

**JOSE SY JONG CHUY, MANAGER OF HOA HIN & CO., INC.,
PLAINTIFF AND APPELLEE, VS. PABLO C. REYES, SPECIAL DEPUTY
OF THE COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND
APPELLANT.**

G.R. No. 38375. December 22, 1933

Ponente: MALCOLM, J.

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MALCOLM, J.:

This case was submitted for the trial court's decision on the legal issues arising from the following:

"STIPULATION OF FACTS

"I

"The plaintiff is the manager of Hoa Hin & Co., Inc., a large shipbuilding concern with offices in Cebu, which corporation had average annual gross receipts of P900,000 for the years 1925, 1926, 1927, and 1928, and the defendant is a duly appointed special deputy of the Collector of Internal Revenue especially assigned to income tax investigation. At all times mentioned in this case, and for all purposes of this case, both the plaintiff and the defendant have acted, and do act, in their respective capacities of manager of Hoa Hin & Co., Inc., and special deputy of the Collector of Internal Revenue.

"II

"Prior to July 14, 1930, the defendant, at various times requested the plaintiff to bring the Chinese books of account of Hoa Hin & Co., Inc., for the years 1925, 1926, 1927, and 1928 to the office of the defendant at the provincial building of Cebu, Cebu, for income tax and other Internal Revenue Tax investigation, but the plaintiff refused to do so, and advised the defendant that the said Chinese books of account were at his disposition in the offices of Hoa Hin & Co., Inc., where a suitable room and all necessary conveniences would be given the defendant for making any tax inspection or tax investigation.

"III

"Consequently, on July 14, 1930, the defendant issued the attached subpoena duces tecum, marked Exhibit A directed to the plaintiff commanding him to appear at the Internal Revenue Office in the provincial building of Cebu, at 9 a. m., on July 16, 1930, bringing with him 'all the commercial BOOKS OR OTHER PAPERS OF HOA HIN & CO., INC., ON WHICH ARE RECORDED YOUR TRANSACTIONS SHOWING INCOME AND EXPENSES FOR THE YEARS 1925, 1926, 1927, AND 1928, INCLUSIVE which said subpoena duces tecum was received by the plaintiff on July 14, 1930, and is in words and figures as follows:

" 'UNITED STATES OF AMERICA

" 'PHILIPPINE ISLANDS

" 'BUREAU OF INTERNAL REVENUE

" 'SUBPOENA DUCES TECUM

" 'CEBU, CEBU, P. I.

" ' To Mr. JOSE SY HUNG CHUY

" 'Manager of Hoa Hin & Co., Inc.

"Morga, Cebu

" 'GREETING:

" 'By authority vested in me under the provisions of sections 580 and 1436 of the Administrative Code, you are hereby commanded to appear before me at Bureau of Internal Revenue, provincial building, Cebu, Cebu, Philippine Islands, on the 16th day of July, 1930, at 9 a. m., and bring with you the following: all the commercial books or any OTHER PAPERS OF HOA HIN & CO., INC., ON WHICH ARE RECORDED YOUR TRANSACTIONS SHOWING INCOME AND EXPENSES FOR THE YEARS 1925, 1926, 1927, AND 1928 INCLUSIVE, it being necessary to use them in an investigation now pending under the Income Tax and Internal Revenue Laws. Hereof FAIL NOT UNDER PENALTY OF THE LAW. This 14th day of July, 1930.

"(Sgd.) 'PABLO C. REYES

""Special Deputy Authorized to administer

oaths and to take testimony under the provisions

of section 1436, of the Administrative Code

" 'I certify that I have this.....day of....., 192 , been served with the original of this subpoena duces tecum.

"(Sgd.) 'JOSE SY JONG CHUY'

"IV

"The defendant refused to comply with this subpoena duces tecum and reiterated that these Chinese books of account could only be legally inspected and investigated at the offices of Hoa Hin & Co., Inc., in the municipality of Cebu, Province of Cebu.

