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Constitutional Law—Search and Seizure—Evidence Obtained During Search Suppressed

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CONSTITUTIONAL LAW—SEARCH AND SEIZURE—EVIDENCE OBTAINED DURING SEARCH SUPPRESSED

Defendant stored illegally obtained narcotics in his aunt's apartment. Police searched the apartment without a warrant and seized this contraband. *Held*: The seizure of the narcotics was a violation of defendant's constitutional rights guaranteed by the Fourth Amendment and the evidence must, therefore, be suppressed. *Jeffers v. United States* 187 F. 2d 498 (D. C. Cir. 1950); *aff'd.*—U. S.—, 20 U. S. L. Week 4011 (Nov. 13, 1951).

The Fourth Amendment to the Constitution states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized."

Warrants must then be obtained unless the circumstances of the search or seizure are for some reason considered exceptional. There are two general areas where a warrant is traditionally unnecessary. One is where the search is carried on as incident to a valid arrest *Mc Donald v. U. S.* 335 U. S. 451 (1948), *Harris* v. *U. S.*, 331 U. S. 145 (1947); the other where there is an emergency with the attendant possibility of the removal of the goods. *Carroll v. U. S.* 267 U. S. 132 (1925), *Johnson v. U. S.* 333 U. S. 10 (1948). In the principal case there was no valid arrest, nor were there any grounds for considering the situation one of emergency.

It follows, necessarily, that the search was illegal but does this afford defendant the remedy which he asks for? *Weeks v. U. S.* 232 U. S. 383 (1914) enunciated the rule that the standing to object to illegal seizure of evidence was a personal one. This has now become a part of the Fed. R. Crim. P. R. 41(e) which states that it is only the "person aggrieved" who can move to suppress the evidence. Here the defendant claims no ownership in the premises and therefore cannot complain of the illegality of the search. The problem was whether he could complain of the illegality of the seizure i.e., did he have ownership of the property seized?

It is provided in 38 Stat. 785, 26 U. S. C. A. sec. 2558 (a) (1914) that narcotics shall be subject to seizure and forfeiture. 53 Stat. 362, 26 U. S. C. A. sec. 3116 (1935) states that no property rights shall exist in any liquor or property intended for use in violating the internal revenue law, but this section also provides that warrants shall issue for the seizure of such property. This provision for the issuance of a warrant was one indication to the court that the Fourth Amendment safeguards apply to contraband seized as well as to other property. As additional

support for defendant's claim, ownership in the government is not established without a forfeiture proceeding. 53 Stat. 457, 26 U. S. C. A. sec. 3730 (a) (1) and 3721; 53 Stat. 460, 26 U. S. C. A. sec. 3745 (a) (1939).

The dissent cited dictum in *Harris* v. *U. S. supra* to the effect "If entry upon the premises be authorized and the search which follows be valid, there is nothing in the Fourth Amendment which inhibits the seizure by law-enforcement agents of government property the possession of which is a crime, even though the officers are not aware that such property is on the premises when such search is initiated" as authority for not suppressing the evidence in the principal case. However, in the *Harris* case the police had a warrant for the defendant's arrest and the search was thus incident to a valid arrest. This brings the case within one of the above-mentioned exceptions to the necessity for a search warrant.

A more difficult case to reconcile with the present decision is *Gibson v. U. S.* 149 F 2d 381 D. C. Cir. (1945). There, as here, a warrantless search was conducted on premises in which the defendant claimed no ownership but narcotics on defendant's person were seized. The court held that this constituted a continuing crime in the presence of officers. If looked at in conjunction with the present case, a motion for the suppression of evidence will be granted defendant if he claims ownership in narcotics but is not present when they are seized. On the other hand the motion will be denied if they are on his person.

From the point of view of the history and purposes for which the Amendment was adopted this decision would appear to be correct. The underlying purpose for the enactment of the Amendment was stated in *Boyd v. U. S.* 116 U. S. 616 (1885) when the court said it is not the breaking of doors that constitutes the offense, but the invasion of personal security, liberty, and property. In *Weeks v. U. S. supra* the court stated that praiseworthy as attempts to bring the criminal to justice are, they are not worth the sacrifice of principles which have been turned into fundamental law. Personal liberty appears to be a jealously guarded value and worth the risk of a few petty criminals being aided through misfeasance of law officers.

In the instant case it would apparently have been a simple matter to obtain a warrant. Instead the officer entered an apartment illegally and seized a package to which defendant had, at least, a claim of ownership. The court allowed defendant a remedy for this invasion of his privacy. It is submitted that this is more in keeping with the purposes for which the amendment was adopted than the decision in the *Gibson* case *supra*, or the dictum in the *Harris* case, *supra*.

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