

UY KHEYTIN ET AL., PETITIONERS, VS. ANTONIO VILLAREAL, JUDGE OF FIRST INSTANCE FOR THE TWENTY-THIRD JUDICIAL DISTRICT, ET AL., RESPONDENTS.

G. R. No. 16009. September 21, 1920

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an original petition, filed in this court, for the writs of induction and prohibition. It appears from the record that on April 30, 1919, one Ramon Gayanilo, corporal of the Philippine Constabulary, presented to the judge of the Court of First Instance of Iloilo an application for search warrant, the said Ramon Gayanilo stating in his application; "That in the house of Chino Uy Kheytn, Sto. Nino St., No. 20, Iloilo, under the writing desk in his store, there is kept a certain amount of opium." The application was subscribed and sworn to by the said complainant before the Honorable L. M. Southworth, judge of the Twenty-third Judicial District.

Upon that application the said judge, on the same day, issued a search warrant in the following terms:

"The United States, to any officer of the law.

"Whereas on this day proof, by affidavit, having been presented before me by Corporal Ramon Gayanilo, Philippine Constabulary, that there is probable cause to believe that in the house of Chino Uy Kheytn, Sto. Nino St., No. 20, under the desk for writing in his store there is kept a certain amount of opium.

"Therefore, you are hereby commanded during day or night to make an immediate search on the person of Uy Kheytn or in the house, Sto. Nino St., No. 20, for the following property opium and, if you find the same or any part thereof, to bring it forthwith before me in the Court of First Instance of Iloilo.

"Witness my hand this 30th day of April, 1919.

(Sgd.) "L. M. SOUTHWORTH,

"Judge of the Court of Iloilo"

Armed with that search warrant, the respondent M. S. Torralba, lieutenant of the Philippine Constabulary, accompanied by some of his subordinates, on the same day (April 30th) searched the house of the petitioner Uy Kheytn and found therein 60 small cans of opium. They wanted to I search also the bodega on the ground-floor of the house, but Uy Kheytn positively denied that it was his or that he rented it. Lieutenant Torralba wanted to be sure, and for this reason he placed a guard in the premises to see that nothing was removed therefrom, and then went away to find out who the owner of the bodega was. The next morning he learned from the owner of the house, one Segovia, of the town of Molo, that the Chinaman Uy Kheytn was the one who was renting the bodega. Thereupon Lieutenant Torralba and his subordinates resumed the search and then and there found and seized the following articles :

"No. 2.-One wrap of paper containing a broken bottle of opium liquid, which is kept in a tin box No. 1.

"No. 3.-One wrap of paper containing an opium pipe, complete, one opium container, one wrap of opium ashes, one rag soaked in opium and one thimble with opium.

"No. 4.-One leather hand bag containing 7 small bottles containing opium, with two cedula belonging to Tian Liong, with key.

"No. 5.-One wooden box containing 75 empty cans, opium containers.

"No. 6.-One tin box containing 23 small empty cans, opium containers.

"No. 7.-One cardboard box containing 3 pieces of wood, one old chisel, one file, one piece of soldering lead, one box of matches, 5 pieces of iron plates, and several other tin plates.

"No. 8.-One roll of 7 sheets of brass.

"No. 9.-Three soldering outfits.

"No. 10.-One hammer.

"No. 11.-One Chinese scale for opium.

"No. 12.-Twelve small bottles empty.

"No. 13.-Two bottles containing opium.

"No. 14.-One bundle of Chinese books of accounts with several personal letters of Chino Uy Kheyтин.

"No. 15.-One tin box containing 60 cans of molasses, with 1 small bottle containing molasses."

Thereafter a criminal complaint was filed in the court of the justice of the peace of Iloilo against all the petitioners herein, charging them with a violation of the Opium Law. They were duly arrested, and a preliminary investigation was conducted by the justice of the peace, after which he found that there was probable cause for believing that the crime complained of had been committed and that the defendants were the persons responsible therefor. The cause was duly transmitted to the Court of First Instance.

While said cause was in the Court of First Instance, pending the filing of a complaint by the provincial fiscal, the defendants, petitioners herein, through their attorney, filed a petition in the Court of First Instance, asking for the return of "private papers, books and other property" which the Constabulary officers had seized from said defendants, upon the ground that they had been so seized illegally and in violation of the constitutional rights of the defendants. It was urged (1) that the search warrant of April 30th was illegal because the requisites prescribed by the General Orders No. 58 had not been complied with in its issuance; (2) that the searches and seizures made on May 1st had been made without any semblance of authority and hence illegal; and (3) that the seizure of the defendants' books and letters was a violation of the provisions of the Jones Law providing that no person shall be compelled to testify against himself, and protecting him against unreasonable searches and seizures.