"V

"Subsequently, on September 8, 1930, to make the issue more definite, the parties agreed to an amendment to the complaint by which the defendant agreed that the bringing to the offices of the Internal Revenue in the provincial building at Cebu, of the following Chinese books of account of Hoa Hin & Co., Inc., would be a sufficient compliance with the afore-mentioned subpoena duces tecum issued on July 14, 1930, which Chinese books, fifty-three (53) in number, measure per book, ten (10) inches by nine and one-half (9.5) inches by two (2) inches of two hundred (200) pages each, to wit:

1925

1926

1927

1928

Journal

3

3

3

3

Ledger

8

8

8

8

Purchase

1

1

1

2

Sales

1

1

1

1

13

13

13

14

Total

53

"VI

"As the plaintiff still insisted on his original contention that the inspection and investigation of the books of account of Hoa Hin & Co., Inc., must be made in the offices of Hoa Hin & Co., Inc., the defendant, threatened to bring contempt proceedings against the plaintiff with the result that this action was filed.

"VII

"The defendant does not specify in the subpoena duces tecum any specific document required or set forth any specific indication of any fact to be verified, but asks for the general production of the fifty-three (53) Chinese books of account of Hoa Hin & Co., Inc., for the years 1925, 1926, 1927, and 1928, to use them in an investigation now pending under the Income Tax and Internal Revenue Laws.

"VIII

"The said fifty-three (53) Chinese books of account of Hoa Hin & Co., Inc., form the principal accounts of Hoa Hin & Co., Inc., for the years 1925, 1926, 1927, and 1928, and are at times needed for checking the transactions of the company for the years mentioned.

"IX

"That the defendant has informed the plaintiff that at any time while the said fifty-three (53) Chinese books of account are being examined at the office of the Bureau of Internal Revenue, Cebu, Cebu, the said plaintiff, or any of his representatives, may consult the same during office hours."

Judgment was rendered by Judge Borromeo Veloso in favor of the plaintiff, and from the same the defendant has appealed to this court and assigns as error that "the trial court erred in declaring that the issuance of subpoena duces tecum was improperly made and not in accordance with law." In this connection it is conceded that the defendant, as a special deputy of the Collector of Internal Revenue, is authorized to administer oaths, to take testimony in any official matter or investigation conducted by him within the jurisdiction of the Bureau of Internal Revenue, and to issue a subpoena duces tecum. The question centers on whether or not the subpoena duces tecum Exhibit A, served on the plaintiff by the special deputy, has been properly issued in accordance with the laws of the Philippine Islands.

As before indicated, the parties have agreed upon the facts. It is accordingly unavailing to spend any time in a consideration of the pleadings and in suppositions not supported by any of the stipulated facts. It is only appropriate to direct attention to a few points evidenced by the stipulation. Thus it is shown that Hoa Hin & Co., Inc., the plaintiff, is a corporation, a shipbuilding concern, which does an annual gross business of P900,000 although the same principles which govern the case of this comparatively large firm would likewise govern the case of a small merchant. When the manager of the plaintiff corporation was requested by the defendant to bring the Chinese books of account of the corporation for the years 1925, 1926, 1927, and 1928, to the office of the defendant for an income tax and other internal revenue tax investigation, the plaintiff refused to do so, but instead advised the defendant that the said Chinese books of account were at his disposition in the offices of the corporation, where a suitable room and all necessary conveniences would be given the defendant for making any tax inspection or investigation. The subpoena duces tecum Exhibit A, as pointed out by the trial judge, is an ordinary mimeographed form on cheap paper without official insignia. The Chinese books mentioned in the subpoena were fifty-three in number of two hundred pages each. It is admitted that the defendant did "not specify in the subpoena duces tecum any specific document required or set forth any specific indication of any fact to be verified", but asked "for the general production of the fifty-three (53) Chinese books of account of Hoa Hin & Co., Inc., for the years 1925, 1926, 1927, and 1928, to use them in an investigation now pending under the Income Tax and Internal Revenue Laws." It is further admitted that "the said fifty-three (53) Chinese books of account of Hoa Hin & Co., Inc., form the principal accounts of Hoa Hin & Co., Inc., for the years 1925, 1926, 1927, and 1928, and are at times needed for checking the transactions of the company for the years mentioned."

Act No. 3292 provides that all the books of account of corporations of the character of the plaintiff shall be

subject to inspection and examination at any time by internal revenue officers. It is accordingly self-evident that the defendant had the right to go into the offices of the plaintiff and there conduct such an investigation of the business done by the plaintiff as seemed desirable, and that the consent given to such examination by the plaintiff did not add anything to the legal powers conferred by law upon the defendant.

