

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VALERIANO DE LOS REYES AND GABRIELA ESGUERRA, DEFENDANTS AND APPELLANTS.

G.R. No. 6800. November 16, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of Manila, the Hon. Charles S. Lobingier presiding, convicting each of the appellants of a violation of section 31 of Act No. 1761 and sentencing each of them to six months' imprisonment and to pay the costs of the action.

It appears that a few days prior to the 5th day of November, 1910, the appellant Gabriela Esguerra, who lived in San Miguel de Mayumo, being a friend of the family of the other appellant, Valeriano de los Reyes, came to visit him and his wife at their home in the city of Manila; that on the said 5th day of November, and while Gabriela was still there, certain revenue officials went to the house of the accused Valeriano to search for opium; that having arrived there they were refused admission to the house by Valeriano upon the ground that they were not authorized to search his premises, they having no search warrant authorizing them to do so; that, after a few moments' conversation, and upon their assertion that they were officers of the law, while not consenting, he offered no physical resistance to their entry, and the search for the drug began; that while some of the officers were in the house prosecuting the search therein, others were on the outside watching to see that no one left the house; that during the progress of the search in the front part of the house one of the officers outside saw the accused Gabriela throw a package from the window of the kitchen into the grass behind the house; that upon recovering the package it was found to contain a considerable quantity of morphine.

It is conceded in this case that at the time the drug was discovered the defendant Valeriano was in the front part of the house, while the accused Gabriela was in a room in the rear used as a kitchen; that there is no direct evidence of any kind showing that the accused Valeriano had any knowledge whatever of the fact that the accused Gabriela had possession of the drug. It is substantially admitted by the court in its opinion convicting Valeriano that the only evidence relative to his knowledge that the opium was in his house is derived from the fact that he refused permission to the officials to search his premises, the inference being drawn from such refusal that the accused had knowledge of the fact that the contraband drug was located in his house, otherwise he would have offered no objection to the search. The trial court says:

"Counsel for the defense does not deny that if the Government's evidence is accepted as true the opium in question was in the woman's possession, but he denies that it was in the man's also. But under the law the said accused is guilty if the evidence discloses his 'knowingly having on his premises any opium' (Act No. 1761, sec. 31). The man admitted (p. 18) on the stand that the house was his; and that he knew that the opium was there seems clear from the fact the he endeavored to prevent the search of the premises."

This is all that the trial court has to say with reference to the evidence which supports the conviction of the

accused Valeriano. We do not believe that this is sufficient. The accused Gabriela was only a visitor in the house of Valeriano. She had been there but a short time. At the time of the search the morphine was found exclusively in her possession and under her control. It nowhere appears that any member of the family of Valeriano had the slightest knowledge of its existence. It was only when the accused herself was about to be searched that she relinquished possession and control of the drug in an effort to protect herself against the consequences of the search. Rather than indicate that anyone else had knowledge of her possession of the drug, the proofs seem to suggest that it was her effort to keep knowledge of such possession from every other person, including Valeriano and his family.

The fact that Valeriano refused the officers permission to search his house for opium can not be taken against him. No public official or other person in any country where that portion of the Constitution of the United States against searches and seizures or similar provision is in force, has the right to enter the premises of another without his consent for the purpose of search or seizure without first being¹ provided with the proper search warrant for the purpose, obtained in the manner provided by law. (Sec. 5 of the Act of Congress of July 1, 1902; sees. 95, 96, 97, and 98 of the Code of Criminal Procedure.) Judge Cooley, in his Constitutional Limitations, sixth edition, say at page 364 and following pages:

"Near in importance to exemption from any arbitrary control of the person is that maxim of the common law which secures to the citizen immunity in his home against the prying eyes of the government, and protection in person, property, and papers against even the process of the law, except in a few specified cases. The maxim that 'every man's house is his castle' is made a part of our constitutional law in the clauses prohibiting unreasonable searches and seizures, and has always been looked upon as of high value to the citizen.

"If in English history we inquire into the original occasion for these constitutional provisions, we shall probably find it in the abuse of executive authority, and in the unwarrantable intrusion of executive agents into the houses and among the private papers of individuals, in order to obtain evidence of political offenses either committed or designed. * * *.

