NOTE

THE MONCADO CASE REVISITED†

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INTRODUCTION

The fascination of dissenting from the majority springs from the fact that, either as a fool or as a great mind, the dissenter stands out. Impelled by the desire to shine, this writer chose to disagree in this paper with the majority opinion, although not unaware that the opporunity for "brilliancy" is greatly limited considering the eminence and learning of the dissenting jurists in the case criticized, and the fact that the majority opinion is a departure from the doctrine laid down by the Supreme Court in previous cases. The thought is comforting that concomittant with the limitation of the opportunity for "brilliancy" is the proportional diminution of the hazards of being a fool. But, primarily, the motive behind the choice of topic is the honest belief that the majority opinion is erroneous; and this writer has no misgivings about his conclusion because he finds confidence in the four dissenting jurists.

FACTS OF THE CASE

Almost a year before petitioner was accused of treason before the People's Court, petitioner was arrested by members of the Counter Intelligence Corps of the City of Manila, without any warrant of arrest, and taken to Bilibid Prison at Muntinlupa, where he was detained. Thereafter, petitioner's wife, who transferred to their home at Rosario Drive, Quezon City, was approached by several C.I.C. officers, headed

† Decided January 14, 1948. We are aware that the doctrine laid down in this case has been, in a number of cases, unqualifiedly followed hence. But, precisely, it is with that awareness that we present this paper. Not so much to criticize the doctrine, but, more so, to invite thoughtful discussion thereon to the end that a truly judicious rule may be formulated. For, it seems to us rather sweeping for the high court to have a well-entrenched precedent, by itself, cast to the winds and supplanted with a shaky one.

* LL.B., ATENEO DE MANILA (1959).

by a lieutenant, and ordered to accompany them to the house at San Rafael to witness the taking of documents and things belonging to petitioner. Learning that the officers had no search warrant, she refused to go with them, but after she was told that with or without her presence they would search the house at San Rafael, Mrs. Moncado decided to accompany them. Upon arrival at the house, she noticed that their belongings had been ransacked and that the trunks which she had kept in the attic and in the garage when she left the house had been ripped open and their contents scattered on the floor. The lieutenant informed her that they were going to take a bundle of documents and things, which were separated from the rest of the scattered things, because they proved the guilt of her husband. Mrs. Moncado protested in vain. Subsequently, after making an inventory of their belongings, she found missing several letters, papers and effects pertaining to their personal affairs, law books, newspaper collections and magazines. Petitioner then filed with the People's Court a motion praying for the return of said documents and things. The petition was denied. Thereupon, petitioner filed with the Supreme Court a petition praying for the setting aside of the denial and for an order requiring the lower court to return the documents and things in question to petitioner, as well as to restrain the prosecutor from using and introducing them as evidence at the trial in the treason. Saying that "Es doctrina bien establecida en Filipinas, Estados Unidos, Inglaterra y Canada que la admisibilidad de las pruebas no queda afectada por la ilegalidad de los medios de que la parte se ha valido para obtenerla,"[1] the Supreme Court denied the petition for the documents and things sought to be recovered.

The majority opinion penned by Justice Pablo was concurred in by Justices Moran, Feria, and Padilla. Justice Tuason concurred in the result without giving the reasons for his concurrence. Justice Hilado concurred in the result on the ground that the principle involved in the case was identical to that in *Alvero v. Dizon.*[2] (In that case the Court held that there was no unlawful search and seizure). Justices Perfecto, Bengzon, Briones and Paras dissented. Thus, in the Moncado Case, there were actually only four justices who categorically propounded the so-called Orthodox Rule. There were as many justices who opposed it.

THE TWO RULES

On the question of admissibility of evidence illegally seized, there are two prevailing rules: the rule that such evidence is inadmissible, which was first enunciated in 1886, in the famous case of *Boyd v. U.S.*,[3] and followed by the United States Federal Supreme Court and some

1 Pp. 3-4.
2 76 Phil. 637 (1946).
3 116 U.S. 616.

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State Supreme Courts; and the rule that such evidence is admissible, advocated by Professor Wigmore in his treatise on Evidence,[4] and followed by the majority of U.S. State Supreme Courts.