Further, as provided in section 1436 of the Administrative Code:

"The Collector of Internal Revenue, the Deputy Collector of Internal Revenue, special deputies of the Collector, internal-revenue agents, provincial treasurers and their deputies, and any other employee of the Bureau thereunto especially deputed by the Collector shall have power to administer oaths and to take testimony in any official matter or investigation conducted by them touching any matter within the jurisdiction of the Bureau." The extent of such authority is delimited by section 580 of the same Code, wherein it is provided:

"When authority to take testimony or evidence is conferred upon an administrative officer or upon any nonjudicial person, committee, or other body, such authority shall be understood to comprehend the right to administer oaths and summon witnesses and shall include authority to require the production of documents under a subpoena duces tecum or otherwise, subject in all respects to the same restrictions and qualifications as apply in judicial proceedings of a similar character," The above provisions contained in the Administrative Code accordingly expressly empowered the defendant to issue a subpoena duces tecum, the act being subject in all respects to the same restrictions and qualifications as apply in judicial proceedings of a similar character. The Code of Civil Procedure is, therefore, made applicable, which brings into view a portion of codal section 402 recognizing a writ called a subpoena duces tecum, requiring a witness "to bring with him any books, documents, or other things under his control, which he is bound by law to produce in evidence."

The use of the subpoena duces tecum by the courts was considered in the case of *Liebenow vs. Philippine Vegetable Oil Co.* ([1918], 39 Phil., 60), and observations were there made intended to guide the litigant who desired to avail himself of the writ. Speaking of section 402 of the Code of Civil Procedure, it was said that, "The words 'which he is bound by law to produce in evidence' indicate a limitation upon the exigency of the writ; and it is evident that there is this difference between the ordinary subpoena to testify and the subpoena duces tecum, namely, that while the person to whom the subpoena to testify is directed is bound absolutely and without qualification to appear in response to the subpoena, the person to whom the subpoena duces tecum is directed is bound only in so far as he is required by law to produce the documents in evidence." It is the consensus of opinion here that the decision in *Liebenow vs. Philippine Vegetable Oil Co.*, supra, is in point, and that the trial judge was right in making use of the authority to reach the conclusion that the subpoena duces tecum Exhibit A was improperly issued.

Section 402 of the Philippine Code of Civil Procedure found its origin in the statutes of California, and accordingly it is wise to look to the decisions of California for assistance in solving the problem before us. The doctrines announced by the California courts are summarized in the following language: "In order to entitle a party to the issuance of such a subpoena, it must appear, by clear and unequivocal proof, that the book or document sought to be produced contains evidence relevant and material to the issue before the court, and that the precise book, paper or document containing such evidence has been so designated or described that it may be identified. It follows that a witness may not be punished for disobedience of a subpoena which requires him to produce irrelevant documents, or a subpoena which is too broad in its scope." (27 Cal. Jur., pp. 15, 16.)

The United States internal revenue laws are not as helpful as they might be because of frequent amendment and because phrased in a different and more extensive manner than are the Philippine laws on the subject. (26 U. S. Code Annotated, pp. 59, 60.) Nevertheless the scattered decisions construing the internal revenue laws of the United States furnish some information. The Federal courts have taken the attitude that since the American law

confers upon the collectors of internal revenue an extraordinary inquisitorial power, it ought to be most strictly construed. In other words, the power should be limited to books and papers concerning the subject of investigation which should be mentioned with reasonable certainty. (33 C. J., pp. 356, 357; *In re Brown* [1866], Fed. Cas. No. 1,977.)

With reference to the cases before-cited and those which will be cited in a moment, it should be recalled that the Philippine law makes the production of documents under a subpoena duces tecum subject in all respects to the same restrictions and qualifications as apply in judicial proceedings of a similar character. Therefore, it is interesting to note that even where the state or federal government conducts investigations of corporations pursuant to grand jury process for the purpose of establishing a crime or under an act like that creating the Federal Trade Commission, the United States Supreme Court has nevertheless set a limit to the use of the power and has done so in a most emphatic manner. We propose to refer to two decisions of the United States Supreme Court.

