ARREST, SEARCHES, AND SEIZURES

By Jacinto Jimenez

"The poorest man may, in his cottage, bid defiance to all the forces of the Crown. It may be frail, its roof may shake, the wind may blow through it; the storm may enter the rain may enter; but the King of England may not enter. All his force dares not cross the threshold of the ruined tenement."

Chatham's Speech on General Warrants[1]

I. HISTORICAL BACKGROUND

A. Early Times

"A man's house is his castle" has become a maxim among the civilized peoples of the earth.[2]

The concept of respect for the sacredness of the home dates back to ancient times, because religion gathered under the same roof all the members of primitive families to worship their protective gods in accordance with common prayers and rites. Thus, when he abandoned Troy, Aeneas did not save from the fire and bring with him the images of the gods of the city but its Lares and Penates. The Hebrews worshipped God by calling him the God of Abraham, of Isaac, and of Jacob.

The house of man was the first house of God. The home was the primitive altar. Family worship antedated public worship. The sanctity of the home preceded the sanctity of the temple.

In Rome the home of the citizen was a sacred asylum. Its inviolability was recognized both by the jurisconsults and the laws. Cicero exclaimed, *"Quid est sanctius, quid omni religione munitius quam uniuscujusque civium domus? Hoc perfugium est ita sanctum omnibus, ut inde abripi neminem fas sit."* The Cornelian Law afforded strong protection to the home. Acts of force which resulted in the invasion of the home were condemned and were likened to acts of violence against persons. The right to hale persons before the tribunals and the magistrates, no matter how expeditiously, absolutely and broadly protected by the laws, did not prevail over the inviolability of the home. *'De domo sua nemo extrahi debet,"* an ancient law tersely proclaimed. Another provided, *"Plerique putaverunt, nullum de domo sua in jus vocari licere, quia domus tutissimum cuique refugium atque receptaculum sit, eumque, qui inde in jus vocaret vim inferre videri."*

During the Middle Ages, religious sentiments, which flourished under the care of the Catholic Church, protected the temples and the cloisters from violent attacks. The security of the home relied upon the only effective protection of human rights that existed during those turbulent times -- force. The home was converted into a castle, the fields bristled with fortresses, the towns were surrounded with walls.

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[1] Quoted in Cooley, A Treatise on the Constitutional Limitations, 8th ed., Vol. 2, p. 611.

[2] United States vs. Arceo, 3 Phil. 381, 384.

With the triumph of monarchy, the protection of the home was placed in the hands of the king as the representative of all social forces. " In the name of the king," shouted the magistrates and their agents when pursuing a criminal to arrest him. It was only by invoking the name of the king that the doors of a private house could be opened, so that they could arrest a criminal within.[3]

B. England

Probably, in the early days officials enforced the criminal statutes without the need for any warrant but on the strength of their authority. The fourteenth century witnessed the first instances of laws authorizing searches and seizures. A law passed in 1335 provided that innkeepers in passage ports were to search guests for imported money. In the next century and a half, similar powers were given to organized trades and associations to enforce their regulations and charters. A law enacted in 1511 gave the authorities of cities, towns and boroughs full power to search for and destroy adulterated oils.

With the introduction of the printing press, a system of state censorship was imposed by requiring a license for all publications. It was for the purpose of enforcing the licensing system that broad powers of search and seizure were conferred on those entrusted with its enforcement. The enforcement of the licensing system was entrusted to the Stationers' Company, a private organization incorporated in 1557, which was given a monopoly over printing.[4] It was empowered "to make search whenever it shall please them in any place, shop, house, chamber, or building or any printer, binder or bookseller whatever within our kingdom in England or the dominions of the same of or for any books or things printed, or to be printed, and to seize, take hold, burn or turn to the proper use of the said community, all and several those books and things which are or shall be printed contrary to the form of any statute, act, or proclamation, made or to be made."[5]

In the second part of the sixteenth century, the Star Chamber passed two decrees to strengthen the powers of the Stationers' Company. The first one expanded its powers by authorizing its wardens to inspect all books and papers brought to England, to search any place where they suspected the printing laws had been violated or was being violated, and to seize any books or papers printed in violation of the printing law. The second decree provided for stricter censorship and granted more sweeping powers of search and seizure.[6] The books and papers seized were brought to the Stationers' Hall, where they were inspected by ecclesiastical authorities, who decided whether they should be burned. The powers were wielded under the Tudor censorship to suppress Catholic and Puritan dissenting literature.[7]

3 Groizard, El Codigo Penal de 1870, 2nd ed., Vol. III, pp. 499-501.

4 Polyviou, Search & Seizure, pp. 1-2

5 Marcus vs. Search Warrant of Property at 104 East Tenth Street, Kansas City, Missouri, 367 U.S. 717, 724-725.

6 Polyviou, op. cit., p.2.

7 Marcus vs. Search Warrant of Property at 104 East Tenth Street, Kansas City, Missouri, 367 U.S. 717, 725.

During this time seditious libels and similar offenses fell under the jurisdiction of the Courts of Star Chamber and High Commission. General warrants were issued authorizing the arrest of suspects and the seizure of evidence.[8]

During the first part of the seventeenth century, general warrants were widely used to enforce laws regulating religious worship.[9] James I commissioned the ecclesiastical judges of the Court of High Commission to search for all heretical, schismatical and seditious books, pamphlets, and portraitures offensive to the state or public without authority and to seize and destroy them.[10]

The excesses of this period were dramatized by the ransacking in 1634 of the house of Sir Edward Coke as he lay dying. Upon order of the Privy Council, a messenger seized the manuscripts for his classic legal work *Institutes of the Laws of England* for being seditious and libelous. The messenger carried away practically all his writings, jewelry, money, and other valuables and even his will.[11]

In 1637 the infamous Star Chamber issued a decree expanding the powers of search and seizure of the Stationers' Company and authorizing the conduct of searches at any time of day or night.[12] As a result, John Milton wrote his memorable plea for free speech, *Areopagetica.* The use of general warrants continued to rage unabated. They were particularly used to seize smuggled goods.[13]

Parliament continued to stress the necessity of broad powers of search and seizure to control printing. Thus, an order of 1648 authorized the search of any house or place where there was just cause for suspicion that presses were used to print scandalous and lying pamphlets and to seize such pamphlets.[14]

Nevertheless, with the abolition of the Star Chamber a sentiment that general warrants were undesirable was beginning to develop. The House of Commons passed a resolution condemning the issuance of general warrants against members of Parliament in 1629 as breaches of their privilege. The Earl of Strafford was impeached for granting to his subordinates a general warrant of arrest.[15]

These hopeful developments did not last long. With the Restoration, in 1662 several statutes were enacted again granting powers of search and seizure as broad as those authorized by the Star Chamber. The Licensing Act of 1662 banned the printing of many kinds of books and pamphlets, required the licensing of books, and authorized the Secretaries of State with almost no limitation to issue search warrants against unlicensed books.[16] While these warrants were sometimes specific in content, they often gave general discretionary authority. Thus, a warrant given

8. Polyviou, op. cit., p. 2.

9. Ibid., p.2.

10 Marcus vs. Search Warrant of Property at 104 East Tenth Street, Kansas City, Missouri, 367 U.S. 717, 725-726.

11 Hall, Search and Seizure, p. 14.

12 Polyviou, op. cit., p. 2.

13 Marcus vs. Search Warrant of Property at 104 East Tenth Street, Kansas City, Missouri, 367 U.S. 717, 725-726.

15 Polyviou, op. cit., pp. 2-3.

16 Ibid., p. 3.

to Roger L'Estrange, the Surveyor of the Press, authorized him to seize all seditious books and libels; to arrest the authors, contrivers, printers, publishers and distributors; and to search any house, shop. printing room, chamber. warehouse and other places for seditious, scandalous, or unlicensed pictures, books or papers. Another warrant given him empowered him to arrest authors, contrivers, printers, publishers, distributors, and concealers of treasonable, schismatic, seditious, or unlicensed books, libels, pamphlets, or papers.[17]

The Licensing Act lapsed in 1679 when Charles II refused to convene Parliament. However, Chief Justice Scroggs advised him that since seditious libel was a common law offense, books and papers containing such libels could still be seized. Charles II issued a proclamation suppressing seditious libel and prohibiting unlicensed printing. The judges relied upon this proclamation in issuing general warrants.[18]

The feeling in Parliament that general warrants were undesirable resurfaced. A year later Chief Justice Scroggs was impeached for issuing general warrants.[19]

However, even after the English Revolution in 1688, general warants continued to be issued for the search and seizure of offending books. Even when criminal prosecution for seditious libel replaced licensing as the government tool for controlling the press, the prosecution was conducted with the aid of general warrants.[20]

Parliament openly showed its disapproval of general warrants by abolishing a tax, partly because its enforcement required general searches. In 1733 Robert Walpole withdrew a bill proposing to impose an excise tax on wine and tobacco. It would have been defeated because of its provisions for extensive searches, although it allowed the search of storehouses only. In 1763, William Pitt denounced the tax on cider, because its provisions for enforcement included powers of search and seizure.[21]

In 1736, Chief Justice Matthew Hale published his work *History of the Pleas of the Crown,* which has strongly influenced the developments in the field of search and seizure. He condemned general warrants as void. He stressed that a warrant could only be issued after examination by a judge of the prosecutor or the witness under oath, because warrants should not be granted unless probable cause existed. In addition, the warrant should specify the name or description of the person to be arrested and should describe with particularity the place to be searched.[22]

However, the Secretary of State continued issuing general warrants.[23]

[17] Marcus vs. Search Warrant of Property at 104 Est Tenth Street, Kansas City, Missouri, 367 U.S. 717, 726-727.

[18] Polyviou, op. cit., p. 3.

[19] Ibid., p. 3.

[20] Marcus vs. Search Warrant of Property at 104 East Tenth Street, Kansas City. Missouri, 367 U.S. 717, 727.

[21] Polyviou, op. cit., p. 3.

[22] Ibid., p. 4.

[23] Ibid., p. 5.

The issue of the validity of general warrants was finally resolved in the landmark General Warrants Cases.

In 1762, John Wilkes started publishing anonymously the *North Briton,* a series of pamphlets critical of the government policies. In 1763, No. 45 of the *North Briton* was unusually critical. Lord Halifax, the Secretary of State, issued to four messengers a general warrant ordering the search for the authors, printers and publishers of the "seditious and treasonable paper". Within three days, the four messengers arrested forty-nine persons. When they arrived, John Wilkes refused to submit to the warrant. The messengers removed him and searched his house. John Wilkes sued for damages. The defendants invoked the general warrant as justification for their acts. John Wilkes won the case. He obtained a verdict for L4,000 against Lord Halifax and L1,000 against Wood, the undersecretary who supervised the enforcement of the general warrant.[24]

Seeing the victory of John Wilkes, John Entick, a writer for an opposition paper against whom Lord Halifax had also issued a general warrant for seditious libel, also sued for damages. The officers enforcing the warrant ransacked his house for four hours and carted away numerous books and papers.[25] In a landmark decision, Lord Camden declared the warrant void, saying :

> "If this point should be decided in favor of the Government the secret cabinet and bureaus of every subject in this kingdom would be thrown open to the search and inspection of a messenger whenever the secretary of state shall see fit to charge, or even to suspect, a person to be the author, printer, or publisher of a seditious libel."[26]

Lord Camden added:

> "By the laws of England, every invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my ground without my license, but he is liable to an action, though the damage be nothing; which is proved by every declaration in trespass, where the defendant is called upon to answer for bruising the grass and even treading upon the soil."[27]

C. America

During the colonial days, it was the practice to issue writs of assistance which gave customs officials blanket authority to search where they pleased for smuggled goods.[28] These writs of assistance were general warrants authorized by two English statutes enacted in 1662 and 1696. They were more sweeping than the general warrants issued in England, because they were not related to a particular offense, such as, seditious libel, and they remained valid during the lifetime of the reigning sovereign.

The death of George II in 1760 meant that the writs of assistance previously issued would have to be renewed. Several merchants in Boston who opposed the

[24] Hall, op. cit., p. 17; Boyd vs. United States, 116 U. S. 616, 625-626.

[25] Hall, op. cit., p. 17; Marcus vs. Search Warrant of Property at 104 East Tenth Street, Kansas City, Missouri, 367 U. S. 717, 728.

[26] Entick vs. Carrington, 19 How, st. Tr. 1029, 1064.

[27] Ibid., p. 1066.

[28] Stanford vs. State of Texas, 379 U.S. 476, 481.

renewal hired the legal services of James Otis. James Otis denounced the writs of assistance, because they placed "the liberty of every man in the hands of every petty officer." He argued that writs of assistance were unknown in common law and that general warrants violated the Magna Carta. The court decided to ask for further information from England. After receiving the information, it decided in favor of the customs officers. Although James Otis lost the case, his argument galvanized opposition to the English crown. John Adams observed, "Then and there was the first scene of opposition to the arbitrary claims of Great Britain. Then and there the child Independence was born. In fifteen years, namely in 1776, he grew to manhood, and declared himself free."[29]

Between 1776 and 1787, almost every State adopted a provision affording protection against arbitrary search and seizure. The first one to do so was Virginia, which condemned general warrants in its Declaration of Rights adopted three weeks before the Declaration of Independence. The Declaration of Rights of Pennsylvania, adopted over two months after the Declaration of Independence, was the first one to contain a more elavorate provision on search and seizure. It required that warrants be supported by oath or addirmation. The Declaration of Rights of Massachusetts adopted in 1780 first used the phrase "unreasonable searches and seizures."[30]

The original text of the Constitution of the United States approved by the Constitutional Convention in 1787 did not contain a Bill of Rights. This omission was one of the most controversial topics during the debates before the ratification of the Constitution of the United States. In 1789, Congress adopted a Bill of Rights by approving the first Ten Amendments, which were ratified that same year.

While there is a controversy regarding the final version of the Fourth Amendment, the text that appears in the Statutes at Large, reads as follows :

> "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 warrants 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."

D. Spain

The Bourbons ruled Spain as absolute monarchs. When Napoleon Bonaparte placed his brother Joseph on the Spanish throne in 1808, Spain adopted a constitution for the first time. The Constitution of 1808 guaranteed the inviolability of the home and freedom from illegal arrests.

Article 126 of the Constitution of 1808 provided:

> "La casa de todo habitante en el territorio de España y de India es asilo inviolable; no se podra entrar en ella sino de dia y para un objeto especial determinada por una ley, o por una orden que dimane de la autoridad publica."

Article 127 of the same Constitution stated:

> "Ninguna persona residente en el territorio de España y de Indias podra per presa, como no sea en flagrante delito, sino en virtud de un orden legal y escrita."

[29] Polyviou, op. cit., pp. 10-11.

[30] Ibid., p. 11, Hall, op. cit., p. 19.

With the struggle for independence raging, the Cortes convened in Cadiz and promulgated the Constitution of 1812. This also secured the home against illegal searches. Article 306 of the Constitution of 1812 read:

> "No podra ser allanada la casa de ningun español, sino en los casos que determina ley para el buen orden y seguridad del estado."

With the proclamation of Isabella II as Queen of Spain under the regency of Maria Cristina, Spain adopted a new Constitution in 1837. Article 7 of the Constitution of 1837 declared:

> "No puede ser detenido, ni preso ni separado de su domicilio ningun español, ni allanada su casa, sino en los casos y en la forma que las leyes prescriban.

As the struggle for succession to the Spanish throne continued. Spain adopted another constitution in 1845. Article 7 of the Constitution of 1845 reproduced Article 7 of the Constitution of 1837.

When Isabela II was overthrown from the Spanish throne in 1868, the Cortes assembled in 1869 and approved a new constitution. Article 5 of the Constitution of 1869 decreed:

> "Nadie podra entrar en el domicilio de un español o extranjero residente en Espana sin su consentimiento, excepto en los casos urgentes de incendio inundacion u otro peligro analogo, o de agresion ilegitima precedente de adentro, o para auxiliar a persona que desde alli pida socorro.
>
> "Fuera de estos casos, la entrada en el domicilio de un español o extranjero residente en España y el registro de sus papeles o efectos solo podran decretarse por el juez competente y ejecutarse de dia.
>
> "El registro de papeles y efectos tendran siempre lugar a presencia del interesado o de un individuo de su familia; y en su defecto de dos testigos vecinos del mismo pueblo.
>
> "Sin embargo, cuando un delincuente llamado en infraganti y perseguido por la autoridad o sus agentes se refugiarse en su domicilio, podran estos penetrar en el solo para el acto de aprehension. Si se le refugiarse en domicilio ajeno, procedera requirimiento al dueno de este."

