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CASE NOTES

CONSTITUTIONAL LAW—STATUTE PROVIDING FOR FINE FOR FAILURE TO ADMIT HEALTH INSPEC- TOR INTO DWELLING WITHOUT WAR- RANT HELD CONSTITUTIONAL

An inspector of the Baltimore City Health Department, acting upon a complaint, began an inspection of the houses in the defendant's neighborhood. When the inspector received no reply at the defendant's residence, he inspected the outside area and found the house to be in an extreme state of decay, and also found a pile consisting of straw, trash, and rodent feces in the rear of the house. As the inspector was leaving, the defendant arrived and after explanation of his activities in the neighborhood, the inspector asked to be admitted into the defendant's house, so that he could inspect the basement. The defendant refused admittance unless the inspector presented a search warrant, which he refused to do. The next day the inspector swore out a warrant for defendant's arrest, alleging violation of a Baltimore ordinance, which provided for a fine of \$20 to be forfeited by anyone who refused admittance to an inspector when the Commissioner of Health had cause to suspect that a nuisance existed in a neighborhood.¹ The defendant was convicted and fined \$20. The Maryland Court of Appeals denied certiorari. Subsequently the Supreme Court of United States granted certiorari and ruled that the ordinance was valid and that a search warrant is not needed for inspections involving civil cases. *Frank v. Maryland*, 359 U.S. 360 (1959).

The conflict between the rights of the individual and the police power of the state in protecting the public welfare is a recurring problem which the courts of the United States have often been called upon to decide. Prior to the *Frank* case the principle had long been recognized that the Fourth Amendment as embraced by the Fourteenth Amendment, requires a search warrant where law enforcement officials seek to search a private dwelling for information concerning criminal cases.² However, the question of whether or not a search warrant is needed in civil cases, where the civil officials seek to inspect a private residence for the protection of the

¹ Baltimore City Code Art. 12, § 120 provides: "Whenever the Commissioner of Health shall have cause to suspect that nuisance exists in any house, cellar or enclosure, he may demand entry therein in the day time, and if the owner or occupier shall refuse or delay to open the same and admit a free examination, he shall forfeit and pay for every such refusal the sum of Twenty Dollars."

² *Wolf v. Colorado*, 338 U.S. 25 (1948); *Agnello v. United States*, 269 U.S. 20 (1925); *Weeks v. United States*, 232 U.S. 383 (1913).

public welfare, had not previously been decided. This problem is of great importance today because of the numerous cities which have ordinances regulating the standards of health to be maintained and the many urban renewal plans now in effect, both of which require inspections for proper enforcement.³ As a result of this decision those cities which have ordinances providing for inspections are allowed to inspect private dwellings where a nuisance has been complained of, without the delay required in obtaining a search warrant.

In 1765, in *Entick v. Carrington*,⁴ Lord Camden announced a principle which later became the basis of the Fourth Amendment to the United States Constitution. In that case it was decided that the English law did not allow officers of the Crown to force their way into a citizen's home, under cover of a general executive warrant, to search for evidence of the utterance of libel. In deciding the case, the court stated:

It is very certain, that the law obligeth no man to accuse himself; because the necessary means of compelling self-accusation, falling upon the innocent as well as the guilty, would be both cruel and unjust; and it should seem, that search for evidence is disallowed upon the same principle. There too the innocent would be confounded with the guilty.⁵

Thus the principle that one is protected against general searches has long been recognized,⁶ and the Supreme Court in many of its previous decisions has often given the impression that this protection extends to civil cases as well as criminal.⁷ However, these cases must be viewed in the light of the fact that the Court was ruling on criminal matters and not civil. The Court comes closest to saying that a search warrant is necessary in civil cases in its decision in *Wolf v. Colorado*,⁸ where it was stated:

The knock at the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned. . . . Accordingly, we have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the guaranty of the Fourteenth Amendment.⁹

³ For a discussion of urban renewal and the cities providing for such, consult *Urban Renewal: Problems of Eliminating and Preventing Urban Deterioration*, 72 *Harv. L. Rev.* 504 (Jan. 1959).

⁴ 19 *Howells' State Trials*, col. 1029 (1765).

⁵ *Ibid.*, at col. 1073.

⁶ Consult *Boyd v. U.S.*, 116 U.S. 616 (1885), for an historical review of searches in the U.S. until the ruling of that case.