After a hearing upon said motion, the Honorable Antonio Villareal, judge, in a very carefully prepared opinion, reached the conclusion that the searches and seizures, complained of had been legally made, and consequently, denied the defendants' petition.

Thereafter and on November 22, 1919, the said defendants, petitioners herein, filed the present petition in this court, praying as follows:

"Wherefore, in view of the foregoing allegations, it is respectfully prayed that a preliminary injunction issue.

"First, restraining the respondent judge, and his successors from making any cognizance of any action of any

kind which has or may be brought against these petitioners which have resulted directly or indirectly from the unlawful searches and seizures above-mentioned;

"Second, restraining the respondent clerk of the court, the respondent fiscal, the respondent commandant of the Constabulary, and the successors of any of them, and the assistants of any of them, from any further examination of the private papers, books, and other property unlawfully seized as above alleged; from making or using the same for the purpose or in such a manner that the character or reputation of these petitioners might be injured; from making or using any copies, memorandum, notes, or extracts obtained from the books, papers, etc., so seized; from making any examinations of any of the property thus obtained or from using any reports or from publishing in any manner any reports already prepared as a result of the examination of such property; or from making any other use of the property and papers so obtained until orders are received from this court regarding the disposition of the same.

"It is further requested, that a writ of prohibition issue, restraining the respondent judge from at any time taking cognizance of any action or prosecution growing out of the unlawful searches and seizures above-mentioned, and directing such judge or his successor to order the immediate return to these petitioners of all of the papers and other property thus unlawfully obtained, together with all copies, extracts, memorandum, notes, photographs, reports, samples, or evidence obtained by reason of such searches and seizures whereby the reputation and character of petitioners may be further damaged; furthermore enjoining all of the respondents and their assistants from divulging any of the secrets or information which they have thus unlawfully obtained from these petitioners; and especially ordering the respondent judge to dismiss all actions or prosecutions already filed before him or which may hereafter come before him as a result of the unlawful acts herein alleged."

I

THE SEARCH WARRANT OF APRIL 30TH

The petitioners contend that the search warrant of April 30, 1919, was illegal, (1) because it was not issued upon either of the grounds mentioned in section 96 of General Orders No. 58, and (2) because the judge who issued it did not determine the probable cause by examining witnesses under oath, as required by section 98 of said General Orders No. 58.

Section 96 of General Orders No. 58 is as follows:

"Sec. 96. It (a search warrant) may be issued upon either of the following grounds:

"1. When the property was stolen or embezzled.

"2. When it was used or when the intent exists to use it as the means of committing a felony."

In support of their first contention the petitioners argue that the property ordered to be seized, namely, opium under the said search warrant, had not been stolen or embezzled, nor had it been used or intended to be used as the means of committing a felony; that the word "felony" is applicable only to a serious crime which is *malum per se* and not to one which is merely *malum prohibitum*, such as the possession of opium.

For the purpose of this decision we deem it unnecessary to draw the distinction between the words "felony" and "misdemeanor" as used in the common law. Suffice it to say that, whatever may be the technical common-law meaning of the word "felony," which is used in paragraph 2 of section 96 above quoted, we believe it would be the height of absurdity to hold, upon technical grounds, that a search warrant is illegal which is issued to search for and seize property the very possession of which is forbidden by law and constitutes a crime. Opium is such property. "Search-warrants have heretofore been allowed to search for stolen goods, for goods supposed to have

been smuggled into the country in violation of the revenue laws, for implements of gaming or counterfeiting, for lottery tickets or prohibited liquors kept for sale contrary to law, for obscene books and papers kept for sale or circulation, and for powder or other explosive and dangerous material so kept as to endanger the public safety." (Cooley on Constitutional Limitations, 7th ed., p. 432.)

In support of their second contention, the petitioners invoke section 98 of General Orders No. 58, which provides as follows:

"SEC. 98. The judge or justice must, before issuing the warrant, examine on oath the complainant and any witnesses he may produce and take their depositions in writing."

Section 97 provides that "a search warrant shall not issue except for probable cause" and section 98 above quoted provides the manner in which that probable cause shall be determined by the judge issuing the warrant. In the present case, however, the judge did not examine any witness under oath but relied solely upon the sworn application of the Constabulary officer in determining whether; there was probable cause. In that application the complainant swore positively: "That in the house of Chino, Uy Kheyin, Sto. Nino St., No. 20, Iloilo, under the writing desk in his store, there is kept a certain amount of opium." This statement was found to be true by the subsequent finding and seizure of a considerable quantity of opium in the place mentioned. The question now is, whether the omission of the judge to comply with the requirements of section 98 would, under the circumstances, justify the court in declaring that the search warrant in question was illegal and ordering the return of the opium found and seized under said warrant.

