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Constitutional Law—Search and Seizure—Tapping Telephone Wires

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.

But in such cases the question of the invasion of private premises is not involved. In the principal case the Court was forced to declare expressly that telephone wires, which the dissenting justices insisted were an extension of private premises which called for a similar extension of the protection afforded by the fourth amendment, could be interfered with at the will of Federal officers.

Wire tapping is a crime in over thirty states, as Mr. Justice Brandeis emphasizes in his dissent. It is a crime in the State of Washington, in which the principal case arose. The majority of the Court holds in the instant case that the commission of a crime against state law by Federal officials is not ground for holding a search and seizure to be in violation of the fourth amendment. But see the dissenting opinion of Mr. Justice Brandeis, l. c. 573. Also, the brief for the Government desclaimed and frowned upon the illegal act of wire tapping. See marginal note, 48 S. Ct., l. c. 575. It is hoped that the decision of the majority is not the final word upon this subject. M. E. C., '29.

CONSTITUTIONAL LAW—TAXATION—STATE TAX OF FEDERAL INSTRUMENTALITY.—A Mississippi statute provided for a tax of three cents on each gallon of gasoline sold in the state. The state sued to recover taxes on sales made by an oil company to the Federal Government for use of its Coast Guard Fleet and Veterans' Hospital. The oil company did not include the tax in its price to the Government, and contended on writ of error to the Supreme Court that if this statute wer construed to impose taxes on such sales, it would be repugnant to the Federal Constitution. *Held* (the court being divided five to four), that the necessary operation of the statute when so construed would be directly to retard, impede, and burden the exertion by the United States of its constitutional powers to operate the fleet and hospital. *Panhandle Oil Company v. State of Mississippi ex rel. Knox,* (1928), 72 L. Ed. 517; 48 S. Ct. 451.

Beginning with *McCulloch v. Maryland* (1819), 4 Wheat. 316, 4 L. Ed. 579, a long line of cases has upheld the principle that the state governments cannot lay a tax upon the constitutional means employed by the Government of the Union to execute its constitutional powers—although *McCulloch v. Maryland* itself did not go as far as since has been believed. *Dobbins v. Commissioners of Erie County* (1842), 16 Pet. 435, 10 L. Ed. 1022; *The Banks v. The Mayor* (1868), 7 Wall. 16, 19 L. Ed. 57; *Weston v. City of Charleston* (1829), 2 Pet. 448, 467, 7 L. Ed. 481; *Van Brocklin v. Anderson* (1886), 117 U. S. 151, 29 L. Ed. 845, 6 S. Ct. 670; *Choctaw O. & G. R. Co. v. Harrison* (1914), 235 U. S. 292, 59 L. Ed. 234, 35 S. Ct. 27; *Indian Terr. Illuminating Oil Co. v. Oklahoma* (1915), 240 U. S. 522, 60 L. Ed. 779, 36 S. Ct. 453; *Gillespie v. Oklahoma* (1921), 257 U. S. 501, 66 L. Ed. 338, 42 S. Ct. 171. The opinion in the last-named case was written by Mr. Justice Holmes, Justices Pitney, Brandeis, and Clarke dissenting. Mr. Justice Holmes voiced the chief dissent in the instant case, and it is singular to note that Justice Butler, in writing the opinion of the Court, says, "The strictness of that rule (that the States may not burden or interfere with execution of governmental powers) was emphasized in *Gillespie v. Oklahoma.*"