What is striking about this provision is that it is very detailed. Aside from requiring a court order for the search of a home, it provided that the search could only be done in the daytime and in the presence of the person involved or a member of his family, or in their absence, in the presence of two neighbors.

When the Bourbons returned to power with the ascent of Alfonso XII to the Spanish throne, the Cortes adopted another constitution in 1876. The Constitution of 1876 incorporated Article 4 of the Constitution of 1869 as Article 5. In addition, it embodied the following provision as Article 6:

> "Nadie podra entrar en el domicilio de un español, o extranjero residente en España, sin su consentimiento, excepto su los casos y en la forma expresamiente previstos en las leyes.
>
> "El registro de papeles y efectos se verificara siempre a presencia del interesado o de un individuo de su familia, y en su defecto, de dos testigos vecinos del mismo pueblo."

E. The Philippines

While the various constitutions of Spain contained guarantees against illegal arrests and searches, these guarantees were not extended to the Philippines. One of

the objectives of the Propaganda Movement, which the Filipino patriots launched in Spain, was the extension to the Philippines of the rights guaranteed by the Constitution of 1876.[31] *La Solidaridad,* the newspaper published by the Propaganda Movement, bewailed the untrammeled freedom of the government authorities to search the home of anyone at any time of the day or night and to arrest anyone without due process of law.[32]

After the outbreak of the Philippine Revolution, the Malolos Congress drafted a constitution for the Revolutionary Government. Emilio Aguinaldo, the President of the Revolutionary Government, proclaimed the Malolos Constitution on January 21, 1899. The Malolos Constitution contained detailed guarantees against illegal arrests and searches. Article 7 of the Malolos Constitution provided:

> "Ningun filipino ni extranjero podra ser detenido ni preso sino por causa de delito y con arreglo a las leyes."

Article 8 decreed:

> "Todo detenido sera puesto en libertad o entregado a la autoridad judicial dentro de las venticuatro horas siguientes el acto de la detencio.
>
> "Toda detencion se dejara sin efecto o se elevara a prision dentro de la setenta y dos horas de haber sido entregado el detenido al Juez competente.
>
> "La providencia que se declare se notificara al interesado dentro del mismo plazo."

Article 10 declared;

> "Nadie puede entrar en el domicilio de un filipino o extranjero residente en Filipinas sin su consentimiento excepto en los casos urgentes de incendio, inundacion, terremoto u otro peligro analogo o de agresion ilegitima procedente de dentro, o para auxiliar a persona que desde alli pida socorro.
>
> "Fuera de estos casos, la entrada en domicilio de un filipino o de extranjero residente en Filipina, y el registro de sus papeles o efectos, solo podran decretarse por Juez competente y ejecutarse de dia.
>
> "El registro de papeles y efectos se verificara siempre a presencia del interesado o de un individuo de su familia y, en su defecto, de dos testigos vecinos del mismo pueblo.
>
> "Sin embargo, cuando un delincuente hallado enfragranti y perseguido por la autoridad con sus agentes se refugiarse en su domicilio podran estos penetrar en el, solo para el acto de la aprehension.
>
> "Si se refugiarse en domicilio ajeno, procedera requerimiento al dueno de este."

Article 12 stated:

> "En ningun caso podra detenerse ni abrirse por la autoridad gubernativa la correspondencia confiada al correo, ni tampoco detenerse la telegrafica o telefonica.
>
> "Pero en virtud de auto de Juez competente, podra detenerse cualquiera correspondencia y tambien abrirse en presencia del procesado la que se dirija por el correo.

Article 13 read as follows:

> "Todo auto de prision de registro de morada o detencion de la correspondencia escriba, telegrafica o telefonica, sera motivado.

[31] Mabini, La Revolucion Filipina, p. 289.

[32] Fores-Ganzon, tr., La Solidaridad, pp. 501 and 837.

> "Cuando el auto carezca de este requisito o cuando los motivos en que se haya fundado se declaren en juicio ilegitimos o notariamente insuficientes, la persona que hubiere sido presa, o cuya prision no se hubiere ratificado dentro del plazo señalado en el art. 9, o cuyo domicilio hubiere sido allanado, o cuya correspondencia hubiere sido detenido, tendra derecho o reclamar las responsibilidades consiguientes."

The influence of Spain upon the Malolos Constitution is unmistakable. Article 10 was taken from Article 5 of the Constitution of 1869. However, the scope of the protection the Malolos Constitution afforded was broader. It also guaranteed the privacy of communication and authorized the person whose rights were violated to sue.

When the American colonial forces steamed into Manila Bay, they brought with them a new legal system. When Spain ceded the Philippines to the United States by virtue of the Treaty of Paris, initially the American colonial authorities governed the Philippines by virtue of the authority of the President of the United States as Commander-in-Chief of the Army and the Navy. On April 7, 1900, President William McKinley issued his instructions to the Second Philippine Commission, which ordered:

> "Upon every division and branch of the Government of the Philippines, therefore, must be imposed these inviolable rules:
>
> xxx xxx xxx
>
> "That the right against unreasonable searches and seizures shall not be violated;"

The Congress of the United States shortly provided for the administration of the Philippines. On July 1, 1902, it approved the Philippine Bill of 1902, which replaced the Instructions of President William McKinley to the Second Philippine Commission as the fundamental law of the Philippines. Section 5 of the Philippine Bill of 1902 guaranteed:

> "That the right to be secure against unreasonable searches and seizures shall not be violated.
>
> "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."

When the Philippine Bill of 1902 was superseded by the Autonomy Act, popularly known as the Jones Law, Section 3 reproduced verbatim the guarantee against unreasonable searches and seizures and illegal arrests found in Section 5 of the Philippine Bill of 1902.

Public Act No. 127, popularly known as the Tydings-McDuffie Law, was approved on March 24, 1934. It authorized the Philippine Legislature to call a constitutional convention to draft a constitution for the Philippines. Pursuant to this statute, the Philippine Legislature called a constitutional convention by passing Public Act No. 4125.

In formulating the draft of the constitutional protection against unreasonable searches and seizure, Delegate Jose Laurel, the Chairman of the Committee on Bill of Rights, followed the text of the Fourth Amendment of the Constitution of the United States.[33] However, Delegate Vicente Francisco proposed that the

[33] Francisco, Journal of the Constitutional Convention of the Philippines, Vol. III, No. 91, November 19, 1934, p. 1034.

phrase "supported by oath or affirmation" be substituted with the phrase" to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce". This was already provided for in Section 98 of General Order No. 58, Series of 1900. However, Delegate Vicente Francisco insisted on his amendment. He argued that an inconsistency between section 98 of General Orders No. 58, Series of 1900 and Section 1 (3) of Article III might render the former unconstitutional. Besides, if the requirement that the complainant and his witnesses be examined under oath or affirmation by the judge were to be left to ordinary legislation, it might be amended or repealed.[34] Delegate Jose Laurel agreed to the amendment, and it was accordingly approved.[35] Thus, as finally approved, Section 1 (3), Article III of the 1935 Constitution read as follows: "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 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 person or things to be seized."

In addition, the constitutional convention adopted the following provision as Section 1 (5) of Article III of the 1935 Constitution :

> "The privacy of communication and correspondence shall be inviolable except upon lawful order of the court or when public safety and order require otherwise."

This was patterned after Article 12 of the Malolos Constitution.

The Constitution of 1935 served as the fundamental law both of the Commonwealth of the Philippines and the Republic of the Philippines.

On March 16, 1967, Congress passed Resolution No. 2, which called for a constitutional convention. Pursuant to Resolution No. 2, a constitutional convention convened on June 1, 1971 to draft a new constitution. While debates on the new draft of the constitution continued dragging on, on September 21, 1972, former President Ferdinand Marcos imposed martial law on the entire Philippines. Under the shadows of martial law, on November 29, 1972 the constitutional convention approved its draft of the constitution. Although this draft was never ratified by the people in a plebiscite, on January 17, 1973, former President Ferdinand Marcos issued Proclamation No. 1102, which announced the draft of the new constitution had been ratified by the members of the Citizens' Assemblies.

Section 3, Article IV of the 1973 Constitution changed the guarantee against unreasonable searches and seizures to read as follows :

> "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under both or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized."

[34] Ibid., p. 1100.

[35] Ibid., p. 1102.

On the other hand, Section 4, Article IV of the 1973 Constitution modified the guarantee of the privacy of communication to read as follows:

> "(1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court or when public safety and order require otherwise.
>
> "(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."

Thus, the 1973 Constitution introduced four amendments to the provisions on searches and seizures. Firstly, the protection was made applicable to searches and seizures of whatever nature and for any purpose. Secondly, it specified that it applies to both search warrants and warrants of arrest. Thirdly, the power to issue warrants was extended not only to judges but also to other responsible officers authorized by law. Fourthly, it was expressly provided that any evidence obtained in violation of the right against unreasonable searches and seizures shall be inadmissible for any purpose in any proceeding.

After a controversial presidential election marred by rampant fraud on the part of former President Ferdinand Marcos, President Corazon C. Aquino assumed office on February 25, 1986 during a bloodless revolution. After proclaiming a revolutionary government on April 23, 1986, she issued Proclamation No. 9, which created a constitutional commission to draft a new constitution. The 1987 Constitution was ratified by the people during the plebiscite held on February 2, 1987.

Section 2, Article III of the 1987 Constitution amended the guarantee against unreasonable searches and seizures to read as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally 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 or things to be seized."

Section 3, Article III of the 1987 Constitution modified the guarantee of the privacy of communication to read as follows:

> "(1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.
>
> "(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."

Thus, the 1987 Constitution introduced three (3) amendments to the constitutional guarantee against unreasonable searches and seizures and of the right to privacy of communication. Firstly, the power to issue warrants was again limited to judges. Secondly, it was stressed that the examination of the complainant and his witnesses cannot be delegated but must be personally conducted by the judge. Thirdly, in order that an executive official may impair the privacy of communication and correspondence, there must be a law defining the conditions under which he may do so.

II. SCOPE OF THE CONSTITUTIONAL PROTECTION

The Constitution does not prohibit all arrests, searches, and seizures but only those which are unreasonable. All illegal arrests, searches, and seizures are unreasonble, while lawful ones are reasonable. What constitutes a reasonable or unreasonable arrest, search, or seizure in a particular case must be determined from a consideration of the circumstances involved, including the purpose of the arrest or search, the presence or absence of probable cause, the manner in which the arrest, search, and seizure were made, the place or the article searched, the persons arrested, and the character of the article seized.[36]

The constitutional guarantee against unreasonable searches and seizures extends not only to individuals but also to artificial persons like corporations.[37]

Search warrants have no relation to civil proceedings. The issuance of a search warrant cannot be used to decide title to property in a civil case. Thus, where a salesman pawned without authority the office equipment he was supposed to sell, his employer cannot recover them from the pawn shop by getting a search warrant and then obtaining a declaration of ownership in favor of the employer.[38]

The Supreme Court has held that the Radio Control Office could not evade the requirement for holding a hearing before refusing to renew the license of a radio station by obtaining a search warrant on the ground that the radio station was using a transmitter which was different from the one it was authorized to use.[39]

In a case decided on the basis of the text of the 1935 Constitution, the Supreme Court ruled that an order for the production and inspection of documents relevant to a civil case was not covered by the constitutional prohibition against unreasonable searches and seizures.[40]

However, Father Joaquin G. Bernas, S.J. believes that since the 1973 Constitution extended the guarantee against unreasonable searches and seizures to searches and seizures of whatever nature and for any purpose, the protection covers subpoenas duces tecum and orders for the production and inspection of documents.[41]

III. REQUISITES FOR THE ISSUANCE OF SEARCH WARRANTS AND WARRANTS OF ARREST

For a search warrant or a warrant of arrest to be valid, the following requisites must concur: (1) it must be issued upon probable cause; (2) the probable cause must be personally determined by the judge; (3) in the determination of the

[36] Alvarez vs. Court of First Instance of Tayabas, 64 Phil. 33, 44; Rodriguez vs. Villamiel, 65 Phil. 230, 237-238.

[37] Bache & co. (Phil.), Inc. vs Ruiz, 37 SCRA 823, 837.

[38] Life Pawnshop, Inc. Far East Distributors, Inc. 11 CAR (2s) 754, 757. See also Hercules Bottling Co., Inc. vs. Savellano, CA-G.R. No. 09153-R, February 29, 1980.

[39] Lemi vs. Valencia, 117 Phil. 484, 488-489.

[40] Material Distributors (Phil.), Inc. vs. Natividad, 84 Phil. 127, 135.

[41] Bernas, The Revised 1973 Philippine Constitution: Notes and Cases, 1983 ed., Part II, p. 210.

probable cause, the judge must examine under oath or affirmation the complainant and the witnesses he may produce; and (4) the warrant issued must particularly describe the place to be searched and the persons or things to be seized.[42]

To be valid, a search warrant or a warrant of arrest must comply strictly with the constitutional and statutory requisites for its issuance. The right against unreasonable searches and seizures must be liberally construed to prevent any stealthy encroachment upon it.[43]

A. Probable Cause

Probable cause means such reasons, supported by the facts and circumstances, as will warrant a cautious man in the belief that his action, and the means taken in prosecuting it, are legally just and proper.[44] It refers to such facts and circumstances antecedent to the issuance of the warrant that are in themselves sufficient to induce a cautious man to rely upon them and act in pursuance thereof.[45]

For a search warrant, probable cause means such facts and circumstances which will lead a reasonably discreet and prudent man to believe that an offense has been committed and that the object soughts in connection with the offense are in the place sought to be searched.[46] Probable cause does not mean actual and positive cause. Neither does it imply absolute certainty. If on the basis of the facts recited in the deposition in support of the search warrant a reasonable, discreet and prudent man will be led to believe that the offense charged has been committed, a probable cause for the issuance of a search warrant exists.[47]

With respect to warrants of arrest, probable cause means that sufficient facts must be presented to the judge issuing the warrant to convince him that there is probable cause for believing that the person whose arrest is sought committed the crime charged.[48] It is a reasonable ground for suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that

[42] Garcia vs. Locsin, 65 Phil. 689, 693; Villanueva vs. Querubin, 48 SCRA 345, 349; Lim vs. De Leon, 66 SCRA 299, 305.

[43] People vs. Veloso, 48 Phil. 169, 176; Alvarez vs. Court of First Instance of Tayabas, 64 Phil. 33, 42; People vs. Sy Juco, 64 Phil. 667, 674; Rodriguez vs. Villamiel, 65 Phil. 230, 235, People vs. Bongo, 55 SCRA 547, 550; Castro vs. Pabalan, 70 SCRA 477, 483, Redondo vs. Dimaano, 71 SCRA 543, 545, Mata vs. Bayona, 128 SCRA 388, 393, Geronimo vs. Ramos, 136 SCRA 435, 449, Dizon vs. Castro, G.R. No. 67923, April 11, 1985, Hercules Bottling co., Inc. vs. Savellano, CA-G.R. No. 09153-R, February 29, 1980.

[44] United States vs. Addison, 28 Phil. 566, 570; People vs. Sy Juco, 64 Phil. 667, 674; Viduya vs. Berdiago, 73 SCRA 553, 561; Corro vs. Lising, 137 SCRA 541, 547; Nolasco vs. Pano, 139 SCRA 152, 163.

[45] La Chemise Lacoste, S.A. vs. Fernandez, 129 SCRA 373, 390-391.

[46] Burgos vs. Chief of Staff, 133 SCRA 800, 813; Roan vs. Gonzales, 145 SCRA 687, 692; Gozon vs. Laron, AC-UDK SP No. 2387, March 20, 1985.