⁷ *Wolf v. Colorado*, 338 U.S. 25 (1948); *Agnello v. United States*, 269 U.S. 20 (1925); *Weeks v. United States*, 232 U.S. 383 (1913).

⁸ 338 U.S. 25, 27 (1948).

⁹ *Ibid.*, at 28.

The Court seems to hold the same view in other cases such as: *Agnello v. United States*,¹⁰ where the court ruled that a search of a private dwelling without a search warrant is unreasonable in itself; in *Weeks v. United States*,¹¹ where the Court held that the protection of the Fourteenth Amendment extended to all alike, whether accused of a crime or not; and in other cases holding that the essence of the Fourth Amendment is protection against invasion of one's property.¹² Further, in many of these decisions, the Court emphasizes the necessity of a judicial officer to decide if a search warrant should be issued. Thus it intimates that an individual seeking to make the search should not be the one who decides if there is sufficient reason for making the search.¹³ The Supreme Court, in ruling on these criminal cases, has clearly left open the question of whether or not a search warrant is needed in civil cases.

The *Frank* decision is not completely without support since the Court has interpreted the Fourth Amendment to prohibit only unreasonable searches. In determining what constitutes a reasonable search, the Court has said that each case must be decided on its own facts and circumstances.¹⁴ However, only searches which are made in case of emergency or in pursuit of a felon have previously been considered sufficient to dispense with a search warrant.¹⁵ Notwithstanding this past interpretation of a reasonable search, since the Court failed to define such search, or limit it to criminal cases, the Court did leave open the possibility that an inspection in a civil case might be considered reasonable and consequently make a search warrant unnecessary.

Prior to the *Frank* case, the lack of necessity of search warrants in civil inspections was generally upheld in certain cases such as: Where the inspection was of places where food is stored or kept for sale,¹⁶ where a private institution contained an orphanage,¹⁷ places where the public is in-

¹⁰ 269 U.S. 20 (1925).

¹¹ 232 U.S. 383 (1913).

¹² E.g., *Trupiano v. United States*, 334 U.S. 699 (1948); *McDonald v. United States*, 335 U.S. 451 (1948); *Johnson v. United States*, 333 U.S. 10 (1947); *Harris v. United States*, 331 U.S. 145 (1946); *Gould v. United States*, 255 U.S. 298 (1921).

¹³ E.g., *McDonald v. United States*, 335 U.S. 451 (1948); *Trupiano v. United States*, 334 U.S. 699 (1948); *Johnson v. United States*, 333 U.S. 10 (1947); in *Olmstead v. United States*, 277 U.S. 438 (1928) (dissent).

¹⁴ *United States v. Rabinowitz*, 339 U.S. 56 (1950).

¹⁵ *Ibid.*; *Go-Bart Importing Co. v. United States*, 282 U.S. 344 (1931); *Harris v. United States*, 331 U.S. 145 (1946).

¹⁶ *United States v. Crescent-Kehran Co.*, 164 F.2d 582 (C.A. 3rd, 1948); *Keiper v. City of Louisville*, 152 Ky. 691, 154 S.W. 18 (1913).

¹⁷ *Sister Feleccitas v. Hartridge*, 148 Ga. 832, 98 S.E. 538 (1919).

vited;¹⁸ and in other instances connected with a business operation where the public is directly affected.¹⁹ The majority of the lower courts limited inspections without a search warrant to these instances and did not extend them to private homes.²⁰ However, there were a few decisions where the lower courts did not require a search warrant in inspecting private homes.²¹ The two most recent cases supporting this view were *Givner v. State*²² and *State v. Price*²³ which were based upon the same reasons set forth by the Supreme Court in *Frank v. Maryland*; that to require a search warrant would be against public welfare in that it would cause a loss of time for the inspectors and thus cause a delay in correcting the nuisance.²⁴

The Court in the *Frank* case considered several factors in making its decision. First, it analyzed the *Entick* and *Boyd* cases which are used by the dissent in the present case to support the necessity of a search warrant in civil cases. The Court concluded that the Fourth Amendment was not meant to encompass inspections which are not connected with a crime. It then examined the history of the inspection laws and found that they have been in existence since the Declaration of Independence and that most of these laws provided for inspections without a search warrant.²⁵ Thus, a general acquiescence in civil searches without warrants was indicated.

