CONSTITUTIONAL LAW—SEARCH AND SEIZURE—PRODUCTION OF DOCUMENTS UNDER SUBPOENA DUCES TECUM.—In an anti-trust proceeding, the National Alliance of Furniture Manufacturers, an unincorporated association, was served with a *subpoena duces tecum* commanding it to produce before the grand jury all letters and documents during a period of three years between said alliance and its predecessor, and between all parties connected with both associations, numbering 192, relating to enumerated aspects of the manufacture and sale of case goods. Defendant contended that the subpoena was invalid because too broad and indefinite. The documents had been produced once under a subpoena identical in terms, served personally on the secretary. *Held*, the subpoena was not universal in its application and obedience to it would not so hamper the business of the defendant as to be designated unreasonable; that the former production of the documents demonstrated that the description contained in the subpoena was sufficient and reasonable. *Brown v. United States* (1928), 72 L. Ed. 281, 48 S. Ct. 288.

The question arising in such cases is whether the requirements of the subpoena constitute a violation of the exemption from unreasonable searches and seizures contained in the fourth amendment to the United States Constitution. *Hale v. Henkel* (1905), 201 U. S. 43, 50 L. Ed. 652, 26 S. Ct. 370. In the Hale case the subpoena required a witness to produce all understandings, contracts, and correspondence between a corporation named and six different companies; all reports made and accounts rendered from the formation of the corporation; all letters received from a dozen different companies. It was held too sweeping to be regarded as reasonable, on the ground that it would put a stop to the business of the corporation. Subpoenas intended merely as a means of eliciting information, or "fishing," and not for the purpose of obtaining documents particularly described, are not allowable. *U. S. v. Terminal R. Association* (1907), 154 F. 268; *Miller v. Mutual Reserve Fund Life Association* (1905), 139 F. 864; *American Car and Foundry Co. v. Alexandria Water Co.* (1908), 221 Pa. 529, 70 A. 867. The general rule is stated in *United States v. Babcock* (1876), 3 Dill. 566, 24 Fed. Cas. 908. "The papers called for must be specified in the subpoena with such certainty as is practicable under all the circumstances of the case, so that the witness to whom the subpoena is addressed may be able to know what is wanted of him." It is not compulsory to designate each particular paper desired, which presupposes an accurate knowledge of such papers rarely possessed by the tribunal desiring them. See *Consolidated Rendering Co. v. Vermont* (1907), 207 U. S. 541, 52 L. Ed. 327, 28 S. Ct. 178. But some necessity should be shown to justify an order for the production of an unusual mass of papers. *Hale v. Henkel, supra.* In *Miller v. Mutual Reserve Fund Life Association, supra,* the Court refused to punish a witness for failure to obey a grotesque *subpoena duces tecum* calling for a "cart load of books and papers, many of which apparently can have no bearing on any of the issues raised on the pleadings."

The Courts in Missouri have followed the general rule of *United States v. Babcock, supra,* but with more than ordinary strictness. It was stated in the case of *Missouri v. Wurdeman* (1913), 176 Mo. App. 540, 158 S. W. 436, that "an application for a *subpoena duces tecum* to require a witness who

is not a party to the action to produce books and documents, must state facts enabling the Court to determine that such books and documents are material and relevant." See also *State v. Continental Tobacco Co.* (1903), 177 Mo. 1, l. c. 43, 75 S. W. 737 and *Ex parte Brown* (1880), 72 Mo. 83, 37 Am. Rep. 426. *State v. Davis* (1893), 117 Mo. 614, 23 S. W. 759, held that a subpoena which requires a druggist to produce all prescriptions filed in his store for about a year was too indefinite. A similar case was *State v. Bragg*, 51 Mo. App. 334, where a subpoena required the production before a grand jury of all prescriptions compounded for a period of more than a month. Cases of this sort are likely to be of growing frequency due to the increasing number of anti-trust proceedings. The case of *Federal Trade Commission v. American Tobacco Co.* (1924), 264 U. S. 298, 68 L. Ed. 696, 44 S. Ct. 336, upholds the right of a private corporation to be immune from governmental fishing expeditions into its books and papers, and maintains that their disclosure cannot be compelled without some evidence of their relevancy and upon a reasonable demand. This case was decided on a sound basis and on just principles. J. J. C., '30.

CONSTITUTIONAL LAW—SEARCH AND SEIZURE—TAPPING TELEPHONE WIRES.—Federal revenue officers tapped a telephone wire—an act forbidden by state statute. The incriminating conversation which they overheard was made the basis of a conviction for violating the prohibition law. *Held*, not unreasonable search and seizure such as is forbidden by the fourth amendment to the Federal Constitution. *Olmstead v. United States* (1928), 72 L. Ed. (adv.) 212, 48 S. Ct. 564.

The doctrine of making illegal all unreasonable searches and seizures has its foundation in the common law of England. *Entick v. Carrington and Three Other King's Messengers* (1762), 19 Howells State Trials 1029. This principle is fully recognized in modern law. Today it is no longer a question that the seizure of papers by Federal officers without a Federal warrant is within the prohibition imposed by the fourth amendment. *Boyd v. United States* (1885), 116 U. S. 616, 29 L. Ed. 746, 6 S. Ct. 524; *United States v. Hounday* (1913), 208 F. 186. Also, it has been held that the acquisition of papers by anyone connected with the Federal Government by stealth, or through false pretention to friendship is an unreasonable seizure. *Gouled v. United States* (1920), 255 U. S. 298, 65 L. Ed. 697, 71 S. Ct. 261. Sealed packages in the mails and letters are entitled to the protection given by the fourth amendment. *In re Jackson*, 96 U. S. 727, 24 L. Ed. 877. The fourth amendment, however, has no application except to government officers.

The issue in the instant case is concerned with telephone messages. So far as has been found no similar case has been decided. However, there have been some holdings which might indicate the trend of the courts before this decision and possibly account for it in the light of precedent. In the case of telegraph messages it has been held uniformly that they are not privileged and that the telegraph operator may be compelled to disclose their contents. *State v. Litchfield* (1870), 58 Me. 267; *ex parte Brown* (1882), 72 Mo. 83, 37 Am. Rep. 426; *U. S. v. Hunter* (1883), 15 F. 712.