Article III, Section 1 (3) of the Constitution

The resolution of the question presented in the case under consideration revolves around the interpretation of Article III, Section 1, Clause 3 of the Philippine Constitution:

"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 except upon probable cause to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons and things to be seized."

History of the Constitutional Provision

President McKinley's Instructions to the Second Philippine Commission, the first Organic Law promulgated in the Philippines, enunciated the guarantee that "the right to be secure against unreasonable searches and seizures shall not be violated." The Philippine Bill of 1902 guaranteed the same right in Section 5 thereof, adding that "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." The above provision was again incorporated in Section 3 of the Jones Law of 1916.

Thus, before the promulgation of the Constitution, the right to be secure against unreasonable searches and seizures was already assured in the Philippines. Believing that the right could further be fortified, the framers of the Constitution sought to improve wording of the provision.[5] In the case of *Rodriguez v. Villamiel*,[6] Justice Laurel in his concurring opinion discussed the difference between the provision contained in the Jones Law and that found in the Constitution:

"The right guaranteed is declared a popular right. 'The right of the people'..... so runs the precept. The provision also is made more specific and extends to 'persons, houses, papers and effects.' The Constitution also specifically requires the determination or probable cause by the Judge himself after examination under oath or affirmation of the complainant and the witnesses he may produce."

The provision contained in our Constitution is pattered after its American counterpart — the so-called Fourth Amendment — which reads:

"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

4 See 8 WIGMORE (3rd Ed.) 5-11.
5 I TAÑADA, CONSTITUTION 331.
6 65 Phil. 230, 239 (1937).

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."

Willoughby traces the history of this constitutional right to English and American constitutional history, thus:[7]

"The historical reasons for this constitutional provision are well known. In England, agents of the government, acting under warrants, had frequently invaded dwellings in order to obtain evidence against persons charged with committing or suspected of having committed political offenses, and the illegality of such general searches had not been determined until the case of Entick vs. Carrington, decided in 1765. The part played in the American Colonies by writs of assistance which gave to customs officials the right to search any house they pleased for smuggled goods needs no dwelling upon. It was therefore natural that, when the adoption of the Constitution which was to provide a strong central government was under discussion, the people should have demanded that, by express provision, the new government should be denied the right to authorize unreasonable searches and seizures."

Fraenkel would trace the constitutional guaranty to the Magna Carta.[8]

Precedents

The question of admissibility of evidence seized in violation of the constitutional right against unreasonable searches and seizures, or, stated in another way, whether or not things, papers, and effects so seized should be returned upon motion and thus prevent their introduction in evidence, is not new in this jurisdiction.

In 1920, in the case of *Uy Kheytin v. Villareal*,[9] the Supreme Court encountered the question. Briefly stated, the facts: an officer of the Philippine Constabulary, armed with a search warrant for opium, searched the house of Uy Kheytin. Aside from tins of opium he found, he also seized books, letters and other property not connected with opium. Uy Kheytin sued for the return of the things seized and for injunction to stop the trial judge from receiving the same in evidence. The Supreme Court, noting the effects were not connected with opium and not described in the warrant, unanimously ordered their immediate return as being illegally seized. Quoting Judge Cooley, the high court proceeded to state:[10]

"The warrant is not allowed for the purpose of obtaining evidence of an intended crime; but only after lawful evidence of an offense actually committed. Nor even then is it allowed to invade over privacy for the sole purpose of obtaining evidence against him, except in a few cases where that which is the subject of the crime is supposed to be concealed, and the public or complainant has an interest in it or its destruction."

7 2 WILLOUGHBY.
8 FRAENKEL, 361.
9 42 Phil. 886 (1920).
10 **Id.**, at 898-9.

