

AGATON C. RODRIGUEZ AND JUAN EVANGELISTA, PETITIONER AND APPELLANTS, VS. VICTOR D. VILLAMIEL AND ADOLFO N. FELICIANO, RESPONDENTS AND APPELLEES.

G. R. No. 44328. December 23, 1937

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an appeal taken by the petitioners from the judgment rendered by the Court of First Instance of Tayabas on July 26, 1935, declaring legal two search warrants issued against them and authorizing the agents of the AntiUsury Board to examine the documents and papers seized, belonging to the petitioners, and to retain those that in their opinion are pertinent and necessary for whatever criminal action they may wish to bring against said petitioners.

The respondents are special agent and assistant chief executive officer, respectively, of the Anti-Usury Board of the Department of Justice.

On March 8,1935, special agent Victor D. Villamiel made two affidavits subscribed and sworn to before the justice of the peace of the provincial capital of Tayabas, then acting in the absence of the Judge of the Court of First Instance of the province, for the purpose of obtaining search warrants against each of the petitioners. The text of both affidavits is identical and the pertinent part thereof reads as follows: "Victor D. Villamiel, Special Agent, Anti-Usury Board, Dept. of Justice, having taken the oath prescribed by law, appears and states: that he has and there is just and probable cause to believe and he does believe that the books, lists, chits, receipts, documents, and other papers relating to the activities of JUAN EVANGELISTA, as usurer, are being kept and concealed in the house of said Juan Evangelista situated at Lucena, Tayabas, all of which is contrary to the statute of law."

On the 9th of said month the justice of the peace of the provincial capital, acting in the absence of the Judge of the Court of First Instance of the Province of Tayabas, issued and delivered to said respondent the two search warrants against the petitioners, couched in the following tenor: "To any officer of the law, whereas on this day proof, by affidavit, having been presented before by Victor D. Villamiel, Special Agent, Anti-Usury Board that he has and there is just and probable cause to believe and he does believe that the books, lists, chits, receipts, documents, and other papers relating to the activities of JUAN EVANGELISTA as usurer are being kept and concealed in his house situated at Lucena, Tayabas, Philippine Islands, all of which is contrary to the statute of law. Therefore, you are hereby commanded during day or night or both to make an immediate search on the person of JUAN EVANGELISTA or in the house of said Juan Evangelista, situated at Lucena, Tayabas, P. I. for the following property books, lists, chits, receipts, documents, and other papers relating to his activities as usurer, and, if you find the same or any part thereof, to bring it forthwith before me in the Court of First Instance of Lucena, Tayabas. Witness my hand this 9th day of March, 1935. (Sgd.) FEDERICO M. UNSON, Juez de Cabecera, in the absence of the Judge of the Court of First Instance, Ducena, Tayabas, Philippine Islands)."

On the afternoon of the same day, Villamiel, accompanied by other agents of the Anti-Usury Board and a constabulary soldier, executed the warrants, went to the residences of the petitioners, searched them and seized documents and papers belonging to both petitioners, placing them in two small valises furnished by the petitioners themselves. The special agent issued a receipt to each of the petitioners, without specifying the documents and papers seized by him, which, together with the small valises, were taken by him to his office in Manila, keeping them therein until he was ordered by the Court of First Instance of Tayabas to deposit them in the office of the clerk of court.

On March 21, 1935, the petitioners instituted this proceeding by filing a petition praying that the search warrants be declared null and void and illegal; that the special agent Villamiel be punished for contempt of court for having conducted the searches and for having seized the documents and papers without issuing detailed receipts therefor and for not having turned them over to the court that issued the warrants, and, finally that said documents and papers be ordered returned to the petitioners.

After the special agent had filed his answer, the case was tried, following which the Court of First Instance rendered judgment finding said special agent guilty of contempt of court and sentencing him to pay a fine of P10. In said decision the court declared valid the search warrants and the seizure of the documents and papers but ordered all of them to be deposited with the clerk of court, authorizing the agents of the Anti-Usury Board to examine them and retain those that in their opinion are necessary and material to whatever criminal action they may wish to bring against the petitioners.

In this appeal the attorney for the petitioners contend that the judgment of the court is erroneous: (1) for having declared the search warrants valid; (2) for having sanctioned the seizure to the documents and papers; and (S) for having authorized the agents to examine them and to retain those that may be necessary for use as evidence against the petitioners.