Hale vs. Henkel ([1906], 201 U. S., 43), is a leading case on the subject of search and seizure. The subpoena duces tecum issued in this case commanded the plaintiff to appear before the grand jury and to bring with him:

"1. All understandings, agreements, arrangements, or contracts, whether evidenced by correspondence, memoranda, formal agreements, or other writings, between MacAndrews & Forbes Company and six other firms and corporations named, from the date of the organization of the said MacAndrews & Forbes Company.

"2. All correspondence by letter or telegram between MacAndrews & Forbes Company and six other firms and corporations.

"3. All reports made or accounts rendered by these six companies or corporations to the principal company.

"4. Any agreements or contracts or arrangements, however evidenced, between MacAndrews & Forbes Company and the Amsterdam Supply Company or the American Tobacco Company or the Continental Company or the Consolidated Tobacco Company.

"5. All letters received by the MacAndrews & Forbes Company since the date of its organization from thirteen other companies named, located in different parts of the United States, and also copies of all correspondence with such companies." The court, while conceding that the search and seizure clause of the Fourth Amendment to the United States Constitution was not intended to interfere with the power of the courts to compel the production upon a trial of documentary evidence through a subpoena duces tecum, nevertheless found the particular subpoena duces tecum in this case to be too broad in its requisition. The court, speaking through Justice Brown, in part said:

"We are also of opinion that an order for the production of books and papers may constitute an unreasonable search and seizure within the Fourth Amendment. While a search ordinarily implies a quest by an officer of the law, and a seizure contemplates a forcible dispossession of the owner, still, as was held in the *Boyd* case, the substance of the offense is the compulsory production of private papers, whether under a search warrant or a subpoena duces tecum, against which the person, be he individual or corporation, is entitled to protection. Applying the test of reasonableness to the present case, we think the subpoena duces tecum is far too sweeping in its terms to be regarded as reasonable. It does not require the production of a single contract, or of contracts with a particular corporation, or a limited number of documents, but all understandings, contracts, or correspondence between the MacAndrews & Forbes Company, and no less than six different companies, as well as all reports made and accounts rendered by such companies from the date of the organization of the MacAndrews & Forbes Company, as well as all letters received by that company since its organization from more than a dozen different companies, situated in seven different States in the Union.

"If the writ had required the production of all the books, papers, and documents found in the office of the MacAndrews & Forbes Company, it would scarcely be more universal in its operation or more completely put

a stop to the business of that company. Indeed, it is difficult to say how its business could be carried on after it had been denuded of this mass of material, which is not shown to be necessary in the prosecution of this case, and is clearly in violation of the general principle of law with regard to the particularity required in the description of documents necessary to a search warrant or subpoena. Doubtless many, if not all, of these documents may ultimately be required, but some necessity should be shown, either from an examination of the witnesses orally, or from the known transactions of these companies with the other companies implicated, or some evidence of their materiality produced, to justify an order for the production of such a mass of papers. A general subpoena of this description is equally indefensible as a search warrant would be if couched in similar terms."

In the more recent case of *Federal Trade Commission vs. American Tobacco Co.* ([1924], 264 U. S., 298), it appeared that the law authorized the Federal Trade Commission to investigate and report facts as to alleged violations of the Anti-Trust Acts, and for this purpose granted the commission access to any documentary evidence of any corporation being investigated. The purpose of the particular petitions for mandamus sued out by the Federal Trade Commission was to require the production of records, contracts, memoranda, and correspondence for inspection and making copies. The United States Supreme Court denied the Federal Trade Commission this right, Justice Holmes saying:

"* * * Anyone who respects the spirit as well as the letter of the Fourth Amendment would be loath to believe that Congress intended to authorize one of its subordinate agencies to sweep all our traditions into the fire (*Interstate Commerce Commission vs. Brimson*, 154 U. S., 447, 479), and to direct fishing expeditions into private papers on the possibility that they may disclose evidence of crime. We do not discuss the question whether it could do so if it tried, as nothing short of the most explicit language would induce us to attribute to Congress that intent. The interruption of business, the possible revelation of trade secrets, and the expense that compliance with the commission's wholesale demand would cause, are the least considerations. It is contrary to the first principles of justice to allow a search through all the respondents' records, relevant or irrelevant, in the hope that something will turn up. * * *