A search warrant may be likened to a warrant of arrest. The issuance of both is restricted by the same provision of the Jones Law (sec. 3) which is as follows:

"That no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized."

A person, then, is protected from unreasonable arrests just as much as he is protected from unreasonable searches. But suppose he happened to be arrested without any warrant, or upon a warrant which had been issued by a judge without first properly determining whether there was probable cause, and upon investigation it should be found, from his own admissions, that he was the author of the crime,-should he be released upon the ground that he had not been legally arrested? In the case of *Ker vs. Illinois* (119 U. S., 436) Ker having committed the crime of larceny, escaped and went to Peru. He was kidnapped in Peru and brought back to the State of Illinois without any pretense of authority. Passing upon the question of the constitutionality of the arrest of Ker, the Supreme Court of the United States, speaking through Mr. Justice Miller, said:

"We do not intend to say that there may not be proceedings previous to the trial in regard to which the prisoner could invoke in some manner the provisions of this clause of the Constitution; but for mere irregularities in the manner in which he may be brought into the custody of the law, we do not think he is entitled to say that he should not be tried at all for the crime with which he is charged in a regular indictment. He may be arrested for a very heinous offense by persons without any warrant, or without any previous complaint, and brought before a proper officer, and this may be in some sense said to be 'without due process of law.' But it would hardly be claimed that after the case had been investigated, and the defendant held by the proper authorities to answer for the crime, he could plead that he was first arrested 'without due process of law.'" (Followed in *U. S. vs. Grant and Kennedy*, 18 Phil., 122, 146; *U. S. vs. Wilson*, 4 Phil., 317.)

In the present case there was an irregularity in the issuance of the search warrant in question in that the judge did not first examine the complainant or any witnesses under oath, as required by section 98 of General Orders No. 58. But the property sought to be searched for and seized having been actually found in the place described by the

complainant, reasoning by analogy from the case of an improper arrest, we are of the opinion that that irregularity is not sufficient cause for ordering the return of the opium found and seized under said warrant, to the petitioners, and exonerating the latter.

II

THE SEARCH MADE ON MAY 1ST

Petitioners contend that this was made without any search warrant and without any authority of law; that the search warrant of April 30th could not be used on May 1st because that warrant had been executed on the day of its issuance. In support of this contention counsel for the petitioners, in the lower court, argued that:

"While it is true that a warrant is good for 10 days after the date of issuance, this cannot be interpreted to mean that a search warrant can be used every day for 10 days, and for a different purpose each day. This would be absurd. It is admitted, for sake of argument, that if upon a search, under a legally issued warrant, some other prohibited articles than those named in the warrant should be found, these articles might be seized. Also, it might possibly be true, that if a warrant was issued to search for a certain article and it was not found after the first search, that another search could be made sometime within the 10 days. But this is certainly the furthest possible extreme the doctrine could be carried. It certainly could not be interpreted to allow a search to be made, and after the articles for which the warrant was issued had been seized, to use this same warrant as authority to make another search."

We agree with counsel that a search warrant cannot be used every day for ten days, "and for a different purpose each day," and that after the articles for which the warrant was issued have been seized the same warrant cannot be used as authority to make another search. But this argument is not applicable to the facts in this case. It appears from the oral evidence adduced during the hearing of the petitioners' motion in the court below that the search for opium, the property mentioned in the warrant, was not completed on April 30th; it was interrupted by the necessity to ascertain who the owner of the bodega on the ground-floor was, because the petitioner Uy Kheytn falsely disclaimed ownership thereof. In other words, the search of May 1st was not made "for a different purpose," nor could it be considered "another search," but was really a continuation of the search begun on April 30th. This is shown by the fact that during the interval between the two searches the premises in question were guarded by Constabulary soldiers, and the petitioners were made to understand on April 30th that the authorities were not yet through with the search and would continue the same as soon as they found out that the bodega was also occupied by the petitioner Uy Kheytn. We are, therefore, of the opinion that the search made on May 1st was authorized under the search warrant of April 30th.

III

THE SEIZURE OF BOOKS, LETTERS, ETC.