[47] Hercules Bottling Co., Inc. vs. Savellano, CA-G. R. No. 09153-R, February 29, 1980.

[48] United States vs. Ocampo, 18 Phil. I, 42; United States vs. Grant, 18 Phil. 122, 145.

the person accused is guilty of the offense of which he is charged.[49]

Thus, the norm is a cautious or reasonably discreet and prudent man.

Unless the application for a warrant is for a specific offense, no probable can exist.[50]

Thus, in nulliying several search warrants for violations of Central Bank regulations, the Tariff and Customs Code, the National Internal Revenue Code, and the Revised Penal Code, the Supreme Court pointed out:

> "In other words, no *specific* offense had been alleged in said applications. The averments thereof with respect to the offense committed were ***abstract.*** As a consequence, it was ***impossible*** for the judges who issued the warrants to have found the existence of probable cause, for the same presupposes the introduction of competent proof that the party against whom it is sought has performed ***particular*** acts, or committed *specific* omissions, violating a given provision of our criminal laws. As a matter of fact, the applications involved in this case do not allege any specific acts performed by herein petitioners. It would be a legal heresy, of the highest order, to convict anybody of a 'violation of Central Bank Laws, Tariff and Customs Law, Internal Revenue (Code) and Revised Penal Code', ––as alleged in the aforementioned applications without reference to any determinate provision of said laws or codes."[51]

However, even if the search warrant did not specify the offense for which it was issued, if the offense was mentioned in the application, the search warrant is valid.[52]

The application must prove that the person against whom a warrant is sought performed particular acts or committed specific omissions punished by law.[53]

When a search warrant is directed against a newspaper for publishing subversive materials, the application should pinpoint the subversive publications. Thus, in quashing the search warrant issued against the *We Forum,* the Supreme Court explained:

> "And when the search warrant applied for is directed against a newspaper publisher or editor in connection with the publication of subversive materials, as in the case at bar, the application and/or supporting affidavits must contain a specification stating with particularity the alleged subversive materials he has published or is intending to publish. Mere generalization will not suffice. Thus, the broad statement in Col. Abadilla's application that petitioner is in possession or has in his control printing equipment and other paraphernalia, news publications and other documents which were used and are all continuously being used as a means of committing the offense of subversion punishable as under Presidential Decree 885, as amended x x x' is a mere conclusion of law and does not satisfy the requirement of probable cause."[54]

[49] United States vs. Santos, 36 Phil. 833, 855; Dizon vs. Castro, G. R. No. 67923, April 11, 1985; Tuazon vs. Matias, CA-G. R. No. 45990-R, November 27, 1975.

[50] Castro vs. Pabalan, 70 SCRA 472, 482; Marcelo vs. De Guzman, 114 SCRA 657, 663.

[51] Stonehill vs. Diokno, 126 Phil. 738, 747-748. (Italics supplied by the Supreme Court.)

[52] People vs. Marcos, 117 SCRA 999, 1003.

[53] La Chemise Lacoste, S.A. vs. Fernandez, 129 SCRA 373, 391.

[54] Burgos vs. Chief of Staff, 133 SCRA 800, 813.

The same is true if it is alleged that a newspaper is publishing items intended to incite the people to sedition.[55]

On the other hand, the Supreme Court upheld the validity of a search warrant against a non-stock corporation for engaging in banking without authorization from the Central Bank, although the witness did not name specific individuals from whom the non-stock organization received money for deposit.

The Supreme Court reasoned out:

> "The line of reasoning of respondent Judge might perhaps be justified if the acts imputed to the organization consisted of *isolated* transactions, distinct and different from the type of business in which it is generally engaged. In such case, it may be necessary to specify or identify the parties involved in said isolated transactions, so that the search and seizure be limited to the records pertinent thereto. Such, however, is *not* the situation confronting us. The records suggest clearly that the transactions objected to by the Bank constitute the *general pattern* of the business of the organization."[56]

The existence of probable cause does not require proof beyond reasonable doubt.[57]

In determining the existence of probable cause, certain guidelines should be considered:

1. Only the probability, and not a prima facie showing, of criminal activity is the standard of probable cause;
2. Affidavits of probable cause are tested by much less rigorous standards than those governing the admissibility of evidence at trial;
3. In judging probable cause issuing magistrates are not to be confined by niggardly limitations or by restrictions on the use of their common sense; and
4. Their determination of probable cause should be paid great deference by reviewing courts.[58]

The lapse of a long period of time from the date of the alleged commission of the offense and the date of the filing of the application for the warrant, such as, one year, is an indication that the existence of a probable cause is doubtful.[59] On the other hand, the mere fact that it was only after he had obtained a search warrant that the Collector of Customs issued an order for the forfeiture of imported goods for failure to pay the correct taxes and customs duties, does not show that the issuance of the search warrant was without probable cause.[60]

[55] Corro vs. Lising, 137 SCRA 541, 547.

[56] Central Bank vs. Morfe, 126 Phil. 885, 894.

[57] Algas vs. Garrido, 61 SCRA 62, 65; Gozon vs. Laron, AC-UDK SP No. 2387, March 20, 1985.

[58] Hercules Bottling Co., Inc. vs. Savellano, CA-G.R. No. 09153-R, February 29, 1980, citing Spineli vs. United States, 393 U.S. 410, 419.

[59] Asian Surety & insurance Co., Inc. vs. Herrera, 54 SCRA 312, 322.

[60] Viduya vs. Berdiago, 73 SCRA 553, 561.

B. Determination by a Judge

The determination of the existence of a probable cause does not involve the exercise of judicial power. It does not involve a definite adjudication of the innocence or guilt of the person against whom it is directed.[61] However, under Section 2, Article III of the 1987 Constitution, the power to issue warrants of arrest has been limited to judges.[62] Thus, it was illegal for a fiscal to order the seizure of a stolen motor launch.[63]

Originally, the Supreme Court and the Court of Appeals held that the Commissioner on Immigration can order the arrest of an overstaying alien for the purpose of initiating a deportation case against him.[64] The Supreme Court reasoned out that deportation cases were not criminal proceedings. The Supreme Court did not consider that under Section 1 (3), Article III of the 1935 Constitution, only judges were authorized to issue warrants.

In the leading case of Qua Chee Gan vs. Deportation Board, 118 Phil, 868, 878, the Supreme Court ruled that the Deportation Board cannot issue a warrant of arrest against an alien facing a deportation case, because only judges can issue warrants and the Constitution does not distinguish between warrants in criminal cases and in administrative cases. In the case of Alfonso vs. Vivo, 123 Phil, 338, 343-344, the Supreme Court again sustained the issuance of a warrant of arrest by the Commissioner of Immigration against an alien for the purpose of initiating a deportation case against him. However, the Supreme Court subsequently reverted to its ruling in the case of Qua Chee Gan vs. Deportation Board, 118 Phil. 868, and has followed it since then.[65]

Once a final order of deportation has been issued against an alien, the Commissioner of Immigration can issue a warrant for his arrest pursuant to Section 37(a) of the Philippine Immigration Act of 1940.[66] The Supreme Court rationalized its conclusion as follows:

> "The constitutional limitation contemplates an order of arrest in the exercise of judicial power as a step preliminary or incidental to prosecution or proceedings for a given offense or administrative action, not as a measure indispensable to carry out a valid decision by a competent official, such as a legal order of deportation, issued by the Commissioner of Immigration in pursuance of a valid legislation."[67]

[61] Ocampo vs. United States, 234 U.S. 91, 100; Parungao vs. San Diego, 10 CAR (2s) 352, 357-358.

[62] Lino vs. Fugoso, 77 Phil. 933, 939; Sayo vs. Chief of Police of Manila, 80 Phil. 859, 868; Collector of Customs vs. Villaluz, 71 SCRA 356, 393.

[63] Lim vs. De Leon, 66 SCRA 299, 306.

[64] Tiu Chun Hai vs. Commissioner of Immigration, 104 Phil. 949, 953-954; Lee Teh An vs. Galang, CA-G.R. No. 30196-R, October 5, 1962.

[65] Vivo vs. Montesa, 133 Phil. 311, 316-317; Neria vs. Vivo 29 SCRA 701, 708; Contemprate vs. Acting Commissioner of Immigation, 35 SCRA 623, 631.

[66] Ng Hua To vs. Galang, 119 Phil. 691, 695-696; Morano vs. Vivo, 126 Phil. 928, 934: Vivo vs. Montesa, 133 Phil. 311, 318; Po Siok Pin vs. Vivo, 62 SCRA 368; Ang Ngo Chiong vs. Galang, 67 SCRA 338, 342-343.

[67] Morano vs. Vivo, 133 Phil. 311, 318.

C. Examination of the Complainant and His Witnesses

A warrant issued without examining the complainant and his witnesses is invalid.[68] Thus, the Supreme Court nullified seventy-five (75) warrants of arrest issued against seventy-six (76) persons by a judge who examined the witnesses within a few hours. The Supreme Court found it highly improbable for the judge to have determined the existence of a probable cause within such a short span of time.[69]

In outlining the procedure for examining the complainant and his witnesses, Section 4, Rule 126 of the 1985 Rules on Criminal Procedure provides :

> "The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath the complainant and any witnesses he may produce on facts personally known to them and attach to the record their sworn statements together with any affidavits submitted."

Thus, the judge must propound searching questions to the complainant and his witnesses.[70] The Supreme Court defined the phrase "searching question and answers" as follows:

> "The term 'searching questions and answers' means only, taking into consideration of the preliminary examination which is to determine 'whether there is a reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof so that a warrant of arrest may be issued and the accused held for trial,' *such questions as have tendency to show the commission of a crime and the perpetrator thereof. What would be searching questions would depend on what is sought to be inquired into, such as: the nature of the offense, the date, time, and place of its commission, the possible motives for its commission; the subject, his age, education, status, financial and social circumstances, his attitude toward the investigation, social attitudes, opportunities to commit the offense; the victim, his age, status, family responsibilities, financial and social circumstances, characteristics, etc."*[71]

Thus, it is not sufficient to simply ask the complainant if he knew and understood his affidavit.[72] Leading questions are not searching questions.[73] The examination should not be merely routinary or *pro forma* but must be probing and exhaustive. The judge should not merely rehash the contents of the affidavits submitted in support of the application for a warrant. He must conduct his own inquiry on the intent and justification of the application.[74] However, a detailed and

[68] Garcia vs. Locsin, 65 phil. 689, 694; Paala vs. Regino, 193 Phil. 793, 797.

[69] Geronimo vs. Ramos, 136 SCRA 435, 450.

[70] Doce vs. Branch II of the Court of First Instance of Quezon, 131 Phil. 126, 129; Luna vs. Plaza, 26 SCRA 310, 320; Serafin vs. Lundayag, 67 SCRA 166, 170-171.

[71] Luna vs. Plaza, 26 SCRA 310, 320-321. (Italics supplied.) See also Marinas vs. Siochi, 191 Phil. 698, 713.

[72] Roan vs. Gonzales, 145 SCRA 687, 693-694.

[73] Nolasco vs. Pano, 139 SCRA 152, 163.

[74] Roan vs. Gonzales, 145, SCRA 687, 695.

meticulous examination as is usually conducted in a full-blown trial is not required.[75] In conducting the examination, the judge may adopt questions propounded during a previous investigation if he deems them sufficiently searching.[76]

Since the judge must personally examine the complainant and his witnesses, he cannot issue a warrant on the basis of mere affidavits submitted by them. He must take their depositions in writing. Their testimony should be taken in writing under oath or affirmation before the judge and subscribed by them.[77] If there are no court employees available, the judge himself should write down the depositions of the complainant and his witnesses.[78] However, the affidavits of the complainant and his witnesses submitted in support of the application for a warrant need not be typed in the presence of the judge.[79]

The witness on the basis of whose testimony the warrant was issued must have personal knowledge of the facts. If his knowledge is based on hearsay, the warrant is void.[80] The test of the sufficiency of the testimony to justify the issuance of a warrant is whether on the basis of it the witness can be criminally charged with giving a false testimony and civilly held liable for the damages caused.[81] Thus, if the complainant and his witnesses swore that they possessed personal knowledge of the facts, their testimony is sufficient, for they can be held criminally liable for giving a false testimony if the facts would turn out to be not as they had stated under oath.[82]

Even if initially a police investigator had no personal knowledge of the commission of a crime, if in the course of his investigation, he acquired direct knowledge of the facts, his testimony can serve as sufficient basis for the issuance of a warrant.[83] Thus, where on account of his investigation a police investigator acquired personal knowledge of the sale of four engine blocs by a swindler, a search warrant issued on the strength of his testimony was considered valid.[84]

The purpose of requiring the deposition of the complainant and his witnesses to be taken is to satisfy the judge of the existence of a probable cause. Hence, if the judge considers the testimony of the complainant sufficient to establish probable cause, he may dispense with the testimony of the other witnesses.[85] On the other hand, even if the complainant has no personal knowledge of the facts, if his witnesses do, a search warrant issued on the basis of the testimony of such witnesses is valid.[86]

If the evidence constitutes an exception to the hearsay rule, it can serve as sufficient basis for the issuance of a warrant. If such evidence can serve as basis for the conviction of the accused in a criminal case, in which proof beyond reasonable doubt is required, with more reason they can serve as adequate basis for the issuance of a warrant, in which only probable cause is required. Thus, a warrant issued on the basis of a dying declaration or a statement which forms part of the *res gestae* should be considered valid[87]

Since the judge must personally examine the complainant and his witnesses, he cannot delegate the taking of their depositions. Thus, in quashing a search warrant issued by a judge who instructed the deputy clerk of court to take the depositions of the witnesses, the Supreme Court pointed out:

> "The participation of respondent Judge in the proceedings which led to the issuance of Search Warrant No. 2-M-70 was thus limited to the stenographer's reading of her notes, to a few words of warning against the commission of perjury, and to administering the oath to the complainant and his witness. This cannot be considered as a personal examination. If there was an examination at all of the complainant, it was the one conducted by the Deputy Clerk of Court. But, as already stated, the Constitution and the rules require a personal examination by the judge."[88]

What usually happens is that the fiscal conducts a preliminary investigation. If he finds a *prima facie* case, he files an information against the accused. The court then issues a warrant for the arrest of the accused. It has been repeatedly held that the court can issue a warrant of arrest on the basis of the preliminary investigation conducted by the fiscal.[89]

However, it is not the ministerial duty of the judge to issue a warrant for the arrest of the accused the moment the fiscal files an information against him. If he is not satisfied of the existence of a probable cause, the judge can require the fiscal to submit proof of probable cause before issuing the warrant of arrest.[90]

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[75] Hercules Bottling Co., vs. Savellano, CA-G.R. No. 09153-R, February 29, 1980.

[76] Luna vs. Plaza, 26 SCRA 310, 319, De Mulata vs. Irizari, 61 SCRA 210, 213; Marinas vs. Siochi, 191 Phil. 698, 714.

[77] Mata vs. Bayona, 128 SCRA 388, 393; Roan vs. Gonzales, 145 SCRA 687, 694.

[78] Dizon vs. Castro, G.R. No. 67923, April 11, 1985.

[79] Oca vs. Maiquiz, 122 Phil. 111, 115.

[80] Alvarez vs. Court of First Instance of Tayabas, 64 Phil. 33, 44; People vs. Sy Juco, 64 Phil. 667, 674; Rodriguez vs. Villamiel, 65 Phil. 230, 237; Burgos vs. Chirf of Staff, 133 SCRA 800, 814; Roan vs. Gonzales, 145 SCRA 687, 694. People vs. Liwag, (CA) 38 O.G. 358, 359.

[81] Alvarez vs. Court of First Instance of Tayabas, 64 Phil. 33, 44; People vs. Sy Juco, 64 Phil. 667, 674, rodriguez vs. Villamiel, 65 Phil. 230, 237.

[82] Yee Sue Koy vs. Almeda, 70 Phil. 141, 146.

[83] Hercules Bottling Co., Inc. vs. Savellano, CA-G.R. No. 09153-R, February 29, 1980.

[84] Yu vs. Honrado, 99 SCRA 273, 279.