The Court then examined the laws pertaining to search warrants and found that these statutes were written in such terms that there was a question whether a search warrant would be issued for a civil inspection.²⁶ In answering the proposal that less stringent laws could be enacted for the issuance of a search warrant in civil cases, the Court ruled out any "synthetic search warrant" for periodic inspections by saying that if a search

¹⁸ *Reirhart v. State*, 193 Tenn., 15, 241 S.W.2d 854 (1951).

¹⁹ E.g., *Albert v. Milk Control Board of Indiana*, 210 Ind. 283, 200 N.E. 688 (1936); *Dederich v. Smith*, 88 N.H. 63, 184 A. 595 (1936); *Financial Aid Corporation v. Wallace*, 216 Ind. 114, 23 N.E.2d 472 (1936).

²⁰ *District of Columbia v. Little*, 178 F.2d 13 (C.A.D.C., 1949); *aff'd* by Supreme Court on other grounds, 339 U.S. 1 (1950); *Nueslein v. District of Columbia*, 115 F.2d 690 (C.A.D.C., 1940). See *People v. Castree*, 311 Ill. 392, 143 N.E. 112 (1924); *State v. Frye*, 58 Ariz. 409, 120 P.2d 793 (1942).

²¹ *In re Strouse*, 23 Fed. Cas. 261, No. 13,548 (1871); *In re Meador*, 16 Fed. Cas. 1294, No. 9375 (1869); *State v. Price*, 168 Ohio St. 123, 152 N.E. 2d 776 (1958); *Givner v. State*, 210 Md. 484, 124 A.2d 764 (1956). See *State v. Buxton*, 148 N.E.2d 547 (1958); *Richards v. City of Columbia*, 227 S.C. 538, 88 S.E.2d 683 (1955).

²² 210 Md. 484, 124 A.2d 764 (1936).

²³ 168 Ohio St. 123, 152 N.E.2d 776 (1958).

²⁴ But see *Johnson v. United States*, 333 U.S. 10 (1947).

²⁵ *Maryland Laws* (Nov. 1773) c. 1, §§ LXXIV, LXXX; inspections of house. *Ibid.*, § LXIII. But Cf. *Entick v. Carrington*, 19 Howells St. Tr., col. 1029, 1068 (1765).

²⁶ *Grau v. United States*, 287 U.S. 124 (1932) (semble). See *Givner v. State*, 210 Md. 484, 124 A.2d 764 (1956).

warrant is constitutionally required, the constitutional restrictions must apply.

The main point considered by the Court in deciding this case, however, was the relationship between what the individual was forced to give up as compared with benefits that the public welfare would derive by prompt inspections. This conclusion was reached by examining the inspection law which required three elements for a proper inspection: (1) there must be valid ground for suspicion of a nuisance; (2) the inspection must be made in the day time; and (3) the inspector can use no force in order to enter. The Court indicates that as long as these elements are present in an inspection law, the law will be upheld as constitutional as the invasion of the person's privacy is slight, when compared with the benefit to public good. As a result of this public good which the Court felt is to be desired, the privacy of the individual in his home must be sacrificed.

The ramifications of the decision in the *Frank* case are not entirely clear and can only be clarified by subsequent cases. The Court seemed to emphasize the fact that the ordinance required the inspection to be made during the day, that there was ground for suspicion of a nuisance on defendant's property and that no force was authorized. Thus the Court may in subsequent cases limit the inspections without a search warrant to cases where these three elements are present and require a search warrant in all other inspections whether for civil or criminal information. On the other hand, the Court may extend the present decision to all civil inspections whether the three elements are present or not. In either case, the present decision has greatly limited a right which had long been considered as being without limitation. Thus, a person who feels that he has a right to privacy in civil cases, as well as in criminal cases, can no longer look to the Constitution for protection of this right. His only recourse is to campaign against these ordinances and statutes which take this right away from him by authorizing inspections without a search warrant.

CRIMINAL LAW—PROBATION BY FEDERAL COURT DOES NOT PRECLUDE CRIMINAL JURISDICTION OVER PROBATIONER BY STATE COURTS

Errol Leslie Merriman was indicted in the United States District Court for Utah. A plea of guilty was interposed, imposition of sentence was deferred and Merriman was placed on probation for a period of five years. According to the terms of his probation, Merriman was to return to his home in Bakersfield, California, where he was to remain and live with his wife, and supervision of probation was to be transferred to the United States Probation Officer for the Southern District of California. Obedient to the direction of the court, Merriman started by bus for his home.