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## Searches and Seizures--General Exploratory Search--When Unreasonable (United States v. Lefkowitz, 285 U.S. 452 (1932))

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to the defendant firm, minus the sum paid to him on the closing of his account, *held*, that the plaintiff was entitled to his proportionate share of the value of the stocks as of the time of the disaffirmance of the contract, and not as of the time when he entered into the transaction. *Joseph v. Schatzkin*, 259 N. Y. 241, 181 N. E. 464 (1932).

The privilege of infancy is to be used as a shield and not as a sword; and if the infant has had a benefit of a contract sought to be rescinded by him he must account for the benefit or return of its equivalent.<sup>1</sup> An infant may more readily rescind a contract where it is still executory and has not received any benefit thereunder.<sup>2</sup> An agreement made by a minor is merely voidable and by rescission the contract does not become void *ab initio*,<sup>3</sup> although there seems to be contention for the contrary.<sup>4</sup> The infant's appointment of an agent to sell goods is voidable and not void.<sup>5</sup> When the sale is voidable no tort is committed until after avoidance.<sup>6</sup> The plaintiff in this case received no benefit but contracted a loss which he is trying to shift on the shoulders of the defendants, his agents. Up until the infant repudiated the contract, the brokers had obeyed the infant's commands and no tort had been committed by them, since, as agents, defendants were authorized by the infant principal. The loss, if any, should fall on him. The infant should not be placed in a better position after disaffirmance of the agreement than he was in before.<sup>7</sup> Until the plaintiff avoided the contract, the agreement was valid and all action taken under it by the agents or brokers was wholly regular and therefore until disaffirmance no cause of action arose.

S. S.

SEARCHES AND SEIZURES—GENERAL EXPLORATORY SEARCH—WHEN UNREASONABLE.—Under the allegations of a complaint based on knowledge and information of facts sufficient to justify the accusation, the defendant and another were arrested by federal officers on a warrant for conspiracy to violate the National Prohibition Act. The arrest was made in an office room and the officers, without a search warrant, made a general search of all the desks, cabinets, drawers, etc., in the room and seized practically all the personal property

<sup>1</sup> *Rice v. Butler*, 160 N. Y. 578, 55 N. E. 275 (1899).

<sup>2</sup> *Medbury v. Watrous*, 7 Hill 110 (1843).

<sup>3</sup> *Casey v. Kastel*, 237 N. Y. 305, 142 N. E. 671 (1924).

<sup>4</sup> Dissenting opinion per Crane, J.; *citing* (1 WILLISTON, CONTRACTS, §236; ANSON, CONTRACTS [3rd Am. ed. by CORBIN] §161b, p. 184; MEYER, THE LAW OF STOCK BROKERS AND STOCK EXCHANGE, §125, p. 496; *Myers v. Hurley Motor Co.*, 273 U. S. 18, 21; *Benson v. Tucker*, 212 Mass. 60; *Casey v. Kastel*, 237 N. Y. 305).

<sup>5</sup> *Casey v. Kastel*, *supra* note 3.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Rice v. Butler*, *supra* note 1.

found therein. The defendant issued an order to show cause why the court should not order the suppression of the evidence obtained as aforesaid. The District Court denied the motion justifying the seizure on the ground that the acts complained of constituted a felony and a nuisance and termed the articles seized, contraband or at least the usual and ordinary means of carrying on a business of the character complained of. The Circuit Court of Appeals reversed. On appeal, *held*, a general exploratory search of the premises under the circumstances was unreasonable and violative of the Fourth and Fifth Amendments to the Constitution. *United States v. Lefkowitz*, 285 U. S. 452, 52 Sup. Ct. 420 (1932).

The Fourth Amendment forbids every search that is unreasonable<sup>1</sup> and is construed liberally<sup>2</sup> to safeguard the right of privacy. Its protection extends to offenders as well as to the law-abiding.<sup>3</sup> A warrant of arrest does not carry with it the right to a general search<sup>4</sup> although if the articles seized be contraband<sup>5</sup> or are them being used as part of the criminal enterprise,<sup>6</sup> the search and seizure thereof are sustainable. A distinction has been made between search and seizure in a house as compared with search and seizure in automobiles or other vehicles.<sup>7</sup> In the second situation where the impracticability of procuring a search warrant is apparent, the validity of the search is to be determined on whether the search was based on reasonable and probable cause for suspicion.<sup>8</sup> The courts have attempted to define the constituents of reasonable and probable cause<sup>9</sup> but each case must

<sup>1</sup> *Boyd v. U. S.*, 116 U. S. 616, 641, 6 Sup. Ct. 524, 538 (1886); *Go-Bart v. U. S.*, 282 U. S. 344, 357, 51 Sup. Ct. 153, 158 (1931). U. S. CONST. 4TH AMDT.

<sup>2</sup> *Boyd v. U. S.*, *supra* note 1 at 635, 6 Sup. Ct. at 535; *Gouled v. U. S.*, 255 U. S. 298, 304, 41 Sup. Ct. 261, 263 (1921); *Byars v. U. S.*, 273 U. S. 28, 32, 47 Sup. Ct. 248, 249 (1927).