[85] Alvarez vs. Court of First Instance of Tayabas, 64 Phil. 33, 45; People vs. Enriquez, (CA) 47 O.G. 5182, 5188.

[86] Hercules Bottling Co., Inc. vs, Savellano, CA-G.R. No. 09153-R, February 29, 1980.

[87] Sections 31 and 36, Rule 130 of the Rules of Court.

[88] Bache & Co. (Phil.), Inc. vs. Ruiz, 37 SCRA 823, 831-832.

[89] United States vs. Ocampo, 234 U.S. 91, 100-101; United States vs. McGovern, 6 Phil. 621, 623; Amarga vs. Abbas, 98 Phil. 739, 742; People vs. Villanueva, 110 SCRA 465, 471; Parungao vs. San Diego, 10 CAR (2s) 352, 362.

[90] Amarga vs. Abbas, 98 Phil. 739; People vs. Villanueva, 110 SCRA 465, 470; Placer vs. Villanueva, 126 SCRA 463, 469; Parungao vs. Masakayan, CA-G.R. No. 37595-R, June 21, 1969; Pacete vs. Elma, CA-G.R. No.SP-06131, July 29, 1977.

D. Particularity of Description

A warrant should particularly describe the place to be searched and the person or the articles to be seized in order to limit the persons to be arrested or the articles to be seized to those described in the warrant and to leave the officers of the law no discretion regarding the persons to be arrested are the articles to be seized. This is intended to prevent the officers of the law from conducting any unreasonable search and seizure and from committing abuses.[91]

To be sufficient, the description must be specific.[92] The test of the sufficiency of the description is whether it will permit the arrest of the wrong person or the seizure of the wrong property.[93] The description of the place to be searched is sufficient if the officer of the law enforcing the search warrant can with reasonable effort, ascertain and identify the place intended.[94] In enforcing the search warrant, he may look at the affidavit attached to the court record to resolve an ambiguity in the search warrant as to the place to be searched.[95]

However, the law does not require the impossible. The description is required to be specific only in so far as the circumstances will ordinarily allow. If by the very nature of the articles to be seized their description must rather be general, it is not required that a technical description be given.[96]

Thus, in the following cases, the description of the articles to be seized was considered sufficient :

1. People vs. Rubio, 57 Phils. 384.
   Offense
   Keeping fraudulent books, invoices and records
   Description
   Illegally and feloniously fraudulent books invoices and records at 129 Juan Luna Street, Manila
2. Alvarez vs. Court of First Instance of Manila, 64 Phil. 33.
   Offense
   Usury
   Description
   Books, documents, receipts, lists, chits and other papers kept by the accused in his residence at Infanta, Tayabas used by him in his activities as a usurer.

[91] Uy Khetin vs. Villareal, 42 Phil. 886, 897.

[92] Castro vs. Pabalan, 70 SCRA 477, 483.

[93] Secretary of Justice vs. Marcos, 76 SCRA 301, 305.

[94] People vs. Veloso, 48 Phil. 169, 180.

[95] Burgos vs. Chief of Staff, 133 SCRA 800, 811.

[96] People vs. Rubio, 57 Phil. 384, 389; Alvarez vs. Court of First Instance of Tayabas, 64 Phil. 33, 46-47; Yee Sue Koy vs. Almeda, 70 Phil. 141, 146, Hercules Bottling Co., Inc. vs. Savellano, CA-G.R. No. 09153-R, February 29, 1980.

3. Yee sue Koy vs. Almeda, 70 Phil. 141.
   Offense
   Usury
   Description
   Documents, notebooks, lists, receipts and promissory notes kept by the accused in their store at Sagay, Occidental Negros and being used in connection with their usurious activities
4. Secretary of Justice vs. Marcos, 76 SCRA 301.
   Offenses
   Illegal possession of firearms and violation of Central Bank regulations
   Description
   Firearms and ammunition without license and a golden Buddha kept at 47 Ledesma Street, Baguio City

On the other hand, in the following cases, the description of the articles to be seized was considered inadequate because of its generality:

1. Stonehill vs. Diokno, 126 Phil. 738.
   Offenses
   Violations of Central Bank regulations, Tariff and Customs Code, National Internal Revenue Code, and Revised Penal Code
   Description
   Books of accounts, financial records, vouchers, vouchers, correspondence, receipts, ledgers, journals, portfolios, credit journals, typewriters, and other documents and/or papers showing all business transactions including disbursements receipts, balance sheets and profit and loss statements and Bobbins (cigarette wrappers)
2. Bache & Co. (Phil.), Inc. vs. Ruiz, 37 SCRA 823.
   Offenses
   Evasion of national internal revenue taxes
   Description
   Unregistered and private books of accounts (ledgers, journals, columnars, receipts and disbursements books, customers ledgers); receipts for payments received; certificates of stocks and securities; contracts; promissory notes and deeds of sale; telex and coded messages; business communications; accounting and business records; checks and check stubs; records of bank deposits and withdrawals; and records of foreign remittance, covering the years 1966 to 1970
3. Asian Surety and Insurance Company, Inc. vs. Herrera, 54 SCRA 312.
   Offenses
   Estafa, falsification, tax evasion, and insurance fraud
   Description
   Fire registers, loss bordereau, adjusters, report, including subrogation receipt and proof of loss, loss registers, books of accounts, including cases receipts and disbursements and general ledger, check vouchers, income tax returns, and other papers connected therewith for the years 1961 to 1964

4. Marcelo vs. De Guzman, 114 SCRA 657.
   Offense
   Indeterminate
   Description
   Panel delivery trucks, books of account and other papers relative to commercial transaction
5. Burgos vs. Chief of Staff, 133 SCRA 800.
   Offense
   Subversion
   Description
   1) All printing equipment, paraphernalia, paper, ink, photo equipment, typewriters, cabinets, tables, communications, recording equipment, tape recorders, dictaphones and the like used and/or connected in the printing of the "WE FORUM" newspaper and any and all documents/communications, letters and facsimiles of prints related to the "WE FORUM" newspaper.
   2) Subversive documents, pamphlets, leaflets, books, and other publications to promote the objectives and purposes of the subversive organizations known as Movement for Free Philippines, Light-a-Fire Movement, and April 6 Movement, and
   3) Motor vehicles used in the distribution/circulation of the "WE FORUM" and other subversive materials and propaganda
6. Dizon vs. Garcia, G. R. No. 67923, April 11, 1985.
   Offense
   Subversion
   Description
   Subversive documents, propaganda materials, firearms, printing paraphernalia and all other subversive materials
7. Corro vs. Lising, 137 SCRA 541
   Offense
   Inciting to sedition
   Description
   1) Printed copies of Philippine Times;
   2) Manuscripts/drafts of articles for publication in the Philippine Times;
   3) Newspaper dummies of the Philippine Times;
   4) Subversive documents, articles, printed matters, handbills, leaflets, banners;
   5) Typewriters, duplicating machines, mimeographing and tape recording machines, video machines and tapes
8. Nolasco vs. Paño, 139 SCRA 152.
   Offense
   Rebellion
   Description
   Documents, papers and other records of the Communist Party of the Philippines/New People's Army and/or the National Democratic Front, such as minutes of the party meetings, plans of these groups, programs, lists of possible supporters, subversive books and instructions, manuals not otherwise available to the public, and support money from foreign or local sources

In explaining why the search warrants issued in the case of Stonehill vs. Diokno were general warrants, the Supreme Court pointed out:

> "Thus, the warrants authorized the search for and seizure of records pertaining to *all business transactions* of petitioners herein, regardless of whether the transactions were *legal* or *illegal*. The warrants sanctioned the seizure of *all* records of the petitioners and the aforementioned corporations, whatever their nature, thus openly contravening the explicit command of our Bill of Rights – that the things to be seized be *particularly* described – as well as tending to defeat its major objective: the elimination of *general warrants*."[97]

In the case of Bache & Co. (Phil.) Inc. vs. Ruiz, the Supreme Court elaborated on when the description in a search warrant is sufficiently particular:

> "A search warrant may be said to particularly describe the things to be seized when the description therein is as specific as the circumstances will ordinarily allow (People vs. Rubio, 57 Phil. 384.) or when the description expresses a conclusion of fact – not of law – by which the warrant officer may be guided in making the search and seizure (*idem*, dissent of Abad Santos, *J.*,); or when the things described are limited to those which bear direct relation to the offense for which the warrant is being issued (Sec. 2, Rule 126, Revised Rules of Court.)" [98]

The Supreme Court went on to say how the description of the documents to be seized should have been couched :

> "In this event, the description contained in the herein disputed warrant should have mentioned, at least, the dates, amounts, persons, and other pertinent data regarding the receipts of payments, certificates of stocks and securities, contracts, promissory notes, deeds of sale, messages and communications, checks, bank deposits and withdrawals, records of foreign remittances, among others, enumerated in the warrant."[99]

In the same tenor, in the case of Nolasco vs. Paño, the Supreme Court observed:

> 'It is at once evident that the foregoing Search Warrant authorizes the seizure of personal properties vaguely described and not particularized. It is an all-embracing description which includes everything conceivable regarding the Communist Party of the Philippines and the Democratic Front. It does not specify what the subversive books and instructions are; what the manuals not otherwise available to the public contain to make them subversive or to enable them to be used for the crime of rebellion."[100]

Thus, the common theme running through all the decisions which struck down the search warrants involved on account of the vagueness of the description is that the search warrants covered all documents or articles connected with the persons against whom the search warrants were issued.

However, in the earlier case of Oca vs. Marquez, 122 Phil. 111 the Supreme Court gave its stamp of approval upon a search warrant which ordered the seizure of books of account and allied papers belonging to a labor union which were being used by the officers of the labor union to commit misappropriation of union funds, falsification of public and private documents, and violation of labor laws, rules and

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[97] 126 Phil. 738, 749. (Italics supplied by the Supreme Court)

[98] 37 SCRA 823, 835.

[99] Ibid, p. 836.

[100] 139 SCRA 152, 161.

regulations. The Supreme Court deemed the description sufficient, because it specifically described the receipts, vouchers, minutes, books of accounts, lists of properties, and records sought to be seized.

In the case of Central Bank vs. Morfe, 126 Phil. 885, the Supreme Court upheld the validity of a search warrant which ordered the seizure of the following documents :

I. Books of Original Entry
   (1) General Journal
   (2) Columnar Journal or cash book
      (a) Cash receipts journal or cash receipt book
      (b) Cash disbursements journal or cash disbursement book

II. Books of Final Entry
   (1) General ledger
   (2) Individual deposits and loan ledgers
   (3) Other subsidiary ledgers

III. Other Accounting Records
   (1) Application for membership
   (2) Signature card
   (3) Deposit slip
   (4) Passbook slip
   (5) Withdrawal slip
   (6) Tellers' daily deposit report
   (7) Application for loan credit statement
   (8) Credit report
   (9) Solicitor's report
   (10) Promissory note
   (11) Indorsement
   (12) Co-makers' statements
   (13) Chattel mortgage contracts
   (14) Real estate mortgage contracts
   (15) Trial balance
   (16) Minutes book - Board of Directors

IV. Financial Statements
   (1) Income and expenses statements
   (2) Balance sheet or statement of assets and liabilities

V. Others
   (1) Articles of incorporation
   (2) By-laws
   (3) Prospectuses, brochures, etc.
   (4) And other documents and articles which are being used or intended to be used in unauthorized banking activities and operations contrary to law.

This list covers all documents pertaining to the operations of the non-profit corporation involved in the case. The Supreme Court upheld the validity of the search warrant on the ground that what was being questioned was the general pattern of business of the non-profit corporation.[101] Yet, one is hard put trying to reconcile the ruling in this case with the other decisions in which the Supreme Court struck down the search warrants as being general warrants.

Be that as it may, the fact that the documents seized were voluminous does not of itself show the search was unreasonable, if the search warrant particularly described the articles to be seized.[102]

Thus, in the case of Hercules Bottling Company, Inc. vs. Savellano, CA-G. R. No. 09153-R, February 29, 1980, the Court of Appeals sustained the validity of the search warrant, which ordered the seizure of the following articles:

1. Materials

   All whisky, bottles, labels, caps, cartons, boxes, machinery, equipment or other materials used or indended to be used, or suitable for use, in connection with countefeiting or imitation of Johnnie Walker Scotch Whisky.

2 Documents

   All letters, telexes, cables, invoices, agreements, bills of lading, letters of credit, checks, legal opinions, receipts, certificates, notes, files, folders or other documents relating to or otherwise showing:

   (a) The bottling, labelling or other productions of, or intention to produce, bottle or label, counterfeit or imitate Johnny Walker Scotch Whisky.

   (b) The actual or intended offering distribution or sale in the Philippines or in any other country of such Scotch whisky or of samples of any of the materials above-described; and/or

   (c) The acquisition of, or intention to acquire, finance, materials, equipment or other matters for the purpose of such production or sale.

The Court of Appeals explained that the description of the articles to be seized was not general, because it was delimited by the qualification that they were for the production or sale of counterfeit Scotch whisky.

With regards to warrants of arrest, a special rule applies. A warrant issued against a person with a fictitious name like John Doe is insufficient unless it is coupled with a description or designation by which the person again whom it was issued can be known and identified. Without such description, the warrant of arrest is a general warrant. Anyone can be arrested on the basis of it.[103]

On the other hand, if the fictitious name is coupled with a description which is sufficient to indicate clearly against whom the warrant of arrest is directed, the warrant is valid. Otherwise, no warrant of arrest can be issued against a person whose name is unknown. The description can be given by stating his occupation, his personal appearance and peculiarities, his residence, or other circumstances by which he can be identified.[104]

Although these principles speak of a warrant of arrest, the Supreme Court applied it *mutatis mutandis* to a search warrant. Thus, the Supreme Court affirmed

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[101] 126 Phil. 885, 894.

[102] Hercules Bottling Co., Inc. vs. Savellano, CA-G.R. No. 09153-R, February 29, 1980.

[103] People vs. Veloso, 48 Phil. 169, 178-179.

[104] Ibid., p. 179.

the validity of a search directed against John Doe who had illegally in his possession in the building occupied by him and under his control at 124 Arzobispo Street, City of Manila, certain devices and offices used in the violation of the Gambling Law, to wit: money, cards, chips, *reglas, pintas*, tables, and other utensils used in connection with the game *monte*.[105]

IV. EXCEPTIONS TO THE REQUIREMENT FOR A WARRANT

The Constitution does not prohibit all arrests, searches, and seizures without a warrant but only those which are unreasonable.[106] In some cases, arrests, searches and seizures may be made without the need for a warrant.

A. Searches and Seizures

There are several instances in which arrests may be made without the necessity of a search warrant.

1. Search Incident to a Lawful Arrest

A person lawfully arresting another may take from him any property found in his person which was used in the commission of a crime, which constitutes the fruits of the crime, which might furnish the person arrested with a means for commiting violence or for escaping, or which may be used as evidence in the trial of the case.[107]

Section 12, Rule 126 of the 1985 Rules on Criminal Procedure provides:

> "A person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant."

The purpose of allowing the search and seizure is to protect the person making the arrest against physical harm from the person being arrested, who might be armed with a concealed weapon, and to prevent him from destroying evidence within his reach.[108]

In order that the search and seizure will be valid, the arrest must be lawful. If it is unlawful, the search and seizure will also be illegal as an incident of it.[109] Moreover, the person making the arrest can seize only the articles which were used in the commission of the crime, which constitute the fruits of the crime, which might furnish the person being arrested with a means for commiting violence or of escaping, or which may be used as evidence in the trial of the case. The person

[105] Ibid., p. 181.

[106] People vs. Malasugui, 63 Phil. 221, 227; Papa vs. Mago, 130 Phil. 886, 904.

[107] Moreno vs. Ago Chi, 12 Phil. 439, 442; People vs. Veloso, 48 Phil. 169, 180-181; People vs. Malasugui, 63 Phil. 221, 229; Alvero vs. Dizon, 76 Phil. 637, 645; Villanueva vs. Querubin, 48 SCRA 345m 354; Manipon vs. Sandiganbayan, 143 SCRA 267, 276; Roan vs. Gonzales, People vs. Fernandez, 8 ACR 172, 180; People vs. Borillo, CA-G.R. No. 10955-R, May 16, 1972.