"The right of access given by the statute is to documentary evidence,—not to all documents, but to such documents as are evidence. The analogies of the law do not allow the party wanting evidence to call for all documents in order to see if they do not contain it. Some ground must be shown for supposing that the documents called for do contain it. Formerly in equity the ground must be found in admissions in the answer, (*Wigram, Discovery* [2d ed.], sec. 293.) We assume that the rule to be applied here is more liberal, but still a ground must be laid, and the ground and the demand must be reasonable. (*Essgee Co. vs. United States*, 262 U. S., 151, 156, 157.) A general subpoena in the form of these petitions would be bad. Some evidence of the materiality of the papers demanded must be produced. (*Hale vs. Henkel*, 201 U. S., 43, 77.)

"* * * We cannot attribute to Congress an intent to defy the Fourth Amendment, or even to come so near to doing so as to raise a serious question of constitutional law. * * *"

The foregoing discussion will disclose that there are two factors involved in the correct solution of the question before us. The first fact which must be made to appear by clear and unequivocal proof, as a condition precedent to the right of a court, and, by analogy, an internal revenue officer, to require a person to deliver up for examination by the court or an internal revenue officer his private books and papers, is their relevancy; and the second fact which must be established in the same manner is the specification of documents and an indication of them with as much precision as is fair and feasible (*Liebenow vs. Philippine Vegetable Oil Co.*, *supra*; *Kullman, Salz & Co. vs. Superior Court* [1911], 114 Pac., 589).

Speaking to the fact of relevancy, there is absolutely no showing of the nature of any official investigation which is being conducted by the Bureau of Internal Revenue, and this is a prerequisite to the use of the power granted by section 436 of the Administrative Code. Moreover, when the production under a subpoena duces tecum is

contested on the ground of irrelevancy, it is for the movant or the internal revenue officer to show facts sufficient to enable the court to determine whether the desired documents are material to the issues. And here, all that we have to justify relevancy is the typewritten part of a mimeographed form reading: "it being necessary to use them (referring to the books) in an investigation now pending under the Income Tax and Internal Revenue Laws." This is insufficient.

But it is in the second respect that the subpoena is most fatally defective. It will be recalled that it required the production of "all the commercial books or any other papers on which are recorded your transactions showing income and expenses for the years 1925, 1926, 1927, 1928 inclusive", that these books numbered fifty-three in all, and that they are needed in the business of the corporation. In the parlance of equity, the subpoena before us savored of a fishing bill, and such bills are to be condemned. That this is so is shown by the phraseology of the subpoena which is a general command to produce all the books of account for four years. This, it seems to us, made the subpoena unreasonably broad in scope. The internal revenue officer had it within his power to examine any or all of the books of the corporation in the offices of the corporation and then having ascertained what particular books were necessary for an official investigation had it likewise within his power to issue a subpoena duces tecum sufficiently explicit to be understood and sufficiently reasonable not to interfere with the ordinary course of business. But this method was not followed. Obviously, if the special deputy could in 1930 call for the production of the books of the corporation for 1925, 1926, 1927, and 1928, the officer could have called for the production of the books for the year just previous, or 1929, and for the books of the current year, and if this could be done, the intrusion into private affairs with disastrous paralyzation of business can easily be visualized.

Generally speaking, there are two readily understandable points of view on the question at issue. The first is the viewpoint of the tax collecting officials. Taxation is a necessity as all must agree. It is for the officials who have to enforce the revenue laws to see to it that there is no evasion of those laws and that there is an equal distribution of the tax burden. To accomplish their duty it will often be incumbent upon the internal revenue officers, for the efficient administration of the service, to inspect the books of merchants and even require the production of those books in the offices of the inspecting officials. The right of a citizen to his property becomes subservient to the public welfare. All this we are the first to concede. In proper cases, the officers of the Bureau of Internal Revenue should receive the support of the courts when these officers attempt to perform in a conscientious and lawful manner the duties imposed upon them by law. The trouble is that the particular subpoena under scrutiny neither shows its relevancy nor specifies with the particularity required by law the books which are to be produced.