"The history of this controversy should be read in connection with that in America immediately previous to the American Revolution, in regard to writs of assistance issued by the courts to the revenue officers, empowering them, in their discretion, to search suspected places for smuggled goods, and which Otis pronounced 'the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law book;' since they placed 'the liberty of every man in the hands of every petty officer.' All these matters are now a long way in the past; but it has not been deemed unwise to repeat in the State constitutions, as well as in the Constitution of the United States, the principles already settled in the common law upon this vital point in civil liberty.

"For the service of criminal process, the houses of private parties are subject to be broken and entered under circumstances which are fully explained in the works on criminal law, and need not be enumerated here. And there are also cases where search-warrants are allowed to be issued, under which an officer may be protected in the like action. But as search-warrants are a species of process exceedingly arbitrary in character, and which ought not to be resorted to except for very urgent and satisfactory reasons, the rules of law which pertain to them are of more than ordinary strictness; and if the party acting under them expects legal protection, it is essential that these rules be carefully observed.

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"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.

Those special cases are familiar, and well understood in the law. 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. A statute which should permit the breaking and entering a man's house, and the examination of books and papers with a view to discover the evidence of crime, might possibly not be void on constitutional grounds in some other cases; but the power of the legislature to authorize a resort to this process is one which can properly be exercised only in extreme cases, and it is better often times that crimes should go unpunished than that the citizen should be liable to have his premises invaded, his desks broken open, his private books, letters, and papers exposed to prying curiosity, and to the misconstruction of ignorant and suspicious persons, and all this under the direction of a mere ministerial officer, who brings with him such assistants as he pleases, and who will select them more often with reference to physical strength and courage than to their sensitive regard to the rights and feelings of others. To incline against the enactment of such laws is to incline to the side of safety. In principle they are objectionable; in the mode of execution they are necessarily odious; and they tend to invite abuse and to cover the commission of crime. We think it would generally be safe for the legislature to regard all those searches and seizures 'unreasonable' which have hitherto been unknown to the law, and on that account to abstain from authorizing them, leaving parties and the public to the accustomed remedies.

"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.

"In other cases than those to which we have referred, and subject to the general police power of the State, the law favors the complete and undisturbed dominion of every man over his own premises, and protects him therein with such jealousy that he may defend his possession against intruders, in person or by his servants or guests, even to the extent of taking the life of the intruder, if that seem essential to the defense."

Judge Cooley in a note quotes the eloquent passage from Chatham's speech on General Warrants as follows (p. 364):

"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."

In the case of *McClurg vs. Brenton* (123 Iowa, 368), the court, speaking of the right of an officer to enter a private house to search for stolen goods, said:

"The right of the citizen to occupy and enjoy his home, however mean or humble, free from arbitrary invasion and search, has for centuries been protected with the most solicitous care by every court in the English-speaking world, from Magna Charta down to the present, and is embodied in every bill of rights defining the limits of governmental power in our own republic.

"The mere fact that a man is an officer, whether of high or low degree, gives him no more right than is possessed by the ordinary private citizen to break in upon the privacy of a home and subject its occupants to the indignity of a search for the evidence of crime, without a legal warrant procured for that purpose. No amount of incriminating evidence, whatever its source, will supply the place of such warrant. At the closed door of the home, be it palace or hovel, even blood-hounds must wait till the law, by authoritative process, bids it open. Even with a warrant, the law of this state forbids a search in the nighttime, save upon a showing

therefor, and upon special authority expressed in the writ. (Code, sec. 5555.) A right thus carefully guarded by the statute as well as by the common law is not to be lightly disregarded."

In the case of *Bailey vs. Eagatz* (50 Wis., 554), the court said:

"It is very questionable whether the defendant would, by virtue of his office as policeman, be justified in demanding an entrance into the plaintiff's house in the nighttime, and after the family had retired, even though the boy he claims he was looking for had been there. Having no warrant or authority for his arrest, we think he would not have been justified in going further than making a proper inquiry upon the subject, and requesting, in a proper manner, to be permitted to enter the house to make search. He was not in a position to demand an entrance. And as there is evidence tending to prove that the defendant demanded an entrance into the house, and that he entered against the will of the plaintiff, the court was not justified in saying, as a matter of law, that the defendant lawfully entered the house of the plaintiff."