[108] Manipon vs. Sandiganbayan, 143 SCRA 267, 277.

[109] People vs. Burgos, 144 SCRA 16.

making the arrest cannot seize any other article found in the possession of the person being arrested.[110]

Thus, in the course of the arrest of someone caught fishing illegally with the use of dynamite, the fishing vessel, its equipment, and the dynamite could be confiscated.[111] Likewise, where a public official was being arrested for bribery, the money given to him could be seized.[112]

What is controversial is the ruling of the Supreme Court in the case of Nolasco vs. Paño, 139 SCRA 152.

Mila Aguilar-Roque, one of the petitioners in that case, was charged with rebellion and subversion. She was arrested while she was on board a public vehicle. Thirty minutes laters, the military authorities searched her house and carted away four hundred twenty-eight documents, a typewriter and two boxes.

A divided Supreme Court ruled that the documents were admissible in evidence. The majority reasoned out:

> "It is also a general rule that, as an incident of an arrest, the place or premises where the arrest was made can also be searched without a search warrant. In this latter case, 'the extent and reasonableness of the search must be decided on its own facts and circumstances, and it has been stated that, in the application of general rules, there is some confusion in the decisions as to what constitues the extent of the place or premises which may be searched.' 'What must be considered is the balancing of the individual's right to privacy and the public's interest in the prevention of crime and the apprehension of criminals.' "[113]

This pronouncement validating the search and seizure involved in the case as an incident of a lawful arrest is erroneous. A search being made as an incident of a lawful arrest must be confined to the area within the immediate control of the person being arrested, that is, the area within which he can reach for a weapon or destroy evidence.[114] If a person was lawfully arrested outside his house, his house cannot be searched without a warrant as an incident of his arrest.[115] Besides, in order that a search may be considered as incidental to a lawful arrest, it must be made contemporaneously with the arrest.[116] Since Mila Aguilar-Roque was arrested outside her house and her house was searched thirty minutes after her arrest, the search cannot be considered as incidental to her arrest.

[110] Moreno vs. Ago Chi, 12 Phil. 439, 442.

[111] Roldan vs. Arca, 65 SCRA 336, 348-349.

[112] Manipon vs. Sandiganbayan, 143 SCRA 267, 277.

[113] Nolasco vs. Pano, 139 SCRA 152, 164-165.

[114] Preston vs. United States, 376 U.S. 364, 367; Stoner vs. State of California, 376 U.S. 364, 367; Stoner vs. State of California, 395 U.S. 752, 762-763.

[115] Agnello vs. United States, 260 U.S. 483, 486; James vs. State of Louisiana, 382 U.S. 36, 37; Shipley vs. State of California, 395 U.S. 818, 820; Vale vs. State of Louisiana, 399 U.S. 30, 35.

[116] Preston vs. United States, 376 U.S. 364, 367; Stoner vs. State of California, 376 U.S. 483, 487; James vs. State of Louisiana, 382 U.S. 36, 37; Duke vs. Taylor Implement Manufacturing Co., Inc., 391 U.S. 216, 220; United States vs. Chadwick, 433 U.S. 1, 15.

Eventually, the Supreme Court reconsidered its decision.[117] In doing so, it did not dwell at length on the error of its ruling. It simply quoted briefly the following portion from the concurring and dissenting opinion of Justice Claudio Teehankee:

> "The questioned search warrant has correctly been declared null and void in the Court's decision as a general warrant issued in gross violation of the constitutional mandate that 'the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated (Bill of Rights, sec. 3). The Bill of Rights orders the absolute exclusion of all illegally obtained evidence: 'Any evidence obtained in violation of this . . . section shall be inadmissible for any purpose in any proceeding.' (Sec. 4(2)). This constitutional mandate expressly adopting the exclusionary rule has proved by historical experience to be the only practical means of enforcing the constitutional injunction against unreasonable searches and seizures by *outlawing* all evidence illegally seized and thereby removing the incentive on the part of state and police officers to disregard such basic rights. What the plain language of the Constitution mandates is beyond the power of the courts to change or modify.
>
> "All the articles thus seized fall under the exclusionary rule *totally* and *unqualifiedly* and cannot be used against any of the three petitioners, as held by the majority in the recent case of *Galman* vs. *Pamaran* (G.R. Nos. 71208-09, August 30, 1985)."[118]

The resolution reversing the prior decision of the Supreme Court evasively did not touch on the question of whether or not the search of the house of Mila Aguilar-Roque could be justified as incidental to her arrest. Thus, Chief Justice Teehankee wrote a separate opinion:

> "The better and established rule is a strict application of the exception provided in Rule 126, sec. 12 and that is to absolutely limit a warrantless search of a person who is to absolutely limit a warrantless search of a person who is lawfully arrested to his or her person at the time of th incident to his or her arrest and to 'dangerous weapons or anything which may be used as proof of the commission of the offense.' Such warrantless search obviously cannot be made in a place other than the place of arrest."[119]

If the possession of an article is prohibited by law, such as, counterfeit coins, gambling devices, forged instruments, lottery tickets and obscene literature, it can be seized without the need for a search warrant.[120] However, the possession of the article must be in plain view, and its discovery must be inadvertent.[121] Otherwise, officers of the law will become authorized to enter any premises without any search warrant on a fishing expedition to look for articles whose possession is prohibited. In addition, the discovery of the search must have been made in the

[117] Nolasco vs. Pano, G.R. No. 69803, January 30, 1987.

[118] Nolasco vs. Pano, 139 SCRA 152, 166. (Italics supplied by Justice Claudio Teehankee)

[119] Nolasco vs. Pano, G.R. No. 69803, January 30, 1987.

[120] Manipon vs. Sandiganbayan, 143 SCRA 267, 276; People vs. Remojo, (CA) 40 O.G. No. 15 11th Supp. 40, 43.

[121] Roan vs. Gonzales, 145 SCRA 687, 697.

course of a search which was lawful.[122] This exception does not in itself justify entry into a place for the purpose of initiating a search. It comes into play when during a lawful search, the prohibited article is discovered. If the search was illegal in the first place, this exception finds no room for application.

Thus, if the search warrant which served as basis for the search of a house was void, the unlicensed pistol and bullets which the military authorities stumbled upon during their search cannot be seized.[123] On the other hand, if during the progress of a lawful search, a *jueteng* list is discovered, it can be seized.[124] The same is true of dynamite[125] and unlicensed firearms, ammunition, magazines and grenades.[126]

3. Moving Vehicle

A motor vehicle can be searched without the need for a search warrant.[127] The Supreme Court explained the rationale for this in the following words :

> "The guaranty of freedom from unreasonable searches and seizures is construed as recognizing a necessary difference between a search of a dwelling house or other structure in respect of which a search warrant may readily be obtained and a search of a ship, motorboat, wagon or automobile for contraband goods, where it is not practicable to secure a warrant, because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought."[128]

This exception applies also to ships and airplanes.[129]

However, if there is time to obtain a search warrant, the fact that the article to be searched is a moving vehicle does not dispense with the need for a search warrant. Thus, where a motor launch was still in the same place after three weeks and in fact its engine had been dismantled, it could not be seized without a search warrant.[130]

Even if the article to be searched is a moving vehicle, there must still be a probable cause for its search and seizure.[131] The fact that the article to be searched is a moving vehicle only does away with the need for a search warrant. It does not dispense with the need for a probable cause. If there is time to get a search warrant, the person seizing the moving vehicle must obtain a search warrant.

[122] Ibid., p. 697.

[123] Ibid., p. 698.

[124] People vs. Remojo (CA) 40 O.G. No. 15 11th Supp. 40, 42.

[125] People vs. Bayaua, (CA) 40 O.G. No. 18 12th Supp. 184, 197; People vs. Adornado, 8 ACR 572, 575; People vs. Biay, CA-G.R. No. 01922-Cr, April 5, 1963.

[126] Magoncia vs. Palacio, 80 Phil, 770, 773-774; People vs. Mistual, CA-G.R. No. 21495-R, September 29, 1959.

[127] Papa vs. Mago, 130 Phil. 886, 902-903; People vs. Court of First Instance of Rizal, 101 SCRA 86, 99; Manipon vs. Sandiganbayan, 143 SCRA 267, 276; Roan vs. Gonzales, 145 SCRA 687, 697.

[128] Papa vs. Mago, 130 Phil. 886, 902-903.

[129] Roldan vs. Arca, 65 SCRA 336, 348; Roan vs. Gonzales, 145 SCRA 687, 697.

[130] Lim vs. De Leon, 66 SCRA 299, 307.

[131] People vs. Court of First Instance of Rizal, 101 SCRA 86, 99.

In such a case, if there is no probable cause, he cannot obtain a search warrant and cannot consequently seize the moving vehicle.

4. Enforcement of Customs Law

Except in the case of the search of a dwelling house, the government officials charged with the enforcement of the customs law may conduct searches and make seizures without the need for a search warrant, in order to enforce the customs laws.[132] The seizure of goods for failure to pay the taxes due under the revenue law or the duties payable under the customs has been recognized by English statutes for centuries and by revenue laws of the United States since the founding of its government.[133] Thus, Sections 2203,2204, 2205, 2207, 2208, 2209, 2211 and 2212 of the Tariff and Customs Code define the extent of the power of the officials of the Bureau of Customs to effect searches, seizures and arrests.

5. Searches at Ports of Entry

Routinary searches may be conducted at ports of entry without the need for a search warrant in the interest of national security and for the proper enforcement of customs, sanitary, and immigration laws.[134]

Thus, Section 2212 of the Tariff and Customs Code provides :

> "All persons coming into the Philippine from foreign countries shall be liable to detention and search by the customs authorities under such regulations as may be prescribed relative thereto.
>
> "Female inspectors may be employed for the examination and search of persons of their own sex."

Section 6 of the Philippine Immigration Act of 1940 declares,

> "The examination of aliens concerning their right to enter or remain in the Philippines shall be performed by Immigrant inspectors, with the advice of medical authorities in appropriate cases. Immigrant Inspectors are authorized to exclude any alien not properly documented as required by this Act, admit any alien complying with the applicable provisions of the immigration laws and to enforce the immigration laws and regulations prescribed thereunder.
>
> "Immigrant Inspectors are also empowered to administer oaths, to take and consider evidence concerning the right of any alien to enter or reside in the Philippines, and to go aboard and search for aliens on any vessel or other conveyance in which they believe aliens are being brought into the Philippines. Immigrant Inspectors shall have the power to arrest, without warrant, any alien who in their presence of view is entering or is still in the course of entering the Philippines in violation of immigration laws or regulations prescribed thereunder."

6. Searches of Prisoners of War

The weapons and military papers of prisoners of war may be seized[135] This is pursuant to Article IV, Chapter II, Section 1 of the Hague Convention respecting the Laws and Customs of War on Land, which reads:

[132] Papa vs. Mago, 130 Phil. 886, 901-902; Pacis vs. Pamaran, 56 SCRA 16, 20; Viduya vs. Berdiago, 73 SCRA 553, 560; People vs. Court of First Instance of Rizal, 101 SCRA 86, 97.

[133] Viduya vs. Berdiago, 73 SCRA 553, 564, citing Carroll vs. United States, 267 U.S. 132, 149-150.

[134] Tañada and Carreon, Political Law of the Philippines. Vol. 2, p. 143.

[135] Alvero vs. Dizon, 76 Phil. 637, 644; citing Wilson, International Law, 3rd ed., p. 524.

> "All their personal belongings, except arms, horses and military papers, remain their property."

Similarly, Article 18, Section I, Part IV of the Geneva Convention relative to the Treatment of Prisoners of War states :

> "All effects and articles of personal use, except arms, hourses, military equipment and military documents, shall remain in the possession of prisoners of war, likewise their metal helmets and gas masks and like articles issued for personal protection."

7. Waiver

The right against unreasonable searches and seizures may be waived expressly or implicitly.[136] For a waiver to exist, the following requisites must be present: (1) the right exists, (2) the person involved knew, actually or constructively, of the existence of the right; and (3) he had an actual intention to relinquish the right.[137]

If the person whose premises were being searched without a search warrant signs a waiver, he waives his right against the unreasonable search.[138] However, if he was pressured to sign the waiver, the waiver is void.[139]

Where the barrio captain to whom the accused admitted having shot the deceased ordered two barrio councilmen to get the murder weapon from the house of the accused and after they did so the accused identified it as the murder weapon, the seizure of the shotgun without a warrant was deemed to have been made with the consent of the accused.[140]

If the person whose house was being searched without a search warrant consents to the search, he waives his right against the unreasonable search.[141] Thus, where the accused expressly allowed the military authorities to search his house, led them to the room where he kept the bottles, demijohn and vial he used to manufacture whisky illegally, and demonstrated how he manufactured whisky, he waived the absence of a search warrant.[142]

Initially, the Supreme Court held that failure to object or protest against the search being made without a warrant constitutes a waiver.[143] The Court of Appeals echoed this ruling.[144] Later on, the Supreme Court repeatedly ruled that

[136] People vs. Malasugui, 63 Phil. 221, 226; Garcia vs. Diego, 65 Phil. 689, 698; Lopez vs. Commissioner of Customs, 68 SCRA 320, 326; People vs. Fernandez, 8 ACR 172, 179.

[137] Garcia vs. Diego, 65 Phil. 689, 698; People vs. Burgos, 144 SCRAA 1, 16; People vs. Fernandez, 8 ACR 172, 179.

[138] People vs. Dimapilis, 20 CAR (2s) 884, 887.

[139] Roan vs. Gonzales, 145 SCRA 687, 696.

[140] People vs. Agbot, 193 Phil. SO, 512.

[141] People vs. Sane, (CA) 40 O.G. No. 9 5th Supp. 113, 115.

[142] People vs. Fernandez, 8 ACR 172, 178-179.

[143] People vs. Malasugui, 63 Phil. 221, 226.

[144] People vs. Bayaua, (CA) 40 O.G. No. 18 12th Supp. 184, 187; People vs. Tan Heng, CA-G.R. No. 00679-Cr, May 11, 1964; People vs. Salonga, CA-G.R. No. 06745-Cr, August 21, 1973; People vs. Lacson, 20 CAR (2s) 1111, 1115.

failure to object to the search does not constitute a waiver but shows a mere respect for the authority of the law.[145] This is the better rule. Courts indulge every reasonable presumption against the waiver of a constitutional right.[146]

The ruling in the case of Lopez vs. Commissioner of Customs, 68 SCRA 320 is what is controversial.

A team of anti-smuggling operatives barged into the hotel room of Tomas Velasco, who was then away. A woman who identified herself as the wife of Tomas Velasco allowed them to enter opened his suitcases and gave their contents to the leader of the team. Tomas Velasco questioned the validity of the search. He claimed that the woman inside his hotel room was not his wife but a manicurist.

The Supreme Court brushed aside the protestations of Tomas Velasco and upheld the validity of the search on the ground that there was adequate consent. The Supreme Court reasoned out:

> 'If such indeed were the case, then it is much more easily understandable why that person, Teofila Ibañez, who could be aptly described as the wrong person at the wrong place and at the wrong time, would have signified her consent readily and immediately. Under the circumstances, that was the most prudent course of action. It would save her and even petitioner Velasco himself from any gossip or innuendo. Nor could the officers of the law be blamed if they would act on the appearances. There was a person inside who from all indications was ready to accede to their request. Even common courtesy alone would have precluded them from inquiring too closely as to why she was there. Under all the circumstances, therefore, it can readily be concluded that there was consent sufficient in law to dispense with the need for a search warrant."[147]

One is tempted to smile at this reasoning, which is amusing rather than persuasive. The right against unreasonable searches and seizures is a personal one. It cannot be waived by anyone except the person whose rights are being violated or by someone whom he expressly authorized to do so in his behalf.[148] The manicurist inside the hotel room of Tomas Velasco, even if she misrepresented herself as his wife, had no authority to waive his right against unreasonable searches and seizures. The team of anti-smuggling operatives could very easily have waited for Tomas Velasco to return.