The Court also cited the case of Boyd v. U.S., quoting Justice Bradley:[11]

"The seizure or compulsory production of a man's private papers to be used in evidence against him is equivalent to compelling him to be a witness against himself, and, in a prosecution for a crime, penalty or forfeiture, is equally within the prohibition of the Fifth Amendment.

"Both amendments (fourth and fifth) relate to the personal security of the citizen. They nearly run into and mutually throw light upon each other. When the thing forbidden in the Fifth Amendment, namely compelling a man to be a witness against himself, is the object of a search or seizure of his private paper, it is an 'unreasonable search and seizure' within the Fourth Amendment."

Seventeen years later, our highest tribunal found occasion to reiterate the doctrine in *Alvarez v. CFI.*[12] On the seizure of certain books, documents and papers involved therein by agents of the Anti-Usury Board, acting on a warrant issued by the Court of First Instance of Tayabas, the tribunal said:[13]

"The seizure of the books and the documents by means of a search warrant for the purpose of using them as evidence in the criminal case against the person in whose possession they are found, is unconstitutional because it makes the search warrant unreasonable, and it is equivalent to a violation of the constitutional provision prohibiting the compulsion of an accused to testify against himself."

And, again, in *People v. Sy Juco.*[14] Here, on the strength of a search warrant, certain peace officers seized certain allegedly fraudulent books, letters, and papers in a house occupied by Sy Juco. Among the articles seized was an art metal filing cabinet claimed by a certain lawyer to be his, and to contain some letters, documents, and papers belonging to his clients. He therefore filed a petition to prohibit the opening of the cabinet on the ground that the warrant by virtue of which the search was made was null and void being illegal and violative of the Constitution. Persistently consistent, the Supreme Court declared the search warrant insufficient, the seizure of the cabinet unconstitutional, and ordered its return. Said the Court:[15]

"It has been held that the true test of sufficiency of an affidavit to warrant issuance of a search warrant is whether it has been drawn in such a manner that perjury could be charged thereon in case the allegation contianed therein prove false (State v. Roosevelt, 244 Pac., 280), and that the provisions of the Constitution and the statutes relative to searches and seizures must be construed liberally in favor of the individual who may be affected thereby and strictly against the State and against the person invoking them for the issuance of the warrant ordering their execution (Elorde v. State of Mississippi, 145 U.S., 615; Fowler v. U.S., 62 Fed. 656;

11 **Id.**, at 899.
12 64 Phil. 33 (1937).
13 **Id.**, at 47.
14 64 Phil. 669 (1937).
15 **Id.**, at 674-5.

Saforik v. U.S., 62 Fed 892; Boyd v. U.S., 116 U.S. 616, 29 L. ed., 746), for the simple reason that the proceedings of searches and seizures are by their very nature, summary and drastic ones (Alvarez v. C.F.I., supra)."

And, still, in *Rodriguez v. Villamiel,*[16] under facts identical to those in the Alvarez case, declaring:

"As the protection of the citizen and the maintenance of his constitutional rights is one of the highest duties and privileges of the court, these constitutional guaranties should be given a liberal construction or a strict construction in favor of the individual, to prevent stealthy encroachment upon, or gradual depreciation of, the rights secured by them (State v. Custer County, 198 Pac., 362; State v. McDaniel, 231 Pac. 965; 237 Pac., 373)."

Wrote Justice Laurel in his concurring opinion:[17]

"Usury is admittedly an evil which should be eradicated. While courts should cooperate with the government in an effort to eradicate this evil through proper interpretation and application of the law, it is of greater importance that the fundamenal provisions of the Constitution with reference to the protection of individual rights should be upheld and preserved. The prosecution of criminals is a bounden duty of government, but it should be accomplished by adherence to rather than by relaxation of fundamental constitutional principles. This is said notwithstanding the apparent tendency in other countries to liberalize the application of the constitutional prinple in favor of the government to arrest the advancing tide of crime."