Article 205 of the Penal Code of the Philippine Islands reads as follows:

"The penalties of suspension in its minimum and medium degrees and a fine of not less than 325 and not more than 8,250 pesetas shall be imposed upon the following persons:

"1. Any public officer, other than a judicial officer, who, in the absence of the authority referred to in article 200 shall enter the dwelling of a Spaniard or of a foreigner without his consent.

"2. Any public officer, other than a judicial officer, who, without authority of law or of some general regulation in force in the Philippine Islands, shall search the papers and effects in the dwelling of a Spaniard or of a foreigner, unless the owner shall have given his consent thereto.

"If the papers and goods searched are not restored to their owner immediately thereafter, the penalty shall be that next higher in degree.

"If the offense penalized in paragraphs 1 and 2 of this article be committed in the nighttime, the penalty shall be suspension in its medium and maximum degrees and a fine of not less than 625 and not more than 6,250 pesetas: Provided, however, That in cases falling within the second subdivision of paragraph two the penalty shall be that next higher in degree than the penalties designated in said paragraphs one and two."

Commenting on this article, Viada, in his *Treatise on the Spanish Penal Code*, says (vol. 2, p. 130, etc.):

"Article 5 of the constitution of 1869 provided that no one should enter the domicile of a Spaniard or of a foreigner residing in Spain without his consent except in urgent cases of fire, flood, or some other similar danger, or in case of unlawful aggression proceeding from within, or for the purpose of rendering assistance to a person calling for help. Outside of these cases the entrance into the domicile of a Spaniard or of a foreigner could only be authorized by a competent judge and it could only be effected in the daytime. However, when an offender was caught in flagrante delicto and was pursued by the authorities or their agents, and he took refuge in his own domicile, the authorities or their agents could enter the premises for the sole purpose of arresting him; and if he should seek refuge in the domicile of another, it was necessary to first make a demand upon the occupant of the house.

"That inviolability of the domicile, as provided in the aforesaid article of the constitution, is what paragraph 1 of the said article came to protect by means of its penal sanction.

"The constitution of 1876, now in force, provided, in regard to the inviolability of the domicile, only that: 'No one shall enter the domicile of a Spaniard or of a foreigner residing in Spain without his consent, except in the cases and in the manner expressly provided by law.'

"We find the same principle quoted *ad pedem litterae* in article 545 of the Code of Criminal Procedure now in force, article 550 of which has in part modified the provisions of the constitution of 1869 upon the subject by

providing that the judge or tribunal taking cognizance of the cause may decree the entrance into and search of any closed building or place, or any part thereof, constituting the domicile of any Spaniard or foreigner residing in Spain, either during the day or the nighttime, if the urgency of the case should so require, in the cases enumerated in article 546, that is to say, when there is reason to believe that either the offender or the instruments of the crime, books, papers, or any other things which may serve as a clue to the discovery of the crime, might be found therein; but this, provided the interested party consents thereto as stated in article 6 of the constitution; or, in the absence of his consent, by virtue of an order of the court which must be immediately served upon the party affected thereby, within the twenty-four hours at the most after the issuance of such order. The order shall set out the grounds thereof and the judge must expressly state therein the particular building" or place to be entered or searched and whether the entrance and search is to be made during the day or the nighttime, and the name of the officer or official who shall execute the order. (Art. 558 of the Code of Criminal Procedure.) It should be also borne in mind that, according to article 553 of the said code, police officials may now, on their own authority and, therefore, without the necessity of a special order of the court, make any search and, hence, enter any inhabited place when a warrant has been issued for the arrest of any person and his capture is sought; and also when a person is caught in flagrante delicto, or when an offender who is closely pursued by the agents of the authorities, should seek to conceal himself, or seek refuge, in a private house. In all these cases the entrance of a public official into the domicile of another no longer constitutes the crime penalized in paragraph 1 of this section." (2 Viada, Penal Code, pp. 130-132.)

Groizard in his work on the Penal Code of Spain, commenting on articles 215, 216, and 217 thereof, says:

"In the early history of most peoples we find beliefs and traditions which bear witness to the ancient respect for man's home.

"We should not be surprised at this, for religion, under which primitive families were constituted, gathered under the same roof all of the members thereof to worship their protecting gods, at the same time, with the same prayers, and in accordance with the same rites. Eneas, when he abandoned Troy, did not save from the conflagration and take with him the gods of the city, but its Lares and Penates. The Hebrews themselves, a happy exception in ancient history, the only worshippers of the true God, the creator of heaven and earth, invoked him by the names of God of Abraham, of Isaac and of Jacob.