B. Arrests

The instances when an arrest may be made even without a warrant are enumerated in Section 5, Rule 113 of the 1985 Rules on Criminal Procedure, which reads:

> "A peace officer or a private person may, without a warrant, arrest a person:
> "(a) When, in his presence, the person to be arrested has commited, is actually committing, or is attempting to commit an offense;
> "(b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has commited it; and
> "(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is securing final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another."

[145] Garcia vs. Diego, 65 Phil. 689, 695; Magoncia cs. Palacio, 80 Phil. 770, 773; People vs. Burgos, 144 SCRA 1, 161; Roan vs. Gonzales, 145 SCRA 687, 696.

[146] People vs. Burgos, 144 SCRA 1, 16.

[147] Lopez vs. Commissioner of Customs, 68 SCRA 320, 328.

[148] Garcia vs. Diego, 65 Phil, 689, 695.

1. **Flagrante Delicto**

The first exception contemplates a situation in which a crime was committed in the presence of the person making the arrest. Thus, a police officer cannot arrest a person who was acting suspiciously to determine if he had commited a crime.[149] Likewise, a person cannot be arrested without a warrant on the basis of a mere suspicion that he is linked to a murder plot.[150]

An offense is committed in the presence or within the view of the person making the arrest when he sees the offense, although at a distance, or hears the disturbance created by it and proceeds at once to the scene of it; or the offense is continuing and has not been consummated at the time the arrest is made.[151]

Thus, the Supreme Court upheld the validity of the arrest of someone caught with unlicensed firearms, ammunition, and a hand grenade.[152] The same was true of a group of persons who were plotting to subvert the government[153] and another group who were then committing rebellion.[154] Likewise, the Court of Appeals sustained the validity of the arrest by a mayor of someone who uttered derogatory remarks against him in his presence,[155] the arrest by the Philippine Constabulary of someone in possession of blasting caps and fuses without a permit,[156] and the arrest by the victim themselves of someone who robbed them.[157]

2. **Personal Knowledge**

According to the decision in People vs. Burgos, 144 SCRA 1, in the second exception, it is not enough that there be a reasonable ground to believe that a crime has been committed. The crime must actually have been committed. The need for a reasonable ground for the arrest refers only to the identity of the perpetrator of the crime. While this is a ruling of a mere division of the Supreme Court, this is a better rule than the pronouncement in People vs. Ancheta, 68 Phil. 415. In that case, the Supreme Court held that it is sufficient if the person making the arrest has reasonably sufficient grounds to believe that a crime has been committed and that the person to be arrested commited it.

The circumstances that give rise to the reasonable belief that the person to be arrested commited the crime must be personally known to the person making the arrest. Thus, the arrest cannot be made on the basis of information relayed to him

[149] United States vs. Hachaw, 21 Phil. 514, 517.

[150] Taruc vs. Carlos, G.R. No. L-1528, July 22, 1947.

[151] United States vs. Samonte, 16 Phil. 516, 519.

[152] Magoncia vs. Palacio, 80 Phil. 770, 773-774.

[153] Padilla vs. Enrile, 121 SCRA 538, 560.

[154] Morales vs. Enrile, 121 SCRA 538, 562.

[155] People vs. Vidal, CA-G.R. No. 13059-R, April 20, 1955.

[156] People vs. Biay, CA-G.R. No. 01922-Cr, April 5, 1963.

[157] People vs. Ong, 23 CAR (2s) 152, 156-157.

by the victim or a witness.[158] In the landmark case of Sayo vs. Chief of Police of Manila, the Supreme Court observed:

> In all cases above enumerated in which the law authorizes a peace officer to arrest without warrant, the officer making the arrest must have personal knowledge that the person arrested has commited, is actually commiting, or is about to commit an offense in his presence or within his view, or of the time, place or circumstances which reasonably tend to show that such person has committed or is about to commit any crime or breach of the peace."[159]

Indeed, if a police officer making the arrest were to apply for a warrant of arrest, he must have personal knowledge of the circumstances surrounding the commission of the crime. He cannot obtain a warrant of arrest on the basis of hearsay information. If he cannot obtain a warrant of arrest to enable him to make the arrest on the strength of a warrant, with more reason he should not be allowed to make an arrest without a warrant on the strength of hearsay information. The exceptions to the requirements for a warrant of arrest should be strictly construed to give ample protection to the right against unreasonable searches and seizures.[160]

The previous ruling of the Supreme Court upholding the validity of the arrest without warrant of a suspected robber by a police officer on the basis of the information given by the victim should be considered obsolete.[161] The decision was handed down when the law governing the criminal procedure in the courts was General Orders No. 58, Series of 1900, which did not contain a provision similar to Section 5, Rule 113 of the 1985 Rules on Criminal Procedure.

The second exception was invoked by the Supreme Court as basis for sustaining the arrest of the accused in the case of People vs. Francisco.[162] In that case, a girl was raped and strangled to death. A hat which belonged to the accused and a plastic hose which he was carrying were found near the body of the victim.

On the basis of the same exception, the Court of Appeals upheld the validity of the arrest of the accused in People vs. Borillo, CA-G.R. No. 10955-R, May 16, 1972. That case involved the theft of valuables. Half an hour after the theft, the accused was found hiding inside a locked toilet in an apartment a few meters from the scene of the crime. A stolen wrist watch was discovered inside the flusher of the toilet bowl.

The ruling of the Supreme Court in People vs. Molleda, 86 SCRA 667 strikes a discordant note. The decision in that case held that if a crime has been committed, a person may be arrested on reasonable suspicion for the purpose of identification.[163] The error in this decision can be traced to its reliance upon the case of United States vs. Sanchez, 27 Phil. 442, which should be considered obsolete.

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[158] Sayo vs. Chief of Police of Manila, 80 Phil. 859, 885; People vs. Burgos, 144 SCRA 1, 14; People vs. Dauz (CA) 40 O.G. No. 15 11th Supp. 107, 110. See contrary rulings of the Court of Appeals in Costosa vs. Schulte, (CA) 50 O.G. 1171, 1181 and People vs. Acosta, (CA) 54 O.G. 4739,4744.

[159] 80 Phil. 859, 885.

[160] People vs. Burgos, 144 SCRA 1, 14.

[161] United States vs. Sanchez, 27 Phil. 442, 444-445.

[162] 93 SCRA 351, 355.

[163] 86 SCRA 667, 669-700.

3. Escaping Prisoner

A convicted prisoner who escaped from the penal establishment where he is serving sentence can be arrested without a warrant. In fact, by escaping, he is committing the crime evasion of service of sentence, which is punished under Article 157 of the Revised Penal Code.[164]

V. IMPLEMENTATION OF THE WARRANT

A. Subjects of Search and Seizure

The articles which may seized by virtue of a search warrant are listed in Section 2, Rule 126 of the 1985 Rules on Criminal Procedure, which reads:

> "A search warrant may be issued for the search and seizure of personal property:
> "(a) Subject of the offense;
> "(b) Stolen or embezzeled and other proceeds or fruits of the offense; and
> "(c) Used or intended to be used as the means of commiting an offense."

Thus, search warrants may be issued for stolen goods, smuggled items, gambling equipment, implements for counterfeiting; lottery tickets, prohibited liquor, obscene books for sale or circulation, powder or other explosive and dangerous material.[166]

In accordance with Section 2, Rule 126 of the 1985 Rules on Criminal Procedure, the seizure of the following articles has been sustained:

1. Opium[156]
2. Fraudulent books, invoices, and records[167]
3. Documents and papers used in connection with usury[168]
4. Stolen motor vehicle[169]
5. Slot machines used as gambling devices[170]
6. Bottles of illegally manufactured whisky[171]

The property seized need not belong to the person against whom the search warrant is directed. It is sufficient that he has possession or control of it. Stolen property may be seized. Precisely, the stolen property is owned by someone other than the person against whom the search warrant is directed.[172]

However, Section 2, Rule 126 of the 1985 Rules on Criminal Procedure does not apply to crimes committed through reckless imprudence. Thus, a motor boat

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[164] Salonga vs. Holand, 76 Phil. 412, 414; Parulan vs. Director of Prisons, 130 Phil. 641, 645.

[165] Uy Khetin vs. Villareal, 42 Phil. 886, 892.

[166] Ibid.

[167] People vs. Rubio, 57 Phil. 384, 394.

[168] Villaruz vs. Court of First Instance of Nueva Ecija, 71 Phil. 72, 77.

[169] Cruz vs. Dinglasan, 83 Phil. 333, 336; Azucena vs. Muñoz, 33 SCRA 722, 725; Ramirez vs. Jimenez, 1 CAR (2s) 143, 147.

[170] Phillips vs. Municipal Mayor, G.R. No. L-9183, May 30, 1959.

[171] People vs. Fernandez, 8 ACR 172, 180.

[172] Burgos vs. Chief of Staff, 133 SCRA 800, 811-812. See contrary ruling of the Court of Appeals in People vs. Dakay, 13 CAR (2s) 922, 936.

which capsized because of the negligence of the captain cannot be seized.[173]

Any item other than those enumerated in Section 2, Rule 126 of the 1985 Rules on Criminal Procedure cannot be seized if the purpose is only to obtain evidence against the accused.[174] The peg on which this doctrine has been hanged is the right against self-incrimination.[175] The reliance on the right against self-incrimination is misplaced. The right against self-incrimination applies to testimonial evidence only.[176] It does not apply to the production of documents.[177] Thus, the Supreme Court has held that the presentation in evidence of documents and papers taken from the house of the accused did not violate his right against self-incrimination.[178] The doctrine should simply have been based on the right against unreasonable searches and seizures.

Precisely because of the requirement that a search warrant must particularly describe the articles to be seized, in the enforcement of the search warrant, the peace officers cannot seize items other than those described in the search warrant, unless the possession of such other items is prohibited by law.[179]

B. Time and Place of Search

A search warrant has a lifetime of ten days. Section 9, Rule 126 of the 1985 Rules on Criminal Procedure reads:

> "A search warrant shall be valid for ten (10) days from its date. Thereafter it shall be void."

This does not mean that the search warrant can be used every day for ten days. After the articles for which it was issued have been seized, a search warrant cannot be used to conduct another search, unless it is a continuation of the same search.[180]

As a rule, a search warrant should order that it be enforced at daytime only. Section 8, Rule 126 of the 1985 Rules on Criminal Procedure provides:

> "The warrant must direct that it be served in the day time, unless the affidavit asserts that the property is on the person or in the place ordered to be searched, in which case a direction may be inserted that it be served at any time of the day or night."

if the search warrant ordered that it be enforced in the daytime and it was implement at nighttime, the search is unreasonable and unlawful.[181]

Moreover, the peace officer enforcing a search warrant cannot search any place other than that described in the search warrant.[182]

C. Receipt for Articles Seized

Under Section 10, Rule 126 of the 1985 Rules on Criminal Procedure, the place officer who seized any property must give a detailed receipt for it.[183] If he does not, his search is illegal.[184]

VI. ATTACKING THE VALIDITY OF AN ARREST, SEARCH, AND SEIZURE

A. Standing of the Party

Only the party whose rights against illegal searches and seizures was violated can question the validity of a search and seizure and object to the admission in evidence of the articles seized, because the right is purely personal.[185]

Thus, in ruling that the stockholders and officers of several corporations could not challenge the validity of the search warrants issued against the corporations, the Supreme Court reasoned out:

> "Indeed, it is well settled that the legality of a seizure can be contested *only* by the party whose rights have been impaired thereby, and that the objection to an unlawful search and seizure is *purely personal* and cannot be availed of by third parties. Consequently, petitioners therein may not validly object to the use in evidence against them of the documents, papers and things seized from the offices and premises of the corporations adverted to above, since the right to object to the admission of said papers in evidence belongs *exclusively* to the corporations, to whom the seized effects belong, and may not be invoked by corporate officers in proceedings against them in their individual capacity."[186]

B. Searches and Seizures

1. Period for Attacking the Seizure

The illegality of a search and seizure must be questioned within a reasonable time.[187] The accused should litigate the question of the validity by asking for the

[173] Tanaleon vs. City Fiscal of Iloilo City, 7 CAR (2s) 208, 214.

[174] United States vs. De los Reyes, 20 Phil. 467, 471; Uy Khetin vs. Villareal, 42 Phil. 886, 898, Alvarez vs. Court of First Instance of Tayabas, 64 Phil. 33, 47; People vs. Sy Juco, 64 Phil. 667, 675; Rodriguez vs. Villamiel, 65 Phil. 230, 239; people vs. Liwag, (CA) 38 O.G. 358, 360; People vs. Dakay. 13 CAR (2s) 920, 937.

[175] Uy Khetin vs. Villareal, 42 Phil. 886, 899; Alvarez vs. Court of First Instance of Tayabas, 64 Phil. 33, 47; Rodriguez vs. Villamiel, 65 Phil. 230, 238-239; Yee Sue Koy vs. Almeda, 70 Phil. 141, 147; People vs. Dakay, 13 CAR (2s) 920, 937.

[176] United States vs. Tan Teng, 23 Phil. 145, 152; United States vs. Ong Siu Hong, 36 Phil. 735, 736.

[177] Fisher vs. United States, 425 U.S. 391, 408.

[178] Alvero vs. Dizon, 76 Phil. 637, 645.

[179] Uy Khetin vs. Villareal, 42 ohil. 886, 896-897; People vs. Sy Juco, 64 Phil. 667, 675; People vs. Dakay, 13 CAR (2s) 920, 933.

[180] Uy Khetin vs. Villareal, 42 Phil. 886, 895-896.

[181] People vs. Bantola, 19 CAR (2s) 520, 525-526.

[182] People vs. Dakay, 13 CAR (2s) 920, 936.

[183] Asian Surety & Insurance Co., Inc. vs. Herrera, 54 SCRA 312, 219-330.

[184] People vs. Bantola. 19 CAR (2s) 520, 525-520.

[185] Stonehill vs. Diokno, 126 Phil. 738, 745; Nasiad vs. Court of Tax Appeals, 61 SCRA 238-244; Lim vs. De Leon, 66 SCRA 299, 308.

[186] Stonehill vs. Diokno, 126 Phil. 738, 745-746.

[187] Garcia vs. Diego, 65 Phil. 689, 695.

return of the properties seized before the trial.[188] If he consents to the presentation of seized documents as evidence for the prosecution during the hearing on his petition for bail, he waives the illegality of their seizure.[189]

2. Grounds for the Attack

The determination of whether or not probable cause exists depends upon the judgment and discretion of the judge who issued the search warrant.[190] Hence, a reviewing court should pay great deference to the determination of the issuing judge. However, the findings of the issuing judge should not disregard the facts before him or run counter to the clear dictates of reason.[191]

The accused cannot assail the validity of a search warrant on the ground that a prior application for a search warrant was denied for lack of probable cause, because the prior denial does not constitute *res judicata*.[192]

Neither can be accused challenge the validity of a seizure on the ground that he had not been arrested or charged before the seizure was effected. It is not necessary that he be arrested or prosecuted.[193]

3. Defenses

If an article was seized without a search warrant, when one should have been obtained, the peace officer cannot justify its seizure on the ground that it was stolen.[194] The fact that it was stolen does not dispense with the need for a search warrant. On the contrary, this is one of the grounds for asking for a search warrant.

The nullity of a search conducted without a warrant will not be cured by the fact it proved to be successful, because the evidence seized was incriminatory. No amount of incriminatory evidence can take the place of a search warrant.[195]

When the validity of a search and seizure is challenged in court, the enforcing peace officer cannot fall back on the presumption of regularity in the performance of official duty. Such presumption does not apply when the validity of a search and seizure is being questioned.[196]

The fact that the accused used as his own evidence the seized articles belonging to him does not estop him from assailing the validity of their seizure. Since he

[188] People vs. Carlos, 47 Phil. 626, 631; People vs. Fernandez, 8 ACR 172, 175.

[189] Alvero vs. Dizon, 76 Phil. 637, 645.

