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Francis T. Ready

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EDITORIAL COMMENT

IS A MAN'S HOUSE NO LONGER HIS CASTLE?

The immortal Lord Edward Coke stated briefly and succintly more than three hundred years ago a principle which has for generations been one of the most prized heritages of English speaking people. His words were these: "The house of everyone is to him as his castle and fortress as well for his defense against injury and violence as for his repose."

One's home has always been recognized as his "sanctum sanctorum"—the one place above all others in the world where he could go and remain inviolate from undesired intrusions of outsiders. This principle was early incorporated in the common law of England, and from our birth as a nation, it has been one of the most commonly accepted principles of American government—a government having as its basis the theory that the collective rights of the masses can best be insured by protecting the specific rights of the individual. The federal Constitution in the fourth article of amendment (the first ten amendments constituting the "Bill of Rights") provides 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 warrant 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," showing that the framers of our Constitution intended that one's home within the confines of the United States should ever remain his "sanctum sanctorum." Similar provisions were incorporated into the bills of rights, purporting to secure forever the inalienable rights of the individual, of the constitutions of the several states. The constitutions of some states, however, contain no corresponding provision; in others the logical interpretation of it has been perverted so that it is now possible for searches to be made without a warrant, the only test as to their legality being "reason-

ableness"—and it is common knowledge that, according to the whim of the interpreter, so general a term may mean anything or nothing.

The legislature of the state of Iowa recently enacted a statute providing that a dry agent does not need a search warrant when he enters a house to seek evidence of a violation of the prohibition law, the validity of which was only recently upheld by the Supreme Court of that state in the case of State v. Bamsey, reported in 223 N. W. 873. It is to be noted that the provision in the Iowa Constitution relative to unreasonable searches and seizures has been copied verbatim from the provision already quoted from the Bill of Rights of the federal Constitution. The Iowa court placed the same interpretation upon this provision that the United States Supreme Court placed upon the corresponding federal constitutional provision in the 1925 case of Carrol v. United States, reported in 67 U. S. 132. In that case the court decided that a federal prohibition agent may lawfully stop and search for evidence of contraband lisuor any automobile on a public highway, without first securing a search warrant, it being only necessary that the searching officer have reasonable ground for believing that illicit liquor is being transported in the automobile sought to be searched. In reaching this conclusion the court held it seems unreasonably to the writer, that the clause that "no warrant shall issue except upon probable cause" had no direct reference to the clause which immediately and in the same sentence precedes it, and which provides 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 that therefore automobiles—and surely automobiles are "effects" within the meaning of the constitutional provision quoted above—may be searched without warrant, so long as the search is reasonable. It seems to the writer that the only logical interpretation which can be placed upon this provision in the Bill of Rights is that the framers of the Constitution intended 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 that the test of violation should be the issuance of a duly attested search warrant. Otherwise why would they have followed up the above quoted pro-

vision with another providing that "no warrant shall issue except upon probable cause?" Several of the states, among them Indiana, Kentucky, Ohio, and Michigan, following the Carrol case, have, with reference to the searches of automobiles for illicit liquor, held that no warrant is necessary for search, it being only necessary that it be reasonable. The Supreme Court of the State of Iowa has now gone a step further and, following the reasoning employed in the Carrol case, held that one's house may be searched without a warrant, for evidence of possession of contraband liquor, so long as the searching officer has reasonable ground to suspect him of having it in his possession.

The Iowa case(State v. Bamsey, 223 N. W. 873) was appealed to the Supreme Court of the United States on the ground that the holding was in contravention of the fourth article of amendment to the federal Constitution (quoted above). The action of the Supreme Court in disposing of the case was misconstrued by many newspapers, and by a large proportion of the people to whose attention it came, as meaning that it approved and affirmed the Iowa decision. The case was merely dismissed because the court had no jurisdiction. This misconstruction of the action of the Supreme Court of the United States was a result of the popular misconception that the first ten articles of amendment of the federal Constitution (commonly referred to as the "Bill of Rights") are a restriction upon the states as well as upon the federal government. The truth is that they restrict the federal government only and insure no inalienable rights from abridgement by the several states. This principle was established by the Supreme Court of the United States in 1833 in the case of Barron v. Mayor of Baltimore, reported in 8 Law Ed. 672. There is perhaps no commoner misconception of the Constitution than that it guarantees to everyone within the United States immunity from search and seizure without a warrant and that it guaranties a trial by jury.

It is to be hoped that in the interest of enforcing the Eighteenth Amendment, other states, as well as the United States, will not follow in the footsteps of the State of Iowa and decree, in effect, that man's house is no longer his castle. It is to be hoped, also, and lawyers as well as other public men should

work to effect that end, that the highest tribunals of the several states and of the United States will cease the practice seemingly prevalent among them of perverting the normal meaning of the words used in the constitutions they are called upon to construe, and interpreting them in the light that will most effectively meet the exigencies of the time. They are breaking down one of the basic principles of American government, namely, the separation of powers between the legislative, executive, and judicial branches, and usurping, in effect, the legislative function of making new laws—surely a dangerous precedent.

May the time never come when we in this glorious and powerful nation of ours shall no longer be able to claim as a proud heritage and inalienable right that, again using the language of Lord Coke, "The house of everyone is to him as his castle and fortress, as well for his defense against injury and violence as for his repose."

—F. T. R.