The second viewpoint is not that of the government on which is imposed the duty to collect taxes, but is the viewpoint of the merchant. A citizen goes into business, and in so doing provides himself with the necessary books of account. He cannot have government officials on a mere whim or a mere suspicion taking his books from his offices to the offices of the government for inspection. To permit that would be to place a weapon in the hands of a miscellaneous number of government employees some of whom might use it properly and others of whom might use it improperly. With an understanding of the obligations of the government to protect the citizen, the constitution and the organic law have done so by throwing around him a wall which makes his home and his private papers his castle. It should be our constant purpose to keep a subpoena duces tecum from being of such a broad and sweeping character as to clash with the constitutional prohibition against unreasonable searches and seizures.

Answering the question at issue, we do so without vacillation by holding that the subpoena duces tecum was not properly issued in accordance with law because the showing of relevancy was not sufficient to justify enforcing the production of the Chinese books; because the subpoena duces tecum failed to specify the particular books desired, and because a ruling should be avoided which in any manner appears to sanction an unreasonable search

and seizure. In the absence of a showing of materiality, and in the absence of all particularity in specifying what is wanted by a subpoena duces tecum, the refusal of a merchant to obey a subpoena, commanding him to produce his commercial books, will be sustained. The courts function to protect the individual citizen of whatever class or nationality against an unjust inquisition of his books and papers. As a result, we fully agree with the trial judge, and accordingly must overrule the assignment of error made by the Government. Judgment affirmed, without special pronouncement as to costs in this instance.

Avanceña, C. J., Street, Villa-Real, Abad Santos, Hull, and Diaz, JJ., concur.

DISSENTING

IMPERIAL, J.:

To my mind the subpoena duces tecum objected to by plaintiff corporation is not Exhibit A but its amendment restricting the scope of the subpoena to the production of 53 books of account, to wit:

1925

1926

1927

1928

Journal

3

3

3

3

Ledger

8

8

8

8

Purchase

1

1

1

2

Sales

1

1

1

1

13

13

13

14

Total

53

(Paragraphs V of the stipulation of facts and 7-A and 9 of the amended complaint.)

So it is a misapprehension to say that defendant, as Special Deputy Collector of Internal Revenue, called for the production in his office of "all the commercial books or any other papers of Hoa Hin & Co., Inc., on which are recorded your transactions showing income and expenses for the years 1925, 1926, 1927 and 1928 inclusive."

The defendant was assigned by the Collector of Internal Revenue as special deputy for the purpose of verifying the income tax returns filed by the plaintiff corporation. His power to conduct said verification and investigation is based on the provisions of sections 580 and 1436 of the Administrative Code which read as follows:

"Sec. 580. Powers incidental to taking of testimony.— When authority to take testimony or evidence is conferred upon an administrative officer or upon any nonjudicial person, committee, or other body, such authority shall be understood to comprehend the right to administer oaths and summon witnesses and shall include authority to require the production of documents under a subpoena duces tecum or otherwise, subject in all respects to the same restrictions and qualifications as apply in judicial proceedings of a similar character."

"SEC. 1436. Authority of officers to administer oaths and take testimony.—The Collector of Internal Revenue, the Deputy Collector of Internal Revenue, special deputies of the Collector, internal-revenue agents, provincial treasurers and their deputies, and any other employee of the Bureau thereunto especially deputed by the Collector shall have power to administer oaths and to take testimony in any official matter or investigation conducted by them touching any matter within the jurisdiction of the Bureau."

As the stipulation of facts and the amended complaint show, plaintiff did not base its objection on the lack of relevancy and certainty of the subpoena. Materiality and sufficiency in the description of the books of account above quoted were impliedly admitted by plaintiff. In fact both elements are covered by the pleadings since it is admitted that the books were to be used to verify the income tax returns filed by the plaintiff for the four years above stated and since the description of said books as given is sufficiently specific as to enable the officers of the corporation to identify all and each of them.

From the outset plaintiff's contention was that the law does not compel it to produce the required books in the defendant's office and that this officer should go to its premises for that purpose where he could examine all of said books. This contention is untenable. Sections 580 and 1436 of the Administrative Code, above-cited, expressly empower the Collector of Internal Revenue and his deputies to make such inquiries and to issue subpoena duces tecum for the production of books and documents material and necessary to any investigation.