And so, too, in *Yee Sue Koy v. Almeda*[18] with this pertinent pointed statement:

"x x x we reiterate the rule that the seizure of books and documents by means of search warrant for the purpose of using them as evidence in a criminal case against the person in whose possession they were found is unconstitutional because it makes the warrant unreasonable and it is equivalent to a violation of the constitutional provision prohibiting the compulsion of an accused to testify against himself x x x."

The above-cited cases were decided before liberation and in most cases involved the enforcement of the Usury Law. Liberation came and with it the case of *Alvero v. Dizon*[19] which, while not categorically stating that an illegal search and seizure does not render incompetent and inadmissible the evidence by it obtained, foreshadowed the result in the case under comment.[20]

Observations

It cannot be understood why the majority opinion completely ignored the cases before Alvero in which the issues were identical to that in Moncado. Even more difficult to understand is the statement of the major-

16 Note 6, at 235.
17 **Id.**, at 240.
18 70 Phil. 141, 147 (1940).
19 **Supra** note 2.
20 I TAÑADA, **op. cit. supra** note 5, at 253.

ity that "Es doctrina bien establecida en Filipinas x x x que la admisibilidad de las pruebas no queda affectada por la ilegalidad de los medios de que la parte se ha valido para obtenerla." The only case in this jurisdiction cited by the majority is *People v. Carlos*[21] which quoted Wigmore on the progress of the doctrine of *Boyd v. U.S.*[22] It is submitted that the citation of such case was improper and certainly not a solid foundation of a sweeping statement such as the one in question. Firstly, the facts in the Carlos case and those in the Moncado case are not the same. Said the Court in the first:[23]

"...but assuming, without deciding that it (the doctrine) prevails in this jurisdiction it is nevertheless, under the Weeks (232 U.S. 383) and the Silverthorne (251 U.S. 385) cases, inapplicable to the present case. Here the illegality of the search and seizure was not directly litigated and established by a motion made before trial, for the return of the things seized."

Secondly, the statement of the court in said case is mere obiter.

The dissenting opinion of Justice Bengzon is lucid and convincing:[24]

"Logical culmination and practical application of the above principles embodied in our Organic Laws is the ruling we announced in Alvarez v. Court of First Instance of Tayabas (64 Phil. 33), that documents unlawfully seized in a man's home must be returned — irrespective of their evidentiary value — provided seasonable motions are submitted. We followed the Federal rule in Boyd v. U.S. (116 U.S. 616) and many others."

Referring to Article III, Section 1(3) of the Constitution, the learned Justice continued:[25]

"This is an improvement over the provisions of the Jones Law regarding warrants and seizures. It was designed to make our Constitution 'conform entirely', to the Fourth Amendment of the U.S. Constitution (Aruego, Framing of the Philippine Constitution, Vol. 2, page 1040).

"The split between several State Supreme Courts on one side and the Federal Supreme Court on the other, about the admissibility of the evidence obtained through illegal searches and seizures, was familiar to this Court (People vs. Carlos, 47 Phil. 626, 630) before it voted to adopt the Federal doctrine in Alvarez vs. Court of First Instance of Tayabas.

"This last doctrine, applied in several subsequent cases (People vs. Sy Juco, 64 Phil. 667; Rodriguez v. Villamil, 37 O. G. 2416) was probably known to the Constitutional Convention that, in addition,, made the constitutional mandate on the point more complete and explicit, copying exactly the wording of the Federal Constitution, a circumstance which, coupled with the citation of Boyd vs. U.S., showed adherence to the Federal doctrine that debars evidence obtained by illegal search or unlawful seizure.

"It is significant that the Convention readily adopted the recommendation of the committee on Bill of Rights after its chairman had spoken, explaining the meaning and extent of the provision on searches and seizures

21 47 Phil. 626 (1925).
22 Note 3.
23 Note 21, at 630.
24 P. 25.
25 Pp. 26-7.

and specifically invoking the U.S. decisions of Boyd vs. U.S., 116 U.S. 616, and Gould vs. U.S., 298, which the majority of this Court would now discard and overrule (Aruego, op. cit. Vol. 1, p. 160; Vol. 2, p. 1040, 1044).