"The house of man was the first house of God: the home the primitive altar. Family worship preceded public worship ; the sanctity of the home preceded that of the temple.

"In Rome the home of the citizen was a safe refuge, a sacred asylum. Its inviolability was at once proclaimed, both by the jurists and by the laws. Cicero exclaimed: 'Quid est sanctius, quid omni religione munitius quam uniuscujusque civium domus ? Hoc perfugium est ita sanctum omnibus, ut inde abripi neminem fas sit.' The Cornelian Law gave strong protection to domiciles. Any acts of violence which resulted in an invasion thereof were anathematized and were likened to similar acts committed against the person. The right to bring persons before tribunals and magistrates, however expeditious, absolute and securely protected by the laws, did not prevail over the inviolability of the domicile. 'De domo sua nemo extrahi debet,' says with eloquent laconism one of the ancient laws. Another law provided that: 'Plerique putaverunt nullum de domo sua in jus vocari licere, quia domus tutiissimum cuique refugium atque reeceptaculum sit, eumque qui inde in jus vocaret vim inferre videri.'

"During the earliest centuries of the middle ages, the religious sentiment, which was so greatly encouraged and revived by the church, placed the temples and cloisters beyond the possibility of any violent attacks. But the security of the domicile, as well as personal security, sought its own defense in the only effective protection of the citizen's rights existing during those turbulent times, to wit, force. The home was converted into a castle, the fields bristled with fortresses, and the towns were surrounded by walls. The sentiment of individual liberty which, with the barbarians, made its noisy entrance in history, impressed every one most strongly with the right which he had, by himself, and with the assistance of his relatives and friends, to protect the entrance to

his domicile, meeting force with force, and opposing to the unjust violence of aggression the just violence of resistance.

"When monarchy triumphed over that more real than apparent anarchy wherein all of 'the elements which were to serve later as the foundation of the great modern nations were purified through struggle, the protection of the person and the domicile were placed in the hands of the king as the representative of all social forces. 'In the name of the king,' shouted the magistrates and their agents when pursuing an alleged offender in order to arrest him, and it was only by invoking the name of the king that the doors of a private house could be opened whenever they had to perform any functions or acts therein in the discharge of their duties.

"What religion did among primitive peoples, and individual sentiment in the middle ages and the royal authority in despotic governments, in defense of the domicile, should be accomplished through the laws in those countries governed by a constitution.

"Unfortunately the political disturbances which have agitated almost all those countries which have passed from a regime of absolutism to liberty, and particularly our country, Spain, have been the cause of the inviolability of the domicile having been very little respected in practice.

"Some progress, however, has been made in the right direction. Victory seems assured in the field of legislation. All that is necessary is that it take root in the customs of the people. - The English subject says with pride, 'My home is my castle.' Would to God that the Spaniards could rightfully say the same thing!"

"The constitution of 1869 proclaimed the following principles as to the domicile:

"No one shall enter the domicile of a Spaniard, or of a foreigner residing in Spain, without his consent, except in the urgent cases of conflagration, flood, or some other similar danger, or in case of unlawful aggression proceeding from within, or in order to render assistance to someone calling for such assistance.

"Except in these cases, the entrance into the domicile of a Spaniard or of a foreigner residing in Spain, and the searching of his papers and effects, can only be decreed by a competent judge, and must be done in the daytime.

"The search for papers and effects shall always be made in the presence of the interested party, or of some member of his family, and, in the absence of either, of two witnesses, residents of the same town.

"However, when an offender is caught in flagrante delicto and is pursued by the authorities or their agents, and he should seek refuge in his own domicile, said authorities or their agents may enter therein for the sole purpose of arresting him. If he should seek refuge in the domicile of another, it will be necessary to first inform the occupant of the premises.'

"It is the purpose of the three sections which precede these commentaries to protect these rights by penal sanction.

"The first thing to be ascertained is whether they have been repealed, either in whole or in part, by the constitution of 1876.

"The constitution provides: 'No one shall enter the domicile of a Spaniard, or of a foreigner residing in Spain, without his consent, except in the cases and in the manner expressly provided by law.

"The search for papers and effects shall always take place in the presence of the interested party, or of some member of his family, and, in the absence of either, of two witnesses, residents of the same town.'