"While the rights of a corporation are to be protected from unreasonable searches and seizures of their books and papers, still the right to inquire into the condition of a corporation exists, as does the right, by subpoena duces tecum, to secure its books and papers, and, if necessary for the purpose of enforcing a law, there is the right to compel the production of all books, letters, and records without violating the Fourth Amendment. Hence, statutes requiring corporations to produce their books and papers, or to submit to an examination of their books and papers for certain purposes, have been held not to be violative of the constitutional immunity from unreasonable searches and seizures. Therefore, despite the guaranty, a corporation may be compelled to produce its books and papers even though they tend to incriminate an officer thereof; and the protection of the immunity cannot be invoked ordinarily to justify the refusal of an officer to produce its books and papers in obedience to a subpoena duces tecum in an action against the corporation to recover a statutory penalty. Where a copartnership, illegally masquerading as a corporation, is, before the discovery of its status, compelled by a subpoena duces tecum to produce its books and papers, such production is no violation of the Fourth Amendment." (56 C. J., 1171.)

In *Standard Home Co. vs. Davis* (217 Federal Reporter, 904, 916), wherein the State law authorizing an inquiry

into the condition of corporations doing business in the State and requiring them to submit to an examination in respect thereto was challenged, as unconstitutional, the court said;

"The act is also attacked upon the ground that it authorizes the bank commissioner, his clerks, accountants, and examiners, to examine the business of such investment company, and may require it to divulge any and all facts in connection with said business, whether or not the same relates in any way to securities proposed to be sold in Arkansas. The plaintiff is a corporation, and it is now well settled by the decisions of the Supreme Court of the United States that the right to inquire into the condition of corporations exists, and, if necessary for the purpose of enforcing a law, to compel the production of all books, letters, and other records, without violating the provisions of the fourth and fifth amendments to the Constitution of the United States. (Hale vs. Henkel, 201 U. S., 43, 74, 75; 26 Sup. Ct., 370; 50 L. ed., 652; Consolidated Rendering Co. vs. Vermont, 207 U. S., 541; 28 Sup. Ct., 178; 52 L. ed., 327; 12 Ann. Cas., 658; Hammond Packing Co. vs. State of Arkansas, 212 U. S., 322, 348, 349; 29 Sup. Ct., 370; 53 L. ed., 530; 15 Ann. Cas., 645; Wilson vs. United States, 221 U. S., 361, 383; 31 Sup. Ct., 538; 55 L. ed., 771; Ann. Cas. 1912D, 558.)"

Neither could the amended subpoena duces tecum be successfully challenged as unreasonable for according to the description given in the stipulation of facts the books of account could easily be taken to the defendant's office. To say that the production of these 53 books of account corresponding to the past four years is unreasonable because it creates great embarrassment to the plaintiff corporation is equivalent, in my opinion, to nullify the power granted by law to the officers of the Bureau of Internal Revenue and to defeat the authority of the Government of the Philippine Islands to collect revenue taxes. It is argued that in the instant case the defendant could avail himself of the offer made by the manager of plaintiff corporation and proceed to its office where he could make a thorough examination of the books, instead of requiring the production of the same, which might be used by it during the ordinary course of business. This remark may be readily answered that in this case we do not aim to serve the convenience of the plaintiff corporation or its officers but to enforce the provisions of the law which are not challenged by anybody as being illegal or unconstitutional. This is not the first time this court has denied the right of the tribunals and public officers, duly authorized to conduct investigations, to call for the production of books and documents needed in connection with a judicial proceeding or an administrative investigation; and if this policy is not discontinued or abandoned I fear time will come when no court or public officer could issue regular and legal subpoena duces tecum without being challenged as unreasonable and unconstitutional, thus defeating absolutely the purpose of the law.

Before closing it might not be amiss to say that according to the stipulation of facts and pleadings no one could foretell how long the examination of the books would last. The defendant might perform his duties in 2 or 3 hours, or, say, one-half day, in which event the plaintiff corporation would not be deprived of the use of said books but for only a few hours.

For the foregoing reasons, I dissent from the majority opinion and the appealed decision should be reversed and the subpoena duces tecum, as amended, upheld, with costs against the appellee.

Butte, J.: I concur in the dissent of Justice Imperial.

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