The important question that remains to be decided is whether, under a search warrant for opium, the officers of the law were authorized to seize books, personal letters, and other property having a remote or no connection with opium. The respondent M. S. Torralba, lieutenant of the Constabulary, testified that he seized these articles because he believed or suspected that they had some relation with the opium in question; in other words, he thought that they might be used as evidence against the petitioners when they are prosecuted for a violation of the Opium Law. The respondents contend that this was a sufficient justification under the law for the seizure of such articles under the same warrant for opium.

We are of the opinion that the respondents' contention is untenable. Both the Jones Law (sec. 3) and General Orders No. 58 (sec. 97) specifically require that a search; warrant should particularly describe the place to be

searched and the things to be seized. The evident purpose and intent of this requirement is to limit the things to be seized to those, and only those, particularly described in the search warrant-to leave the officers of the law with no discretion regarding what articles they shall seize, to the end that "unreasonable searches and seizures" may not be made,-that abuses may not be committed. That this is the correct interpretation of this constitutional provision is borne out by American authorities.

"In order to comply with the constitutional provisions regulating the issuance of search warrants, the property to be seized under a warrant must be particularly described therein and no other property can be taken thereunder. The goods to be seized must be described with such certainty as to identify them, and the description must be so particular that the officer charged with the execution of the warrant will be left with no discretion respecting the property to be taken. * * * Under a warrant to search a person for stolen goods, the officer cannot lawfully take from the person a letter, such letter not being particularly described in the warrant as property to be searched for." (24 R. C. L., 714, 715.)

"It is a violation of the declaration of rights respecting searches and seizures for an officer, while searching one's person under a search warrant for stolen goods, to take from it, against the party's will, a letter written to him." (State vs. Slamon, 87 Am. St. Rep., 711.)

"We have said that if the officer follows the command of his warrant, he is protected; and this is so even when the complaint proves to have been unfounded. But if he exceed the command by searching in places not described therein, or by seizing persons or articles not commanded, he is not protected by the warrant, and can only justify himself as in other cases where he assumes to act without process. Obeying strictly the command of his warrant, he may break open outer or inner doors, and his justification does not depend upon his discovering that for which he is to make search." (Cooley on Constitutional Limitations, 7th ed., p. 434.)

That the officers of the law believed that the books, papers, etc., which they seized might be used as evidence against the petitioners herein in a criminal action against them for a violation of the Opium Law, is no reason or justification under the law for the seizure: First, because they were not "particularly described" or even mentioned in the search warrant; second, because, even if they had been mentioned in the search warrant, they could not be legally seized, for a search warrant cannot be used for the purpose of obtaining evidence; and third, because to compel a person to produce his private papers to be used in evidence against him would be equivalent to compelling him to be a witness against himself.

- The authorities for the first proposition have already been given above.

- It may be said that-

"Books of account, private documents, and private papers are property which men may lawfully possess. It is not believed that the statute (subsection 2 of section 96, G. O. 58) was intended to cover property of this class. Granting that property of which men may lawfully possess themselves has been used in the commission of a crime and not possessed nor created purely for the purpose of committing a crime, and not likely to be used again, then certainly its seizure can only be for the purpose of using the same as evidence to prove the commission of the crime already committed. This purpose is not contemplated by the provision of the law. The finding of evidence can not be the immediate reason for issuing the search warrant. To use a search warrant for the purpose of obtaining possession of property for this purpose would be an 'unreasonable' use of the remedy by search warrant, which is prohibited by law." (Regidor vs. Araullo, 5 Off. Gaz., 955, 961, 962; U. S. vs. De los Reyes and Esguerra, 20 Phil., 467.)

Judge Cooley in his work on Constitutional Limitations, 7th ed., p. 431, says:

"The warrant is not allowed for the purpose of obtaining evidence of an intended crime; but only after lawful evidence of an offense actually committed. Nor even then is it allowable to invade one's privacy for the sole

purpose of obtaining evidence against him, except in a few special cases where that which is the subject of the crime is supposed to be concealed, and the public or the complainant has an interest in it or in its destruction."

- In the case of *Boyd vs. United States* (116 U. S., 616), the Supreme Court of the United States, speaking through Mr. Justice Bradley, said:

"The seizure or compulsory production of a man's private papers to be used in evidence against him is equivalent to compelling him to be a witness against himself, and, in a prosecution for a crime, penalty or forfeiture, is equally within the prohibition of the Fifth Amendment.

"Both amendments (fourth and fifth) relate to the personal security of the citizen. They nearly run into and mutually throw light upon each other. When the thing forbidden in the Fifth Amendment, namely, compelling a man to be a witness against himself, is the object of a search and seizure of his private papers, it is an 'unreasonable search and seizure' within the Fourth Amendment.