"The difference between these two fundamental laws is that the former announces the principle and determines the rights which are a consequence thereof, whereas the latter merely announces the principle, leaving the matter of its application to be provided for in subsequent legislation.

"The logical deduction from this is that the sections of the code still preserve their full force and vigor, either because the constitution contains no provision in conflict therewith, or because they, being an integral part of the law, have to be enforced until they are repealed, in conformity with the constitution itself, which declares that no one can enter the domicile of a Spaniard, or of a foreigner residing in Spain, without his consent, except in the cases and in the manner expressly prescribed by law.

"To distinguish them and to avoid any confusion as to whether the entrance constitutes a mere abuse or an act performed by the authorities in the discharge of their duties, the first thing to be taken into consideration is whether or not the constitutional guaranties have been suspended. If they have, the inviolability of the domicile disappears and, therefore, the official who, without the consent of the occupant of the house, enters the same in the discharge of his duties commits no crime.

"In this delicate matter, we must also distinguish authorities from authorities. The administrative authorities and their agents, when the provisions of the constitution are in full force and operation, can, without any responsibility whatsoever, enter the domicile of another only in the urgent cases of conflagration, flood, or similar danger, or in case of unlawful aggression proceeding from within the premises, or for the purpose of rendering assistance to a person calling for help, or in the pursuit of an offender who, having been caught in flagrante delicto, should seek refuge in his own domicile, for the sole purpose of his arrest.

"Judicial authorities, however, have only one prohibition, to wit, that they can only act in the daytime, but even this does not apply to the cases of alarming urgency above enumerated.

"The code has endeavored to avoid, if not in whole at least in part, in a very ingenious manner, without detriment whatsoever to the constitutional provision, the great inconvenience which in the prosecution of crimes and the punishment of criminals may result from the absolute prohibition imposed upon judicial authorities to enter in the nighttime the domicile of a citizen, without the latter's consent. The method adopted by the code has been to declare that the occupant of the house who refuses the judicial authorities the necessary permission to enter his premises in the nighttime for the purpose of arresting an offender shall be considered an accessory after the fact in relation to the crime committed.

"In other respects, the penalties provided by the code are adequate for the abuses which are sought to be corrected. The administrative official who, in the daytime, invades the domicile of a person, is punished with suspension in its minimum and medium degrees and a fine of from 125 to 1,250 pesetas. If the invasion takes place in the night-time, and greater alarm is thereby created, the suspension is increased to the medium and maximum degrees and the fine to from 250 to 2,500 pesetas. The judicial authority who shall commit the same act shall be punished with suspension in the minimum and medium degrees and by a fine of from 125 to 1,250 pesetas." (Groizard, vol. 3, Commentaries on the Spanish Penal Code, pp. 327-331.)

In Alcubilla (Diccionario de la Administration Española, pp. 454-456), the following appears:

"Article 7 of the constitution of 1845, which corresponds to article 6 of the constitution now in force, provided, among other things, that the domicile of a Spaniard could not be entered except in the cases and in the manner provided by law, thus announcing in a most solemn manner the principle that a man's home is his kingdom, as an eminent jurist very eloquently puts it, or, according to another jurist, the inviolable asylum of the citizen and of his family, the veil which covers the acts which outside of the home should not be published, and the wall which separates one family from another and from the city.

"What a lofty conception! That within the limits of his home man be in a certain sense emancipated from the rest of the community; that in his own house each father of a family is the chief to whom all should render the highest respect and consideration, which is not due even to the authorities themselves; that without any bolts on the doors each family considers itself safe in its own shelter, both in their persons and in their secrets. That is what the law contemplated when it inserted in the constitution that guaranty which we have mentioned. It commands that only in the cases and in the manner expressly provided by law can the domicile of a Spaniard

or of a foreigner be entered without his consent; and hence the reason why the Penal Code provides a penalty for the citizen who enters the home of another against the will of the occupant, and the public official or judge who, taking advantage of his official position, enters the house of any person except in the cases and in the manner provided by law.

"But, what cases are those, we may be asked, in which the authorities may invade the home of a citizen by entering the same against his will? What formalities are necessary in order to do so? Let us see.

