore on Evidence, Second Edition, Section 2184). To the question, whether it was a violation of the 5th Amendment to admit evidence obtained in transgression of the 4th, the Supreme Court of the United States said that it was. (Gouled v. United States, *supra*). This seems to be the only doctrine of constitutional law, the limitation established by the Weeks case to this right being a mere rule of practice. If the courts can attach such a limitation, they may, by slow degrees, or even by legal avulsion, work out a way by which this constitutional right is completely denied. The power of limitation is also an instrument of destruction. When one realizes that there are more authorities that sustain the contrary view to that of the Boyd case, then he feels safe to believe that the Supreme Court of the United States really does have such power by merely sustaining the other view. The 4th and 5th Amendments, as limitations of the Federal power, are as much directed against the executive and legislative powers as against the judicial power. (Weeks v. United States, 232 U. S. 383, 398, 58 L. ed. 652, 658; U. S. vs. Grant, 18 Phil. 122; Willoughby on the Constitution of the United States, Second Editon, Section 720). The only reasonable stand, therefore, is to sustain the Boyd case without any limitation or to follow the other line of decisions, most aptly represented by Com. v. Dana (2 Motc. 329).

From this discussion it is clear that, as a rule of constitutional law, our courts must be bound by the decision in the Boyd case—that evidence obtained by government officers in transgression of Article III, section 1, sub-section (3) of our Constitution is inadmissible in evidence under subsection (18) of the same provision. The limitations to this principle, stated in the Weeks case and those which followed, as rules of practice, are not binding upon our courts. Nor is it advisable to follow those cases for reasons already stated.

The rule is different where the things are seized by private parties and later turned over to the government. In Burdeau v. McDowell (256 U. S. 465), the court said: "The papers having come into the possession of the government without a violation of petitioner's rights by governmental authority, we see no reason why the fact that individuals, unconnected with the government, may have wrongfully taken them, should prevent them from being held for use in prosecuting an offense where the documents are of an incriminatory character." Article III, section 1, sub-section (3) gives protection only against governmental authority.