"Search and seizure of a man's private papers to be used in evidence for the purpose of convicting him of a crime, recovering a penalty, or of forfeiting his property, is totally different from the search and seizure of stolen goods, dutiable articles on which the duties have not been paid, and the like, which rightfully belong to the custody of the law." (See also *Silverthorne Lumber Co. vs. United States*, decided Jan. 26, 1920, by the Supreme Court of the United States.)

"The seizure of a person's private papers, to be used in evidence against him, is equivalent to compelling him to be a witness against himself." (*State vs. Slamon*, 73 Vt., 212; 87 Am. St. Rep., 711.)

From all of the foregoing our conclusions are:

- That although in the issuance of the search warrant in question the judge did not comply with the requirements of section 98 of General Orders No. 58, the petitioners are not entitled to the return of the opium and its paraphernalia which were found and seized under said warrant, and much less are they entitled to be exonerated because of such permission of the judge.

- That the search made on May 1st was a continuation of the search begun on the previous day, and, therefore, did not require another search warrant.

- That the seizure of the petitioners' books, letters, telegrams, and other articles which have no inherent relation with opium and the possession of which is not forbidden by law, was illegal and in violation of the petitioners' constitutional rights. Therefore, it is hereby ordered and decreed that each and all of the respondents herein, their assistants or successors, be, and they hereby are, forbidden from examining or making any use of said books, letters, telegrams, etc., namely, the articles described in items Nos. 7, 8, 9, 10, 12, 14, and 15 of the sheriff's return (Exhibit 3, reproduced at the top of page 3 of this decision^[1]) and they are hereby ordered to immediately return the said articles to the petitioners. So ordered.

Araullo, and Villamor, JJ., concur.

Mapa, C. J., concurs in the result.

[1] See page 889, ante.

CONCURRING AND DISSENTING**AVANCEÑA, J.,**

I concur with the decision except as to the part which declares that the search warrant was irregularly issued.

CONCURRING AND DISSENTING

MOIR, J., with whom concurs, MALCOLM, J.,

In concurring in the result in this decision, I desire to state that I do not concur in that part of the decision which says that the judge did not comply with the requirement of section 98 of General Orders No. 58 before issuing an order of arrest. That section reads:

"The judge or justice must, before issuing the warrant, examine on oath the complainant and any witnesses he may produce and take their depositions in writing."

It appears that complainant in this case was a Constabulary corporal. He made affidavit before the judge of First Instance when the search warrant was issued. It does not appear that he presented any witnesses whose depositions were to be taken.

General Orders No. 58 expressly provides, in section 99 thereof,

"If the judge or justice is thereupon satisfied of the existence of facts upon which the application is based, or that there is probable cause to believe that they exist, he must issue the warrant, which must be substantially in the following form:

".....}

"Province of.....}

"The United States to any....., or policeman in the Province

"Proof, by affidavit, having this day been made before me by, etc. etc."

This court says, on page 8 of the decision:[1]

"In the present case there was an irregularity in the issuance of the search warrant in question in that the judge did not first examine the complainant or any witnesses under oath, as required by section 98 of General Orders No. 58. But the property sought to be searched for and seized having been actually found in the place described by the complainant, reasoning by analogy from the case of an improper arrest, we are of the opinion that that irregularity is not sufficient cause for ordering the return of the opium found and seized under said warrant, to the petitioners, and exonerating the latter."

We do not think there was any irregularity.

The affidavit required by law was made. It is a general practice to issue search warrants on a single affidavit. To require more than one or to require witnesses to be presented, would add to the law and would defeat the very object of a search warrant, which is to seize evidence of crime before it can be destroyed. Publicity, which would ordinarily follow the presentation of witnesses or even getting more than one affidavit, would invite, if not assure, a failure.

If one witness may be sufficient to convict a man of the gravest crime, certainly one affidavit should be sufficient for a judge to issue a search warrant upon.

Judging from the quantity of opium captured, all the articles mentioned in the decision were used by the petitioners for unlawful purposes; i. e., the carrying on of a trade in opium. Liquid opium is necessarily put up in bottles and other small receptacles, and it would seem that the metal found was for making small containers for the opium. The writer does not know why the molasses was present, but it is most frequently present where inhere is any considerable quantity of opium found.

It would seem that what petitioners really want are the Chinese account book and the letters, and the reason for their ardent desire to get them can easily be imagined.

We must follow the decisions quoted, and hold that this book and the letters should be returned, and to this I agree, but we must assume that everything else was used in and about the sale of opium, and they should not be returned.

[1] See page 894, ante.

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