- A search warrant is an order in writing, issued in the name of the People of the Philippine Islands, signed by a judge or a justice of the peace, and directed to a peace officer, commanding him to search for personal property and bring it before the court (sec. 95, General Orders No. 58, as amended by section 6 of Act No. 2886). Of all the rights of a citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves the exemption of his private affairs, books, and papers from the inspection and scrutiny of others (In re Pacific Railway Commission, 32 Fed., 241; Interstate Commerce Comm. vs. Brimson, 38 Law. ed., 1047; Boyd vs. U. S., 29 Law. ed., 746; Carroll vs. U. S., 69 Law. ed., 543, 549). While the power to search and seize is necessary to the public welfare, still it must be exercised and the law enforced without transgressing the constitutional rights of citizens, for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government (People vs. Elias, 147 N. E., 472). (Alvarez vs. Court of First Instance of Tayabas and Anti-Usury Board, 35 Off. Gaz., 1183.)

- As the protection of the citizen and the maintenance of his constitutional rights is one of the highest duties and privileges of the court, these constitutional guaranties should be given a liberal construction or a strict construction in favor of the individual, to prevent stealthy encroachment upon, or gradual depreciation of, the rights secured by them (State vs. Custer County, 198 Pac, 362; State vs. McDaniel, 231 Pac, 965; 237 Pac, 373). Since the proceeding is a drastic one, it is the general rule that statutes authorizing searches and seizures or search warrants must be strictly construed (Rose vs. St. Clair, 28 Fed. [2d], 189; Leonard vs. U. S., 6 Fed. [2d], 353; Perry vs. U. S., 14 Fed. [2d], 88; Gofer vs. State, 118 So., 613). (Alvarez vs. Court of First Instance of Tayabas and AntiUsury Board, supra.)

- The petitioners contend that the search warrants issued by the court are illegal because they have been based on

the affidavits of special agent Victor D. Villamiel wherein he affirmed and stated that he had no personal knowledge of the facts that were to serve as basis for the issuance of the search warrants, but merely confined himself to asserting that he believed and there was probable cause to believe that the documents and papers were related to the activities of the petitioners as usurers. As has been seen, the special agent's affirmation in this respect consisted merely in the following: "that he has and there is just and probable cause to believe and he does believe that the books, lists, chits, receipts, documents and other papers relating to the activities of * * * as usurer, are being kept and concealed in the house of said * * * situated at Lucena, Tayabas, all of which is contrary to the statute of law."

Section 1, paragraph 3, of Article III of the Constitution, relative to the bill of rights, provides that "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, 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." Section 97 of General Orders No. 58 provides that "A search warrant shall not issue except for probable cause and upon application supported by oath particularly describing the place to be searched and the person or thing to be seized." It will be noted that both provisions require that there be not only probable cause before the issuance of a search warrant but that the search warrant must be based upon an application supported by oath of the applicant and the witnesses he may produce. In its broadest sense, an oath includes any form of attestation by which a party signifies that he is bound in conscience to perform an act faithfully and truthfully; and it is sometimes defined as an outward pledge given by the person taking it that his attestation or promise is made under an immediate sense of his responsibility to God (Bouvier's Law Dictionary; *State vs. Jackson*, 137 N. W., 1034; *In re Sage*, 24 Oh. Cir. Ct. [N. S.], 7; *Pumphrey vs. State*, 122 N. W., 19; *Priest vs. State*, 6 N. W., 468; *State vs. Jones*, 154 Pac, 378; *Atwood vs. State*, 111 S., 865). The oath required must refer to the truth of the facts within the personal knowledge of the petitioner or his witnesses, because the purpose thereof is to convince the committing magistrate, not the individual making the affidavit and seeking the issuance of the warrant, of the existence of probable cause (*U. S. vs. Tureaud*, 20 Fed., 621; *U. S. vs. Michalski*, 265 Fed., 839; *U. S. vs. Pitotto*, 267 Fed., 603; *U. S. vs. Lai Chew*, 298 Fed., 652). The true test of sufficiency of an affidavit to warrant issuance of a search warrant is whether it has been drawn in such a manner that perjury could be charged thereon and affiant be held liable for damages caused (*State vs. Roosevelt County*, 20th Jud. Dis. Ct., 244 Pac, 280; *State vs. Quartier*, 236 Pac, 746).

