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NOTES

ADMISSIBILITY OF THE EVIDENCE AS AF- FECTED BY AN "UNREASONABLE SEARCH."

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" was recently upheld in the case of *Flagg vs. United States*.¹ In this case the defendant was convicted in the lower court of devising a scheme to defraud, and of using the mails in furtherance thereof, but this conviction was not allowed to stand in the higher court because it was arrived at by methods prohibited by the Constitution of the United States, which is the fundamental law of the land. The Constitution expressly provides against just such methods as

¹*Flagg vs. United States*, 233 Fed. 481.

were used in the instant case. In this case the defendant was arrested at his place of business and his books, papers and other property, taken into custody by the officers making the arrest, which officers were acting not under any process or authority, but entirely without warrant either of arrest or search. A warrant was later issued for the arrest of his person, but not for the seizure of his books, while these books were kept by the officials for over a year, and it was upon proof procured from these books and papers during the time that they were thus unlawfully kept, that the defendant was finally convicted. As stated by the court (1. c. p. 483) "the question then is reduced to this—can a party be convicted of a crime upon proof procured from books and papers which have been taken from him by force and without a pretense of legal authority? ", and the court very justly and with sound reasoning answers this question in the negative.

To answer this question in any other way would be to force a "battering ram" through the bulwarks of personal security, for the language of the United States Constitution is very clear upon this point. It is guaranteed therein² 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, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized," and, later on,³ that no person "shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law." If a person's books and papers could be seized in this manner without the slightest vestige of legal authority, and information gleaned therefrom by which such person is convicted of a crime, is this not in effect compelling him to testify against himself in a criminal case? It appears to the writer to be just as much a compulsion, as the compulsory production of private papers under an act, which act provides that if such papers are not produced for the purpose of evidence, the prosecutors version shall be taken as admitted. The rights guaranteed by the fourth and fifth amendments to the United States Constitution were preserved and shielded from violation by such an act in the case of *Boyd vs. United States*.⁴

In the case of *Weeks vs. United States*,⁵ which is the controlling

²Constitution of the United States, Art. IV.

³Constitution of United States, Art. V.

⁴*Boyd vs. United States*, 116 U. S. 616.

⁵*Weeks vs. United States*, 232 U. S. 383.

decision in this case, and in which the facts are very similar to the facts in the instant case, differing only in this; that the papers taken were attempted to be used themselves instead of secondary evidence gleaned therefrom, (which difference is immaterial insofar as the principle here involved is concerned), the court reached the same conclusion as is here reached, namely, that a party can not be convicted by evidence obtained by a search and seizure, not in the method prescribed by the fourth and fifth amendments to the Constitution of the United States, but directly contrary thereto and in violation thereof.

Nor was the defendant compelled to submit to this conviction and rely upon, as his only redress, whatever remedies he might have against the officials making the arrest and seizure. The language of the court in the Weeks case is as follows:

“What remedies the defendant may have against them (the officials) we need not inquire, as the fourth amendment is not directed to individual misconduct of such officials.”

Veeder, District Judge, in the instant case concurred in the result, as he felt that he was bound by the Weeks case, *supra*, but took the position that if he were exercising his own judgment he would sustain the conviction and leave the defendant to his remedies for the violation of his security. He found it hard to reconcile the Weeks Case with the case of *Adams vs. New York*,⁶ both decided by the same judge, for the Adams case held that the fourth Amendment was designed to “give remedy against such usurpations when attempted” but not to “exclude testimony which has been obtained by such means, if it is otherwise competent.” It is immaterial whether the two cases can or can not be reconciled, for the Weeks case is the “latest expression of the Supreme Court” and is accordingly the view which must be adopted by the court in the decision of the instant case.

At first sight this decision seems to lay down a dangerous principle, as it seems to tip the scales of Justice in favor of an accused where the weight which thus overbalances the scales is not the accused's innocence, but the unlawful act of a third party. Yet upon closer scrutiny it will be seen that to lay down a contrary principle would be to sacrifice one of the broad principles of our fundamental law—a principle which is essential to Constitutional liberty—the right to personal security. The preservation of this principle will be found in the end to do justice to the greatest num-

⁶*Adams vs. New York*, 192 U. S. 585.

ber, which should be the aim of all principles of law. To sustain this conviction would be to sanction the encroachment of unlawful and arbitrary power upon individual rights, and render the Constitution of the United States of no effect.

The decision in the instant case is, therefore, not only supported by the weight of authority but also by the weight of reasoning and logic, and will end in doing justice to the greatest number, by upholding the broad principles of the fundamental law of this country.

SCOTT SEDDON.