"Very limited are the cases in which the law authorizes an entrance into the domicile of a citizen and then only on account of the serious consequences which would follow if it were made absolutely inviolable. Far from accomplishing the result which, by this guaranty, the legislature contemplated, property, personal security, public order, and all other rights which are the subject of the penal laws, would, on the contrary, remain unprotected. The criminal would seek refuge in his own house, and, shielding himself with the inviolability of his domicile, would laugh and sneer at the rights of the citizen, and would with impunity challenge the whole community, which would be absolutely helpless and at the mercy of the wrongdoer.

"The home, therefore, can not be guaranteed as a shelter of crime and bad faith, and, for that reason, with the formalities hereinafter enumerated, the public authorities may enter the house of any citizen in the following cases:

"1. To arrest any person against whom a warrant of arrest has been issued.

"2. To capture the person of any known criminal, either because of his having been caught in flagrante delicto, or because there is reasonable ground to believe that he is guilty, although no warrant for his arrest has been actually issued.

"3. To prevent the consummation of a crime the commission of which is being planned or has already commenced.

"4. To search for and seize the effects of the crime or the evidence of the commission of the same and of the identity of the guilty parties.

"5. To detect and seize all contraband articles which are the subject of state monopolies.

"6. For the purpose of attaching property.

"Outside of these cases we do not know of any case in which the entrance of the authorities into the domicile of a private individual, which constitutes the forcible entry of the same, may be justified, and when the entrance is at all authorized it must be upon some notoriously known facts, a mere pretext, which the penal law punishes, not being sufficient. And in all cases an order of the court setting out the reasons therefor is necessary. (See art. 8 of the constitution.) And the judge shall expressly state in his order the particular building or place to be searched and whether the search shall take place in the daytime, and the authority or official who is to conduct the same; complying in addition thereto with the other formalities which the law, and particularly the Code of Criminal Procedure, provides so as to prevent abuses or to restrict them as much as possible.

"As a general rule, it may be stated that, in order to enter a house for any purpose whatever, whether to inspect the same, to arrest a person, or to attach property, it is necessary to first obtain the consent of the occupant of the same, as provided in article 6 of the constitution, and, in his absence, an order of the court will be required for the preliminary inquiry in each case, upon notice to the person affected thereby, either immediately or at the most within the twenty-four hours after the issuance of said order.

"The order need not be in the nature of a command to enter the house, but a warrant of arrest or writ of attachment will be sufficient. In other cases, however, the order must be specific, as, for instance, where the

house is to be searched for the purpose of finding the effects of the crime or evidence of its commission. In this latter case the order of the court must be very plain and it should describe the premises to be searched in order to avoid any unnecessary inquiries into the family secrets of the occupants, which the law requires should be absolutely respected, provided they do not affect the interests of the public at large.

"When the entrance is not made personally by the judge, he must issue a writ in due form, for the inferior officials of the court can not proceed to perform such delicate functions without said requisite. (Note 9, Title 30, Book 4, Novisima Recopilacion.)

"In the execution of an act so delicate as the search or inspection of a private house, in addition to the requisites hereinbefore set out, the first thing to be done is to make demand upon the occupant to voluntarily consent to the same.

"This demand must be made with much prudence, as though the official was performing a very painful and unavoidable duty, and not with the arrogance which irritates and reveals an arbitrary and abusive exercise of such functions.

"The occupant of a house has a perfect right to demand that the authorities explain to him the reason for and the object of the search to be made therein; he has a right to present for the consideration of the authorities the reasons which he may have for objecting to the search as a whole or for requesting that the same be restricted to the necessities of the case; and if his objections should be entirely disregarded, he has the right to immediately protest against the search and to require that the same be made a matter of record. He has the right to be present during the search of his house and to respectfully request the authorities that the persons assisting the latter should enter in an open manner and undisguised, so as to prevent any abuse which might otherwise result; and that in making the search they avoid any unnecessary inspections and that all necessary precautions be taken so as to avoid injuring his reputation. A public official would create a bad impression in regard to his authority if he should refuse to grant such just and due demands, his conduct being always taken into consideration for the purpose of determining the degree of any abuse in substance or form committed by him, and which the penal law would not allow to go unpunished. (See art. 299, above cited.)