"Therefore it is submitted with all due respect, that we are not at liberty now to select between two conflicting theories. The selection has been made by the Constitutional Convention when it impliedly chose to abide by the Federal decisions, upholding to the limit the inviolability of a man's domicile."

The discussion of Justice Bengzon leaves nothing to be said. On this, the error of the majority is apparent. And we are left with two possibilities as to the ultimate reasons of the justices comprising the majority in espousing the so-called Orthodox Rule: blind idolization of Professor Wigmore, and bigotry and an imbalanced zeal in meting out justice to alleged criminals.

After quoting Article III, Section 1(3) of the Constitution, the majority said:[26]

"Concurrimos con la reclamacion del recurrente de que, bajo estas garantias constitucionales, tenia derecho a que su casa fuese respetada, sus documentos no debian ser decomisados por ninguna autoridad o agente de autoridad, sin un mandamiento de registro indebidamente expedido.

"Estas limitaciones constitucionales, sin embargo, no llegan hasta el extremo de excluir como pruebas competentes los documentos obtenidos ilegal o indebidamente de el. El Reglamento de los Tribunales, Regla 123, determina cuales son las pruebas que deben ser excluidas, cuales son las admisibles y competentes yno clasifica como pruebas incompetentes las obtenidas ilegalmente."

The implication is that Rule 123 of the Rules of Court is the only repository of the rules on evidence. This is not correct, nor has it ever been the intention of the framers of the Constitution, under Article VIII, Section 13, which empowers the Supreme Court to promulgate the Rules of Court, that Rule 123 should be the only such repository, for said article also provides that "Congress shall have the power to repeal, alter, or supplement the rules concerning pleading, practice, and procedure." Thus, Article 1403 (2) (d) of the New Civil Code, an act of Congress, amended Rule 123, Section 21 (d) of the Rules of Court by providing that instead of "not less than one hundred pesos" the prime must be "not less than five hundred pesos" in order that an agreement for the sale of goods, chattels or hings in action may come within the purview of the State of Frauds. This is only an example of the rule of exclusion of evidence contrary to the Rules of Court; many more may be cited.

The majority in the case under consideration relied solely on Wigmore for authority. The opinion reproduced verbatim portions of American decisions cited by the distinguished professor in his discussion on admissibility of evidence illegally seized.[27]

26 P. 5.
27 See 8 WIGMORE (3rd Ed.) 31-45.

The majority cited *William v. State*:[28] "If an official, or a mere petty agent of the State, exceeds or abuses the authority with which he is clothed, he is to be deemed as acting, not for the State, but for himself only...."

On what premise and by what process of reasoning can we conclude that if an official, or a mere petty agent of the State, exceeds or abuses his authority, he is to be deemed as acting, not for the State, but for himself alone? Supposing a policeman, upon orders of the chief of police, searched a house without warrant for the purpose of discovering evidence, and seized documents therein, and then these documents are presented in evidence in a criminal case filed against their owner. Did the policeman act as a policeman in gathering evidence for the purpose of presenting them in evidence against the owner thereof, or was he going about his private affairs? Were not the acts of the policeman an exercise of the function of government of prosecuting and punishing criminals?

On the premises that "for the misconduct of private persons acting upon their individual responsibility and of their own volition, surely none of the three divisions of government is responsible," and that "if an official, or a mere petty agent of the State, exceeds or abuses the authority with which he is clothed, he is to be deemed as acting, not for the State, but for himself alone," the court in the case cited concluded that "therefore, he alone, and not the state, should be held 'accountable' for his acts."