It will likewise be noted that section 1, paragraph 3, of Article III of the Constitution prohibits unreasonable searches and seizures. Unreasonable searches and seizures are a menace against which the constitutional guaranties afford full protection. The term "unreasonable search and seizure" is not defined in the Constitution or in General Orders No. 58, and it is said to have no fixed, absolute or unchangeable meaning, although the term has been defined in general language. All illegal searches and seizures are unreasonable while lawful ones are reasonable. What constitutes a reasonable or unreasonable search or seizure in any particular case is purely a judicial question, determinate from a consideration of the circumstances involved, including the purpose of the search, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured (*Go-Bart Importing Co. vs. U. S.*, 75 Law. ed., 374; *Peru vs. U. S.*, 4 Fed. [2d], 881; *U. S. vs. Vatune*, 292 Fed., 497; *Agnello vs. U. S.*, 70 Law. ed., 145; *Lambert vs. U. S.*, 282 Fed., 413; *U. S. vs. Bateman*, 278 Fed., 231; *Mason vs. Rollins*, 16 Fed. Cas. [No. 9252], 2 Biss., 99). (*Alvarez vs. Court of First Instance of Tayabas and Anti-Usury Board*, supra.)

In view of the foregoing and in accordance with the above-cited authorities, it appears that the affidavits, which served as the exclusive basis of the search warrants, are insufficient and fatally defective by reason of the manner in which the oaths were made and, therefore, it is hereby held that the search warrants in question and the

subsequent seizure of the documents and papers are illegal and do not in any way warrant the deprivation to which the petitioners were subjected.

- The last ground alleged by the petitioners in support of their claim that the search warrants were obtained illegally, is that the documents and papers were seized in order that the Anti-Usury Board might provide itself with evidence to be used by it in the criminal cases which might be filed against them for violation of the Anti-Usury Law. At the hearing of the case, it was shown that the documents and papers had really been seized to enable the Anti-Usury Board to conduct an investigation and later use all or some of them as evidence against the petitioners in the criminal cases that may be brought against them. The seizure of books and documents by means of a search warrant, for the purpose of using them as evidence in a criminal case against the person in whose possession they were found, is unconstitutional because it makes the warrant treasonable, and it is equivalent to a violation of the constitutional provision prohibiting the Compulsion of an accused to testify against himself (*Uy Kheytyin vs. Villareal*, 42 Phil., 886; *Alvarez vs. Court of First Instance of Tayabas and Anti-Usury Board*, *supra*; *Brady vs. U. S.*, 266 U. S., 620; *Temperani vs. U. S.*, 299 Fed., 365; *U. S. vs. Miadden*, 297 Fed., 679; *Boyd vs. U. S.*, 116 U. S., 616; *Carroll vs. U. S.*, 267 U. S., 132). Therefore, it appearing that the documents and papers were seized for the purpose of fishing for evidence to be used against the petitioners in the criminal proceedings for violation of the Anti-Usury Law which might be instituted against them, this court holds that the search warrants issued are illegal and that the documents and papers should be returned to them.

For the foregoing reasons, the appealed judgment is reversed and it is ordered that any of the judges presiding over the Court of First Instance of Tayabas, in turn, direct the immediate return of the documents and papers in question to the petitioners, without special pronouncement as to costs. So ordered.

Villa-Real, Abad Santos, Diaz, and Concepcion, JJ., concur.

CONCURRING

LAUREL, J.,

In concurring in the foregoing opinion, I desire to observe that the provision in our Constitution with reference to unreasonable searches and seizures is not the same as that contained in the Jones Law. Under the Constitution, the right guaranteed is declared a popular right. "The right of the people * * *", so runs the precept. The provision also is made more specific and extends to "persons, houses, papers, and effects". The Constitution also specifically requires the determination of probable cause by the judge himself "after examination under oath or affirmation of the complainant and the witnesses he may produce." The incorporation of these requirements is intended to bulwark individual security, home and legitimate possessions. Furthermore, they were intended to curb certain prevalent abuses in the past.

Usury, is admittedly an evil which should be eradicated. While courts should cooperate with the government in an effort to eradicate this evil through proper interpretation and application of the law, it is of greater importance that the fundamental provisions of the Constitution with reference to the protection of individual rights should be upheld and preserved. The prosecution of criminals is a bounden duty of government but it should be accomplished by adherence to rather than by relaxation of fundamental constitutional principles. This is said notwithstanding the apparent tendency in other countries to liberalize the application of the constitutional principle in favor of the Government to arrest the advancing tide of crime. In our case, I express the opinion that the more effective enforcement of the Usury Law could be achieved by an improvement of existing legislation, the creation of administrative agencies endowed with greater powers, and the coordination of the activities of the

agencies thus created with those of the other instrumentalities of the government.

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