"Here we should explain the differences which have always existed and which must necessarily exist between the forcible entry of a private house and that of a public building, the residences of ambassadors, barracks, royal palaces, the senate and congress, churches, ships, etc; but this as well as other important matters are settled by the provisions of articles 41 to 52, inclusive, of the royal decree of June 20, 1852, relating to proceedings in matters of contraband and similar frauds, in the regulations of the Civil Guard Corps of August 2, 1852, articles 36, 43, and 44, articles 170 to 172, inclusive, of the Internal Revenue Regulations of the 21st of June, 1889, articles 495 to 523, inclusive, of the Code of Military Justice, and articles 545 to 588, inclusive, of the Code of Criminal Procedure, which provide what buildings or places shall be public as regards entrance into the same, the requisites for entering royal palaces and the buildings occupied by the legislative bodies, the residences of representatives of foreign nations, the residences of consuls, foreign ships, etc."

In the case of *United States vs. Macaspac* (9 Phil. Rep., 207), it appears that:

"On the morning of April 19, 1906, Atanacio Macaspac, lieutenant of the barrio, made his appearance at the gate of the yard of Apolonia Ico's house, situate in the barrio of San Antonio, town of Lubao, Pampanga, and stated that he intended to enter the house and search it. The landlady objected to such search, in the presence of one Luis and Maria de la Cruz, who were also there on that occasion, and three times repeated her objections, alleging as her reasons therefor the absence of her husband from the house. But in spite of her opposition to such search and that offered in support thereof by her said companions, the defendant, not being provided with and showing no order of court, insisted upon entering the said dwelling under a threat that he would procure a search warrant; thereupon he entered and proceeded to search the house and inspect some jars and baskets therein contained. The said inmates were not aware of what was being searched for, and the defendant was accompanied at the time by one Pedro Manalandin, Moning Sambat, Tolome Devera.

"The facts as above described, and which have been clearly proved in the present cause, constitute the crime of forcible entry of a dwelling committed by the defendant in his official capacity as lieutenant of the barrio, as defined and penalized by article 205, No. 1, of the Penal Code, which provides as follows:

"The following shall incur the penalties of suspension in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas:

'1. The public official who, not being a judicial authority nor empowered in the manner prescribed in article 200, shall enter the domicile of a Spaniard or foreigner without his consent.' "

(See also the opinion of Mr. Justice Johnson, written as vacation judge, published in Volume V of the Official Gazette, p. 955.[1])

The discussion of the question in hand is so full and clear in the quotations above made that it is unnecessary to extend it further. In deciding this case we do not consider or pass upon the searches of private premises and seizures of books and papers which are made under the authority or claim of authority of the revenue laws of the United States in cases where goods have illegally evaded the payment of duties, customs or internal revenue, levied by the Government. With respect to such cases the Supreme Court of the United States seems to have laid down a doctrine by itself to which we now merely refer. Nor is there anything herein in conflict with the decision in the case of *United States vs. Vallejo* (11 Phil. Rep., 193), in which the court said:

"The defense rests upon points of law: First. That within his own house a man's person is sacred and he may conduct himself as he pleases. The inviolability of a dwelling has been well explained in *United States vs. Arceo* (3 Phil. Rep., 381), but while it may be true in general that 'a man's house is his castle,' it is equally true that he may not use that castle as a citadel for aggression against his neighbors, nor can he within its walls create such disorder as to affect their peace. It is clear from the testimony that in this case the behavior of the defendant amounted to more than private misconduct and constituted a public annoyance and a breach of the peace of the neighborhood."

Manifestly this case rests upon different facts from those in the case at bar.

The only evidence against the defendant Valeriano being an inference drawn from the exercise of a legal right, we declare the evidence insufficient to support the conviction. We accordingly reverse the judgment below as to him and acquit him of the charge embraced in the information.

As to the accused Gabriela Esguerra, we have no doubt of her guilt. The evidence clearly demonstrates her possession of the morphine and her attempt to rid herself of its possession before discovery by the officers. We have carefully examined the evidence in the case and, notwithstanding the able arguments of her counsel, we are convinced that she is guilty. It is the unanimous opinion of the court however, that the penalty imposed is too severe. We accordingly modify the judgment against her by reducing the penalty from six months' imprisonment to a fine of P300, with subsidiary imprisonment as provided by law in case of nonpayment. Judgment is hereby entered in conformity herewith, with one-half of the costs of this appeal against the accused Gabriela Esguerra and one-half de oficio. So ordered.

Torres, Mapa, Johnson, and Carson, JJ., concur.

[1] *Regidor vs. Araullo*.

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