That this conclusion is out of place in the discussion of the question whether or not documents illegally obtained should be admitted in evidence, upon objection, is at once apparent. Under the Revised Penal Code,[29] an official or petty agent of the State who makes an illegal search and seizure is alone "accountable". The State is a juridical person.[30] It cannot be held "accountable" for the unlawful acts of its officials or agents, in the sense that it cannot be punished for crime.[31] Obviously, this is not the meaning intended by the court for the word "accountable". If ever a court debars evidence illegally obtained, it would not be because the State is "accountable" or responsible for the unlawful act of its officials or agents, and, therefore, must indirectly suffer punishment of being deprived of evidence it may use in its function of prosecuting and punishing criminals, but because there is a rule of law which taints such evidence with the infirmity of incompetence, or more accurately, which commands that things seized illegally must be returned immediately, regardless of their evidentiary value.

The majority opinion also lifted from *Stevenson v. Earnest*:[32] "It is

28 P. 6.
29 Art. 128.
30 Art. 44 CIVIL CODE OF THE PHILIPPINES.
31 14 C. J., § 3026.
32 Pp. 6-7.

contemplated, and such ought ever to be the fact, that the records of the court remain permanently in the places assigned by the law for their custody. It does not logically follow, however, that the records being (illegally) obtained cannot be used as instruments of evidence; for the mere fact of illegally obtaining them does not change that which is written in them." The implication is that in evidence, trustworthiness is the ultimate criterion of competence. But this is not true. Competence is determined by law; and whatever the reason or reasons for a rule of evidence, the rule is universal in its application. For example, the late Pope Piux XII left a diary in which he stated one fact: that on July 6, 1958, about 10 o'clock in the morning he had a personal conversation with Juan de la Cruz in his palace. Now Juan de la Cruz is accused of murder committed in Manila on the same date and hour. May he present the diary as alibi? No, because the same is hearsay, not withstanding the unquestionable worthiness of the late Pope. Again, a person goes to confession and confesses to a priest that he treacherously killed another. May the priest be examined as to such confession without the consent of the penitent? No, pursuant to Rule 123, Section 26(g), Rules of Court. The rule invoked does not change what is in the mind of the priest, but the information is nevertheless privileged. Many more cases may be cited. The argument propounded by the majority that evidence is not affected by its illegal seizure because "the mere fact of illegally obtaining them does not change that which is written in them," must accordingly be discredited.

Com. v. Dana,[33] also cited by the majority, is of the same tenor as the Stevenson case. "Pertinence to the issue" is the ultimate criterion of competence.

Another case cited is *People v. Defore*:[34] "We are confirmed in this conclusion when we reflect how far-reaching in its effects upon society the new consequences would be. The pettiest officer would have in his power, through overzeal or indiscretion, to confer immunity upon an offender for crimes the most flagitious."

In its turn, the majority opinion had this to say:[35]

"Concretemonos al caso presente. Si los documentos cuya devolucion pide el recurrente, prueban su culpabilidad del delito de traicion, por que el Estado tiene que devolverlos y librarle de la acusacion? No es esto consentir y convalidar el crimen? No constituye una aprobacion judicial de la comision de dos delitos, el de violacion del domicilio del acusado cometido por los miembros del CIC y el traicion cometido por el recurrente? Semejante practica fomentaria el crimen en vez de impedir su comision. Ademas, la obtencion de los documentos no altera su valor probatorio. Si hubiera mediado un mandamiento de registro, los documentos serian pruebas admisibles. No hay ninguna disposicion constitucional, ni legal que

33 P. 7.
34 P. 8.
35 P. 9.

libere al acusado de toda responsabilidad criminal porque no hubo mandamiento de registro. La vindicta publica exige que los infractores de la ley penal sean castigados. Poner en libertad al culpable por el simple hecho de que la prueba contra el no ha sido obtenida legalmente es sancionar judicialmente el crimen."

This is narrow-mindedness. To return documents illegally seized by an officer of the law through over-zeal or indiscretion is not to confer immunity upon the person against whom the documents are evidence, nor does the State by it exonerate or pardon the offender; neither does it constitute "a judicial approval of the commission of the violation of the accused's domicile committed by the members of the C.I.C. and that of treason allegedly committed by the petitioner."