[190] United States vs. Ocampo, 18 Phil. 1, 41-42; United States vs. Grant, 18 Phil. 122, 145; Amarga vs. Abbas, 98 Phil. 739, 741; Luna vs. Plaza, 26 SCRA 310, 321; De Mulata vs. Irizari, 61 SCRA 210, 214-215; Oyao vs. Pabatao, 78 SCRA 90, 92-93; Ramirez vs Jimenez, 1 CAR (2s) 143, 147; People vs. Delfin, 22 CAR (2s) 1118, 1122; Mendoza vs. Lagman, CA-G.R. No 45257-R, October 8, 1970; Ganiron vs. Jacinto, AC-G.R. SP No. 02089, May 10, 1985.

[191] Le Chemise Lacoste, S.A. vs. Fernandez, 129 SCRA 373, 390-391.

[192] Cruz vs. Dinglasan, 83 Phil. 333, 336.

[193] Phillips vs. Municipal Mayor, G.R. No. L-9183, May 30, 1959.

[194] Lim vs. De Leon, 66 SCRA 299, 306.

[195] United States vs. De los Reyes, 20 Phil, 467, 473.

[196] People vs. Veloso, 48 Phil. 169, 176,; Mata vs. Bayona, 128 SCRA 388, 394.

owns them, he has the right to use them as evidence.[197]

The validity of a search warrant issued for unfair competition cannot be attacked on the ground that there is a pending petition in the Philippines Patent for the cancellation of the registration of the trademark in question. The pendency of such a case does not bar the issuance of a search warrant for unfair competition.[198]

4. Modes of Attack

A party who wants to assail the validity of the seizure of any article should do so by filing a motion to quash the search warrant and asking for the return of the article. If the article was seized without any search warrant, he should demand for its return. If it cannot be returned because its possesion is prohibited by law, he should ask for its suppression in evidence.

If the accused wants to question the validity of a search warrant, he should do so in the same case in which it was issued. He cannot do so by filing a separate action for replevin to recover possession of the seized articles.[199] Neither can he do so by filing a petition for injunction with a court of concurrent jurisdiction.[200]

If the motion of the accused is denied, he cannot appeal, because the order denying his motion is interlocutory.[201] His remedy is to assail the order by filing a petition for mandamus[202] or certiorari.[203]

However, the Supreme Court has entertained petitions for certiorari, even if no motion was previously filed in the lower court, where the constitutional issues raised were serious and urgent.[204]

C. Warrants of Arrest

1. Period for Attacking the Arrest

If the accused wants to question the legality of his arrest, he should do so before proceeding to trial. Otherwise, he will be estopped.[205] Indeed, he cannot raise such issue for the first time on appeal.[206]

2. Habeas Corpus

If the accused was arrested by virtue of a warrant of arrest, if he wants to

[197] Burgos vs. Chief of Staff, 133 SCRA 800, 809.

[198] La Chemise Lacoste, S.A. vs. Fernandez, 129 SCRA 373, 394.

[199] Pagkalinawan vs. Gomez, 129 Phil. 534, 539-541.

[200] Templo vs. De la Cruz, 60 SCRA 295, 299.

[201] Alvarez vs. Court of First Instance of Tayabas, 64 Phil. 33, 50; Marcelo vs. De Guzman 114 SCRA 657, 662-663.

[202] Alvarez vs. Court of First Instance of Tayabas, 64 Phil. 33, 50; Garcia vs. Diego, 65 Phil. 689, 696.

[203] Marcelo vs. De Guzman, 114 SCRA 657, 662-663.

[204] Burgos vs. Chief of Staff, 133 SCRA 800, 807; Roan vs. Gonzales, 145 SCRA 687, 698.

[205] People vs. Avendano, CA-G.R. No. 2781-R, October 31, 1949.

[206] People vs. Bongo, 55 SCRA 547, 550.

challenge the validity of the warrant of arrest, he should do so by filing a motion to quash the warrant of arrest. He cannot file a petition for habeas corpus. This remedy is not available if relief may be obtained through another remedy.[207]

3. Posting Bail

It is well-settled that if the accused posts bail for his provisional liberty, he waives his right to question the validity of his arrest.[208] The correctness of this doctrine is open to question. The right against illegal arrests and the right to bail are two separate rights guaranteed by the Constitution. Hence, the availment of the latter should not be considered a waiver of the former. Human liberty is so sacred that violation of it, no matter how momentary it may be, should not be tolerated. A person who has been illegally arrested will naturally seek to regain his freedom. The most expeditious means for doing so is by posting bail. It is an outrage to human liberty to say that one can only regain its loss by the fastest means if he will waive his right to question the illegality of his arrest. The arrested person is not completely free to choose which course of action to take, because he is laboring under the harsh and oppressive realities of life in jail. If he posts bail, it is only because he is motivated by his desire to regain his freedom.

In the case of People vs. Red, 55 Phil. 706, the Supreme Court refused to apply the rule that the posting of bail by the accused amounts to a waiver of his right to challenge the legality of his arrest. The Supreme Court tried to distinguish that case from other cases by pointing out:

> "The present defendants were arrested towards the end of January, 1929, on the Island and Province of Marinduque by order of the judge of the Court of First Instance of Lucena, Tayabas, at a time when there were no court sessions held in Marinduque. In view of these circumstances and the number of the accused, it may properly be held that the furnishing of the bond was prompted by the sheer necessity of not remaining in detention, and in no way implied their waiver of any right, such as the summary examination of the case before their detention."[209]

This distinction is based on trivial differences. It does not go into the essence of the reason of the accused for posting bail, the desire to regain his freedom immediately. There is therefore no reason why this isolated ruling should not be applied to other cases in which the accused posted bail.

[207] Alimpoos vs. Court of Appeals, 193 Phil. 353, 369; Ilagan vs. Enrile, 139 SCRA 349, 364.

[208] Carrington vs. Peterson, 4 Phil. 134, 138; United States vs. Grant, 18 Phil. 122, 147; Doce vs. Branch II of the Court of First Instance of Quezon, 131 Phil. 126, 129; Luna vs. Plaza, 26 SCRA 310, 324; Zacarias vs. Cruz, 30 SCRA 728, 730; Palanca vs. Querubin, 30 SCRA 738, 742; Bermejo vs. Barrios, 31 SCRA 764, 777; De Asis vs. Romero, 41 SCRA 235, 240; People vs. Bongo, 55 SCRA 547, 549; Callanta vs. Villanueva, 72 SCRA 377, 379; Bagcal vs. Villanueva, 120 SCRA 525, 527; People vs. Aguila, 2 ACR 851, 853; People vs. Graceda, CA-G.R. No. 935, January 4, 1939; People vs. Remojo, (CA) 40 O.G. No. 15 11th Supp. 40, 45.

[209] 55 Phil. 706, 711.

VII. CONSEQUENCES OF ILLEGALITY

A. Legality of Detention

Even if the arrest of the accused made without a warrant of arrest was illegal, he cannot be released if subsequently a valid warrant for his arrest was issued. The initial illegality of his arrest does not affect the legality of his continued detention, since the continuation of his detention is no longer based on his initial arrest without a warrant but on a valid warrant of arrest.[210]

B. Criminal Liability of the Accused

If during the trial of the accused, his guilt was proven beyong reasonable doubt, he should be convicted, even if he had been arrested illegally. He should be convicted, even if he had been arrested illegally. He cannot be absolved from criminal liability simply because his arrest was illegal.[211] Illegality of the arrest of the accused is not one of the means for extinguishing criminal liability.

C. Inadmissibility in Evidence of the Articles Seized

Before the proclamation of martial law on September 21, 1972, the strongest blow against the right against unreasonable searches and seizures was dealt by the decision in the case of Moncado vs. People's Court, 80 Phil. I. Ironically. the lawyer of Hilario Moncado was Vicente Francisco, who fought to strengthen the guarantee against unreasonable searches and seizures during the constitutional convention.

Hilario Moncado was arrested for treason, without any warrant by members of the Counter Intelligence Corps of the United States Army. A week later they requested his wife to witness the search of the residence of the Moncados. She refused since they were not armed with any search warrant. Since they assured her that they would search the house just the same even in her absence, she went with them. Upon their arrival at the house, the wife of Hilario Moncado saw the floor littered with documents. The head of the searching team told her he was taking some documents with him to be used as evidence against Hilario Moncado. Hilario Moncado asked for the return of the documents, on the ground that their seizure was illegal, since they had been confiscated without any search warrant.

In a six-to-three decision, the Supreme Court denied the petition of Hilario Moncado by ruling:

> "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."[212]

[210] Medina vs Orozco, 125 Phil. 313, 316.

[211] United States vs. Wilson, 4 Phil. 317, 324; United States vs. Grant, 18 Phil. 122, 146; Uy Khetin vs. Villareal, 42 Phil. 886, 895.

[212] Moncado vs. People's Court, 80 Phil. 1, 3-4.

Speaking of the affect of the constitutional right against illegal searches and seizures upon the admissibility of evidence, the majority said:

> "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 admisibles y competentes y no clasifica como pruebas incompetentes las obtenidas ilegalmente.[213]

According to the majority decision, the remedy of Hilario Moncado to vindicate the violation of his right against unreasonable searches and seizures was to file a criminal case.

> "El procedimiento sano, justo y ordenado es que se castigue de acuerdo con el articulo 128 del Codigo Penal Revisado al individuo que, so capa de funcionario publico, sin mandamiento de registro, indebidamente profana el domicilio de un ciudadano y se apodera de sus papeles y que se castigue tambien a ese ciudadano si es culpable de un delito, no importando si la prueba de su culpabilidad ha sido ilegalmente."[214]

The majority decision cavalierly rejected the ruling of the United States Supreme Court in the case of Weeks vs. United States, 232 U.S. 383 by saying:

> "La teoria de Weeks vs. U.S. que subvierte las reglas de prueba no es aceptable en esta jurisdiccion: es contraria al sentido de justicia y a la ordenada y sana administracion de justicia."[215]

The argument of Justice Cesar Bengzon in his dissenting opinion, which traced the history of the constitutional guarantee against illegal searches and seizures, failed to sway the majority. He pointed out:

> "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 and specifically invoking the United States decisions of Boyd vs. U.S., 116 U.S., 616 and Gould vs. U.S., 225 U.S., 298, which the majority of this Court would now discard and overrule. (Aruego op. cit. Vol. I p. 160; Vol. II, pp. 1043, 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 man's domicil"[216]

From the text of the majority decision, three points appear. Firstly, the admissibility of evidence is not affected by the illegality of the means by which it was obtained. Secondly, violation of the right against unreasonable searches and seizures does not affect the admissibility of evidence, because admissibility of evidence is to be determined solely by the provisions of the Rules of Court. Thirdly, the remedy of the accused whose right against illegal searches and seizures had been violated is to file a criminal case for violation of Article 128 of the Revised Penal Code.

In making the sweeping statement that the admissibility of evidence does not

[213] Ibid., p. 5.

[214] Ibid., p. 11.

[215] Ibid., p. 11

[216] Ibid., p. 27.

depend on the legality of the means used to obtain it, the majority opinion relied on Wigmore.[217] While the majority opinion asserted that this was well settled in the Philippines, the case in which the Supreme Court ruled that evidence is admissible even if it was illegally obtained did not involve articles that were illegally seized without a search warrant. The case of Barton vs. Leyte Asphalt and Mineral Oil Company, 46 Phil. 938, in which the Supreme Court handed down this ruling, involved a letter of the plaintiff to his lawyer, which was privileged.

The Court of Appeals foreshadowed the ruling in Moncado vs. People's court, 80 Phil. 1 years earlier.[218] The doctrine handed down in this case on January 14, 1948 was followed and remained in the books of jurisprudence for almost twenty years.[219] As early as January 28, 1961, in a separate concurring opinion, Justice Roberto Concepcion argued for the overruling of the doctrine laid down in the case of Moncado vs. People's Court, 80 Phil. 1.[220]

The Supreme Court finally overturned this doctrine in the case of Stonehill vs. Diokno, 126 Phil. 738 on June 19, 1967. In a decisioned penned by Chief Justice Roberto Concepcion, the Supreme Court rationalized its holding that evidence illegally seized is inadmissible in evidence by saying:

> "However, most common law jurisdictions have already given up this approach and eventually adopted the exclusionary rule, realizing tha this is *the only practical means of enforcing the constitutional injunction* against unreasonable searches and seizures."[221]

Quoting the case of Mapp vs. State of Ohio, 367 U.S. 643, 656, the Supreme Court added :

> "Only last year, the Court itself recogized that *the purpose of the exclusionary 'is to deter -- to compel respect for the constitutional guaranty in the only effectively available way -- by removing the incentive to disregard it.'* x x x."[222]

The Supreme Court disposed of the suggestion that the remedy of the aggrieved party is to file a criminal case for violation of Article 128 of the Revised Penal Code in this wise:

> "Moreover, the theory that the criminal prosecution of those who secure an illegal search warrant and/or make unreasonable searches or seizures would suffice to protect the constitutional guarantee under consideration, overlooks the fact that violations thereof are, in general, committed by agents of the party in power, for, certainly, those belonging to the minority could not possibly abuse a power they

[217] Wigmore, A Treatise on the Anglo-American System of Evidence in Trials at Common Law, 3rd ed., Vol. VIII, p. 5.

[218] People vs. Remojo, (CA) 40 O.G. No. 15 11th Supp. 40, 43; People vs. Fernandez, 8 ACR 172, 180; People vs. Arevalo, (CA) 45 O.G. Supp. No. 5, 39, 41.

[219] Wong & Lee vs. Collector of Internal Revenue, 104 Phil. 469, 476, Medina vs. Collector of Internal Revenue, 110 Phil. 912, 918; People vs. Abog, CA-G.R. No. 5402-R, August 9, 1949; People vs. Elchico, CA-G.R. No. 4564-R, August 12, 1950; People vs. Mistual, Ca-G.R. No. 21495-R, September 29. 1959.

[220] Medina vs. Collector of Internal Revenue, 110 Phil. 912, 919-920.

[221] Stonehill vs. Diokno, 126 Phil. 738, 750. (Italics supplied ny the Supreme Court.)

[222] Ibid., pp. 752-753. (Italics supplied by the Supreme Court.)

do not have. Regardless of the handicap under which the minority usually – but, understandably – finds itself in prosecuting agents of the minority, one must not lose sight of the fact that the psychological and moral effect of the possibility of securing their conviction, is watered down by the pardoning power of the party for whose benefit the illegality had been committed."[223]

These words proved to be prophetic. Jose Diokno, who, as Secretary of Justice applied for the search warrants in this case, was arrested and detained when martial law was proclaimed on September 21, 1972.

The doctrine handed down in the case of Stonehill vs. Diokno, 126 Phil. 738 has been followed since then.[224] Section 21 (2), Article IV of the 1973 Constitution raised this doctrine to the level of a constitutional provision by declaring:

"Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."

This was copied verbatim as Section 3(2), Article III of the 1987 Constitution. The effect of this is to thwart the Supreme Court from overruling or modifying its ruling in the case of Stonehill vs. Diokno, 126 Phil. 738, as the United States Supreme Court has done. In the case of the United States vs. Leon, 52 LW 5155, 5161, the United States Supreme Court held that even if a search warrant is subsequently declared invalid, the articles seized are admissible in evidence if the peace officer enforcing it relied in good faith on the determination by the issuing judge of the existence of a probable cause and the sufficiency of the search warrant.

It is not only an illegally seized article that is inadmissible in evidence but articles seized by reason of knowledge acquired as a result of an illegal arrest or seizure. It is the fruit of a poisonous tree. Thus, in ruling that a revolver discovered after an illegal arrest was inadmissible in evidence, the Supreme Court explained:

"If an arrest without warrant is unlawful at the moment it is made, generally nothing that happened or is discovered afterwards can make it lawful. The fruit of a poisoned tree is necessarily also tainted."[225]

In the same tenor, the Court of Appeals earlier held

"The protection accorded by the Constitutional guaranty against unreasonable searches and seizures would have little meaning if the knowledge gained by the raiders during an illegal search and seizure were not similarly excluded."[226]

However, if the illegal seizure was not made by agents of the government but by somebody else, the agents of the government can take advantage of the illegal seizure and use the seized articles as evidence.[227]

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[223] Ibid., p. 754.