The offender may still be brought to justice, but only in accordance with the means and processes sanctioned by law. And if the law makes it difficult to convict, or places beyond the reach of government agents certain evidence, there is no choice. The two-witness rule in treason cases,[36] the rule on double jeopardy,[37] the rule on self-incrimination,[38] the rule on privileged communications[39] are such rules. For example, take treason. If the prosecution presents but one witness against the accused, no matter how convinced the court is as to his guilt, it must acquit him. The court has no choice. Supposing, in the same case, the prosecution, after the dismissal of the case discovers another witness for the same treasonable act of the accused. May the latter be brought to court again to answer for the same treasonable act? No, because that would constitute double jeopardy. Would this not be tantamount to sanctioning the crime? Would this not be the same as setting free a person we are convinced beyond any shadow of doubt is guilty?[40]

As to the offending officer, he must suffer for his crime in any case provided his guilt be duly proved. And this writer cannot understand the reason of the court in saying that the return of the documents would mean "sanctioning the violation of the accused's domicile."

To return the documents illegally seized is to place things in their original position prior to the unlawful act, pursuant to the constitutional mandate that the rights against unreasonable searches and seizures shall not be violated.

On one hand, the majority is appalled "when it reflects how far-reaching in its effects upon society the new consequences would be," in returning evidence illegally seized. That is why it refuses to see that to permit the use of evidence illegally seized would encourage the

36 RULE 123 § 97.
37 PHIL. CONST. art. III § 1(20).
38 **Id.**, at (18).
39 RULE 123 § 26 (d)(e)(f)(g)(h).
40 Perhaps, the argument is valid that to return evidence illegally seized is to sanction the crime proved by such evidence in those cases where mere possession of things constitutes a crime. (See Uy Kheytin v. Villareal, **supra**). But this is an altogether different question, one which this writer will not discuss.

violation of the constitutional provision at least in those special cases of notorious criminals too smart or too slippery to be captured by legal means, and thus make heroes of transgressors of the fundamental law, and that the probability of pardon of the erring officers may clinch the legal trick.

On the other hand, if the court does not return the documents and uses them in evidence, it would be nullifying the constitutional provision on search and seizure. The history of the constitutional provision bears out the fact that it was intended primarily as a restriction on the powers of the executive department. It commands not so much "that no law violative of this constitutional inhibition should ever be enforced,"[41] but that no unreasonable search or seizure shall be made by any official or agent of the government. "The right of the people to be secure in their persons, houses, papers and effects *shall not be violated,*" so runs the constitutional mandate. What if violated? What is the remedy afforded the aggrieved party? What is the sanction under the law which creates the right against unreasonable searches and seizures? It is suggested that the officer making the illegal search may be punished. But this is a sanction under the penal law. And it must be observed that the Revised Penal Code antedates the Constitution.[42] Even before the effectivity of the Revised Penal Code, the act of illegal search and seizure was penalized in the Philippines under the Penal Code of Spain.[43] What, then, is the sanction under the constitutional protection? There must be some legal effect, some sanction under it; for if there were none, the provision would be useless, would be a complete nullity. It is the wise and consistent policy of the law, in any case of violation of individual right, to restore a person in his right as far as possible. In that light, therefore, it is here submitted that to return documents illegaly seized to their owner is to restore him in his original position before the violation of his constitutional right. This gives meaning and effect to the constitutional guaranty. It achieves the purpose and guarantees the end for which the constitutional provision was ordained.

The majority opinion took occasion to pose this hypothetical case:[44]

"Por sospechosa catadura, un tal Jose es arrestado por dos policias al lirigirse a la tribuna en donde estan reunidos los altos funcionarios del poder ejecutivo, legislativo y judicial juntamente con los representantes diplomaticos de las naciones amigas para presenciar la parada del aniversario de la independencia; en su bolsillo encuentran una bomba que es capaz de volar toda la tribuna. Otros dos policias, despues de enterarse del arresto, requisan la casa de Jose y encuentran documentos que revelan que el ha recibido ordenes de una organizacion extranjera para polverizar a todo el alto personal del gobierno en la primera oportunidad. Los policias no tienen

41 Note 28.
42 Art. 1 REVISED PENAL CODE.
43 U.S. v. De Los Reyes, 20 Phil. 467 (1918).

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mandamiento de arresto, ni mandamiento de registro. Es justo que a mocion de Jose en la causa criminal seguida contra el, se ordene por el juzgado de la devolucion de los documentos que prueban su crimen? No se daria aliciente al anarquismo con semejante practica?

This, is to use an expression of Professor Wigmore, "misguided sentimentality." This is short-sightedness.

Supposing that in the above hypothesis a warrant for the seizure of the documents may not issue, and it probably would not, because a search warrant cannot be issued for the purpose of seizing evidence to be used in criminal proceedings,[45] and because the documents are not among those mentioned in Rule 122, Section 2 of the Rules of Court. That leaves us two possibilities: if the policemen are law-abiding and would not make the illegal search and seizure, the criminal would go free. Otherwise, to jail. Which shall it be now? Shall we let the person guilty of treason go free, or shall we put him behind bars? Phrased in this manner, we shall invariably answer, and not without pain: "Let him go free."

But then, if the constitutional right is violated anyway, why let a criminal go free? This is the tenor of the reasoning in the case of People v. Mayen:[46]

"The fallacy of the doctrine contended by the appellant is in assuming that the constitutional rights of the defendant are violated by using his private papers as evidence against him, whereas it was the invasion of his premises and the taking of his goods that constituted the offense irrespective of what was taken or what was made of it."

In the words of the majority in the case under comment:[47]

"Concurrimos con la reclamacion del recurrente de que, bajo estas garantias constitucionales, tenia derecho a que su casa fuese respetada, sus documentos no debian ser decomisados por ninguna autoridad o agente de autoridad, sin un mandamiento de registro debidamente expedido.

"Estas limitaciones constitucionales, sin embargo, no llegan hasta el extremo de excluir como pruebas competentes los documentos obtenidos ilegal o indebidamente de el."

At first blush it would seem that the majority has made a point. But upon clear examination, the best that could be said of the argument is that it is a masterpiece of sophistry. Paraphrased in more simple terms, the argument runs thus: the law forbids you to gather evidence without a warrant. You should never have made that illegal search and seizure to secure the evidence. But now that you have the evidence, keep it. We shall use it to convict a criminal.

Analogy as a method of argument is perhaps the most effective weapon for sophistry. It is as often shunned by the faithful adherents of logic

44 Pp. 9-10.
45 Alvarez v. CFI, **supra**; Rodriguez v. Villamiel, **supra**.
46 Pp. 10-11.
47 Note 26.

as it is used by those who would appeal to the heart rather than the mind. Although not always invalid, this method of argument obscures the issues, and is often misleading. Much as this writer would want to be numbered among those who resort only to the cold and systematic method of argument, which is the only truly safe guide in the search for truth, permit him one analogy. It would illustrate, if not prove, his point.

In the argument propounded by the majority, compare the court to a father who admonishes his son for having stolen an orange. He says: "Why did you steal that orange? Don't you know that that is a sin? Have I not told you never to steal? You could have asked me and I would have bought you an orange. All right! Let's eat it!" Afterwards, he spanks his son — mildly.

The story is humorous. It was only an orange that was stolen. It was not the privacy of a home that was invaded.

The violation of the constitutional provision does not change its purpose and spirit and effect. Is it not a fact that if the Constitution would be faithfully followed the person guilty of treason in our hypothetical case should go free? So let it be! As Justice Perfecto said in his dissenting opinion: "Principles are not to be sacrificed for any purpose."[48] *Dura lex, sed lex.* This should ever be the policy of the State. For ours is, and God grant it shall always be, "a government of laws and not of men.[49]

When it shall be settled that all acts of illegal search and seizure shall be for nought, then, perhaps, the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall in fact be forever inviolable.

48 P. 19.
49 Villavicencio v. Lukban, 39 Phil. 773 (1919); People v. Perfecto, 43 Phil. 887 (1922).