[224] Bache & Co. (Phil.), Inc. vs. Ruiz, 37 SCRA 823, 838; Asian Surety & Insurance Co., Inc. vs. Herrera, 54 SCRA 312, 321; Marcelo vs. De Guzman, 114 SCRA 657, 663; Burgos vs. Chief of Staff, 133 SCRA 800, 817; Dizon vs. Castro, G.R. No. 67923, April 11, 1985; Corro vs. Lising, 137 SCRA 541, 550; People vs. Burgos, 144 SCRA 1, 17; Roan vs. Gonzales 145 SCRA 687, 698; Nolasco vs. Pano, G.R. No. 69803, January 30, 1987; People vs. Bantola, 19 CAR (2s) 520; 526; People vs. Go Bun Tang, 22 CAR (2s) 1177, 1186.

[225] People vs. Burgos, 144 SCRA 1, Is.

[226] People vs. Bantola, 19 CAR (2s) 520, 527.

[227] Alvero vs. Dizon, 76 Phil. 637, 646; People vs. Fernandez, 8 ACR 172, 181.

In fact, in the case of Harry Stonehill, the United States Circuit Court of Appeals ruled that the Internal Revenue Service could use as evidence against him the documents illegally seized by the Philippine goverment. The Philippine government allowed agents of the United States government to copy the documents. In sustaining the admissibility in evidence of the documents in the action to foreclose the federal tax lien securing the liability of Harry Stonehill for income tax, the United States Circuit Court of Appeals pointed out:

"Since United States officials did not participate in the unlawful search, but rather obtained the contested documents in a lawful manner, the denial of the motion to suppress was proper and the interlocutory order of the District Court is affirmed."[228]

D. Return of Illegally Seized Articles

If an article was illegally seized, it should be returned.[229] However, if the possession of the article is prohibited by law, it cannot be returned. Thus, it has been held that the following items cannot be returned:

1. Unlicensed firearms and ammunition[230]
2. Gambling devices[231]
3. Narcotics[232]
4. Fake auxiliary stamps[233]
5. Illegal tickets for jai alai.[234]

E. Criminal Liability of the Violators

1. Arrests

A public officer who arrests a person without legal grounds violates Article 128 of the Revised Penal Code, which provides :

"Any public officer or employee who, without legal grounds, detains a person, shall suffer:

"1. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if the detention has not exceeded three days;

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[228] Stonehill vs. United States, 405 F2d 738, 746.

[229] Uy Khetin vs. Villareal, 42 Phil. 886, 900; Alvarez vs. Court of First instance of Tayabas, 64 Phil. 33, 50; People vs. Sy Juco, 64 Phil. 667, 678; Rodriguez vs. Villamiel, 65 Phil. 230, 239; Garcia vs. Diego, 65 Phil. 689, 696; Bache & Co. (Phil.), Inc. vs. Herrera, 54 SCRA 312, 321, Burgos vs. Chief of Staff, 133 SCRA 800, 817; Corro vs. Lising, 137 SCRA 541, 550; People vs. Dakay, 13 CAR (2s) 689, 696; people vs. Go Bun Tang, 22 CAR (2s) 1177, 1187.

[230] Magoncia vs. Palacio, 80 Phil. 770, 773; Roan vs. Gonzales, 145 SCRA 687, 698; People vs. Remojo, (CA) 40 O.G. No. 15 11th Supp. 40, 44; People vs. Bantola, 19 CAR (2s) 520; 528.

[231] Phillips vs. Municipal Mayor, G.R. No. L-9183, May 30, 1959.

[232] Castro vs. Pabalan, 70 SCRA 477, 485; People vs. Bantola, 19 CAR (2s) 520, 528.

[233] People vs. Marcos, 117 SCRA 999, 1003.

[234] Mata vs. Bayona, 128 SCRA 999, 1003.

"2. The penalty of *prision correccional* in its medium and maximum periods, if the detention has continued more than three but not more than fifteen days;

"3. The penalty of *prision mayor,* if the detention has continued for more than fifteen days but not more than six months; and

"4. That of *reclusion temporal,* if the detention shall have exceeded six months.

"The commission of a crime, or violent insanity or any other ailment requiring the compulsory confinement of the patient in a hospital, shall be considered legal grounds for the detention of any person."

However, the Supreme Court has repeatedly held that good faith is a valid defense to criminal prosecution under this provision.[235] The Supreme Court justified this ruling on the following grounds:

"One should however not expect too much of an ordinary policeman. He is not presumed to exercise the subtle reasoning of a judicial officer. Often he has no opportunity to make proper investigation but must act in haste on his own belief to prevent the escape of the criminal. To err is human. Even the most conscientious officer must at times be misled. If, therefore, under trying circumstances and in a zealous effort to obey orders of his superior officer and to enforce the law, a peace officer makes a mere mistake in good faith, he should be exculpated. Otherwise, the courts will put a premium on crime and will terrorize peace officers through a fear of themselves violating the law."[236]

2. Searches and Seizures.

Various criminal liabilities may be incurred in connection with illegal searches and seizures.

Article 128 of the Revised Penal Code read:

"The penalty of *prision correccional* in its minimum period hall be imposed upon any public officer or employee who, not being authorized by judicial order, shall enter any dwelling against the will of the owner thereof, search papers or other effects found therein without the previous consent of such owner, or, having surreptitiously entered said dwelling, and being required to leave the premises, shall refused to do so.

"If the offense be committed in the nightime, or if any papers or effects not constituting evidence of a crime be not returned immediately after the seach made by the offender, the penalty shall be *prision correccional* in its medium and maximum periods."

Thus, a barrio lieutenant who entered a house over the objections of the owner to search for a missing goat was convicted under this provision.[237]

Article 129 of the Revised Penal Code states :

"In addition to the liability attaching to the offender for the commission of any other offense, the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period and a fine not exceeding 1,000 pesos shall be imposed upon any public officer or employee who shall procure a search warrant without just cause, or, having legally procured the same, shall exceed his authority or use unnecessary severity in executing the same."

Thus, if a peace officer obtained a search warrant for the purpose of using it to extort money, this may show that the search warrant was illegally obtained.[238]

Lastly, Article 130 of the revised Penal Code decress:

"The penalty of *arresto mayor* in its medium and maximum periods shall be imposed upon a public officer or employee who, in cases where a search is proper, shall search the domicile, papers or other belonging of any person, in the absence of the latter, any member of his family, or in their default, without the presence of two witnesses residing in the same locality."

F. Civil Liability for Damages

A violation of the right against unreasonable searches and seizures gives rise to a civil liability for damages. Article 32 of the Civil Code provides in part:

"Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable for damages:

xxx xxx xxx

"(9) The right to be secure in one's person, house, papers, and effects against unreasonable searches and seizures;

xxx xxx xxx

"(11) The privacy of communication and correspondence;

xxx xxx xxx

"In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieced party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence.

"The indemnity shall include moral damages. Exemplary damages may also be adjudicated."

In explaining the justification for this provision, the Code Commission wrote:

"The creation of an absolutely separate and independent civil action for the violation of civil liberties is essential to the effective maintenance of democracy, for these reasons:

"(1) In most cases, the threat to freedom orginates from abuses of power by government officials and peace officers. Heretofore, the citizen has had to depend upon the prosecuting attorney for the institution of criminal proceedings, in order that the wrongful act migh. be punished under the Penal Code and civil liability exacted. But not infrequently, because the fiscal was burdened with too many cases or because he believed the evidence was insufficient, or as to a few fiscals, on account of a disinclination, to prosecute a fellow public official, especially when he is of high rank, no criminal action was filed by the prosecuting attorney. The aggrieved citizen was thus left without redress. In this way, many individuals, whose freedom had been tampered with, have been unable to reach the courts, which are the bulwark of liberty.

"(2) Even when the prosecuting attorney filed a criminal action, the re-

[235] United States vs. Burqueta, 10 Phil. 188, 189; United States vs. Figueroa, 23 Phil. 19, 21. United States vs. Batallones, 23 Phil. 46, 49-50; United States vs. Santos, 36 Phil. 853, 855; Suarez vs. Platon, 69 Phil. 556, 565.

[236] United States vs. Santos, 36 Phil. 853, 855.

[237] United States vs. Macaspac, 9 Phil. 207, 208-209.

[238] People vs. De la Pena, 97 Phil. 669, 673.

quirement of proof beyond reasonable doubt often prevented the appropriate punishment. On the other hand, an independent civil action, as proposed in the Project of Civil Code, would afford the proper remedy by a preponderance of evidence.

"(3) Direct and open violations of the Penal Code trampling upon the freedoms named are not so frequent as those subtle, clever and indirect ways which do not come within the pale of the penal law. It is in these cunning devices of suppressing or curtailing freedom, which are not criminally punishable, where the greatest danger to democracy lies. The injured citizen will always have under the of Civil Code, adequate civil remedies before the courts because of the independent civil action even in those instances where the act or omission complained of does not constitute a criminal offense."[239]

Good faith is not a defense to an action for damage under Article 32 of the Civil Code. Thus, Jorge Bocobo, the Chairman of the Code Commission, explained to Congress:

"It is not necessary therefore that there should be malice or bad faith. To make such a requisite would defeat the main purpose of article 32, which is the effective protection of individuals rights. Public officials in the past have abused their powers on the pretext of justiable motives or good faith in the performance of their duties. Precisely, the object of the article is to put an end to official abuse by the plea of good faith."[240]

Thus, in holding a provincial fiscal liable for damages for ordering the zeisure of a stolen motor launch, the Supreme Court spurned the pretension of good faith of the provincial fiscal by pointing out:

"To be liable under Article 32 of New Civil Code it is enough there was a violation of the constitutional rights of the plaintiffs and it is not required that defendants should have acted with malice or bad faith.[241]

Yet after ruling that good faith is not a defense under Article 32 of the Civil Code, the Supreme Court contradicted itself by absolving the detachment commander who seized the motor launch from liability on the ground that he believed in good faith that there was a legal basis for impounding the motor launch.[242] To the same effect is the earlier decision of the Court of Appeals exempting from liability for damages, on the ground of good faith a police officer who detained two suspects for theft, because the assistant city fiscal authorized him to detain them.[243]

The Court of Appeals also held that an accused who was acquitted of theft on the ground of reasonable doubt could not recover damages for illegal arrest without any warrant. Since he was caught with two stolen books, there was probable cause for his arrest. For his arrest to be lawful it sufficed that there was a reasonable ground to be believe that a crime was committed and the person to be arrested committed it.[244]

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[239] Report of the Code Commission, pp. 30-31.

[240] "Proceedings of the Public Hearings of the Joint Senate and House Code Committees," Lawyers' Journal, Vol. XVI, No. 5, May 31, 1951, p. 258.

[241] Lim vs. Ponce de Leon, 66 SCRA 299, 309.

[242] Ibid., p. 310.

[243] Costosa vs. Schulte, (CA) 50 O.G. 1171, 1181.

[244] Cruz vs. Philippine Education Company, 1 CAR (25) 654, 659.

VIII. AFTERMATH OF THE ARREST, SEARCH, AND SEIZURE

A. Arrests

Even in those instances in which a person may be arrested without a warrant, he must be charged in court, He cannot be detained beyond the period prescribed in Article 125 of the Revised Penal Code unless a warrant of arrest is issued by the court to justify his continued detention.[245] Otherwise, he can file a petition for habeas corpus to regain his liberty.[246] However, if a criminal case was filed against the person under detention and a warrant was eventually issued for his arrest, the delay in the issuance of the warrant is of no consequence. The delay in the issuance of the warrant of arrest does not affect its validity.[247]

B. Searches and Seizures

If despite the lapse of an unreasonable length of time, such as, five years, no criminal case has been filed, the seized articles should be returned.[248] There is no justification for the further retention of the seized articles. Likewise, if a criminal case was filed but it was dismissed, the articles seized should be returned.[249] Of course, if the possession of the seized article is prohibited by law, it cannot be returned.

IX. CONCLUSION

While a man's house is his castle, he may not use it as a citadel of crime.[250] Litigations involving arrests, searches, and seizures have centered on the struggle between the competing interests of protecting human rights, on one hand, and prosecuting criminals, on the other hand. In no field is there a greater clash between the demands of personal liberty and of an orderly society than in the area of arrests, searches, and seizures. It is the impartial judge who must step in and resolve these conflicting interests. In the resolution of this dispute, it should be borne in mind that the constitutional right against unreasonable searches and seizures must be liberally construed. The primary duty of the State is to protect the rights of the people.

The Supreme Court has aptly summed it all up in the following words:

"It must be borne in mind that in every application for a search warrant the issuing magistrate is called upon to perform the delicate task of balancing the power of State to search and seize, a power undisputably necessary for the public welfare, against one of the most treasured rights of the people – the right to be secure in their persons, homes, papers and effects against unreasonable searches and seizures." [251]

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[245] Lino vs. Fugoso, 77 Phil. 933, 939. Morales vs. Enrile, 121 SCRA 598, 562.

[246] Morales vs. Enrile, 121 SCRA 538, 562.

[247] Gunabe vs. Director of Prisons, 77 Phil. 993, 995; People vs. Mabong, 100 Phil. 1069, 1071.

[248]Magdaluyo vs. Director, National Bureau of Investigation, 119 Phil. 664, 670. People vs. Villasor, 30 SCRA 518, 528; National Bureau of Investigation vs. Yatco, CA-G-R No. 33905-R, January 5, 1965.

[249]People vs. Jarencio, 128 SCRA 614, 616.

[250]United States vs. Vallejo, 11 Phil. 193, 195. United States vs. Delos Reyes, 20 Phil. 467, 487.

[251]Dizon vs. Castro, G.R. No. 67923, April 11, 1985.

LEGAL ASPECTS OF RECOVERING ILL-GOTTEN WEALTH

By JOVITO R. SALONGA

Let us first define the term "ill-gotten wealth".

On June 18, 1955, the Congress of the Philippines enacted Republic Act No. 1379, "declaring forfeiture in favor of the State any property found to have been unlawfully acquired by any public officer or employee and providing for the procedure therefor."

Section 2 of this Republic Act provides that "whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to this salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed to have been unlawfully acquired."

Three years later, on August 17 1960, Congress enacted Republic Act No. 3019, entitled "Anti-Graft and Corrupt Practices Act" which adopts the same definition that is, any property which is manifestly out of proportion to a person's salary and to his other lawful income. Section 3 of the Anti-Graft law, as it is popularly called, enumerates the corrupt practices of public officers, and penalizes both the public officer and the person giving the gift, present, share, percentage or benefit mentioned in the Act. Sections 4 and 5 of the Act impose certain prohibitions on private individuals and close relatives of high officials of the Government.

Executive Order No 1, issued by President Corazon C. Aquino on February 28, 1986, uses the term "ill-gotten wealth", whether located in the Philippines or abroad, and includes all business enterprises and entities owned or controlled, during his administration, by the former president, his immediate family, relatives, subordinates, and close associates "directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, or connections." The Rules and Regulations of the Presidential Commission on Good Government, otherwise known as the PCGG, issued on April 11, 1986, adopts the same standard found in Republic Act No. 1379, the Anti-Graft Law, and Executive Order No. 1, and enumerates the various means by which ill-gotten wealth is acquired.

Perhaps it might be more appropriate and accurate to speak only of some legal aspects of recovering ill-gotten wealth, since on second thought, the title of tonight's lecture which I had suggested – "Legal Aspects of Recovering Ill-Gotten Wealth is so broad, given the fact that much of this ill-gotten wealth is not located in the Philippines but in various places abroad, notably the United States and Switzerland.

Were we to confine our discussion to Philippine internal law, without taking into account the conflicts aspects, our treatment would be unrealistic. Indeed, most of the cases now pending are being handled abroad – in such jurisdictions as New York, New Jersey, Texas, California, Hawaii, and Switzerland. Proceedings will probably be instituted in other countries as well.

*Lecture delivered by Senator Jovito R. Salonga, former Chairman, Presidential Commission on Good Government, at the Gregorio Araneta Memorial Foundation Lecture Series at the Ateneo College of Law Auditorium.