<sup>3</sup> *Weeks v. U. S.*, 232 U. S. 383, 392, 34 Sup. Ct. 341, 344 (1914); *Gouled v. U. S.*, *supra* note 2 at 307, 41 Sup. Ct. at 264; *Agnello v. U. S.*, 269 U. S. 20, 32, 46 Sup. Ct. 4, 6 (1925); *Go-Bart v. U. S.*, *supra* note 1 at 357, 51 Sup. Ct. at 158.

<sup>4</sup> *Boyd v. U. S.*, *supra* note 1; *Gouled v. U. S.*, *supra* note 2; *Agnello v. U. S.*, *supra* note 3; *Go-Bart v. U. S.*, *supra* note 1.

<sup>5</sup> *Boyd v. U. S.*, *supra* note 1 at 623, 6 Sup. Ct. at 528; *Gouled v. U. S.*, *supra* note 2 at 308, 41 Sup. Ct. at 264; *Carroll v. U. S.*, 267 U. S. 132, 45 Sup. Ct. 280 (1925); *U. S. v. Bookbinder*, 278 Fed. 216, 219 (E. D. Pa. 1922); *U. S. v. Kirschenblatt*, 16 F. (2d) 202, 203, 51 A. L. R. 416, 417 (C. C. A. 2d, 1926).

<sup>6</sup> *Weeks v. U. S.*, *supra* note 3, at 392, 34 Sup. Ct. at 344; *Marron v. U. S.*, 275 U. S. 192, 48 Sup. Ct. 74 (1927); *U. S. v. Kirchenblatt*, *supra* note 5, at 204, 51 A. L. R. at 419.

<sup>7</sup> *Hester v. U. S.*, 265 U. S. 57, 44 Sup. Ct. 445 (1924); *Carroll v. U. S.*, *supra* note 5; *U. S. v. Kaplan*, 286 Fed. 963 (S. D. Ga. 1923); *People v. Defore*, 242 N. Y. 13, 20, 150 N. E. 585, 587 (1926); Note (1932) 20 GEO. L. REV. 508.

<sup>8</sup> *Carroll v. U. S.*, *supra* note 5, at 156, 45 Sup. Ct. at 286; *U. S. v. Kaplan*, *supra* note 7, at 972.

<sup>9</sup> *Stacey v. Emery*, 97 U. S. 642, 24 L. ed. 1035 (1878); *Dumbra v. U. S.*, 268 U. S. 435, 45 Sup. Ct. 546 (1925); *Husty v. U. S.*, 282 U. S. 694, 51 Sup. Ct. 240 (1931); Note (1932) 20 GEO. L. REV. 508.

be decided upon its particular facts.<sup>10</sup> An officer making such search does so at his risk and is liable should the search be held unreasonable.<sup>11</sup>

The Fourth and Fifth Amendments often conflict on the question of evidence obtained by unreasonable searches<sup>12</sup> but the courts have preserved the unity of idea which is the basis of both provisions, the protection of the right of privacy<sup>13</sup> and the rule of the instant case is in accord with the policy of this court long adhered to.<sup>14</sup> New York State, although providing for the same protection to its citizens, does not<sup>15</sup> follow the policy of the United States Supreme Court<sup>16</sup> and practically allows into evidence all articles and information obtained regardless of the validity of the search except such evidence as is obtained by the trickery of legal process.<sup>17</sup> The federal rule has been greatly criticized and is not followed in the majority of the states.<sup>18</sup>

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<sup>10</sup> *Agnello v. U. S.*, *supra* note 3, at 33, 46 Sup. Ct. at 6; *Go-Bart v. U. S.*, *supra* note 1, at 357, 51 Sup. Ct. at 158; *Peru v. U. S.*, 4 F. (2d) 881, 883 (C. C. A. 8th, 1925).

<sup>11</sup> *Kilbourn v. Thompson*, 103 U. S. 168, 26 L. ed. 377 (1880); *West v. Cabell*, 153 U. S. 78, 14 Sup. Ct. 752 (1894); *Kercheval v. Allen*, 220 Fed. 262 (C. C. A. 8th, 1915); *U. S. v. Maresca*, 266 Fed. 713 (S. D. N. Y. 1920); *Bell v. Clapp*, 10 Johns. (N. Y.) 263 (1813); *Sailly v. Smith*, 10 Johns. (N. Y.) 500 (1814); *Johnson v. Comstock*, 14 Hun (N. Y.) 238 (1878); *Entick v. Carrington*, 19 How. St. Tr. 1030 (1765); *WILKES' CASES*, 19 How. St. Tr. 1405 (1763, 1765); *Fraenkel, Concerning Searches and Seizures* (1920) 34 HARV. L. REV. 364.

<sup>12</sup> *Boyd v. U. S.*, *supra* note 1; *Atkinson, Admissibility of Evidence Obtained Through Unreasonable Searches and Seizures* (1925) 25 COL. L. REV. 11, 28.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Boyd v. U. S.*, *supra* note 1; *Weeks v. U. S.*, *supra* note 3; *Silverthorne Lumber Co. v. U. S.*, 251 U. S. 385, 40 Sup. Ct. 182 (1920); *Amos v. U. S.*, 255 U. S. 313, 41 Sup. Ct. 266 (1921); *Agnello v. U. S.*, *supra* note 3; *Go-Bart v. U. S.*, *supra* note 1.

<sup>15</sup> N. Y. CIVIL RIGHTS LAW §8; N. Y. STATE CONST. art. 1, §6.

<sup>16</sup> *People v. Adams*, 176 N. Y. 351, 68 N. E. 636, *aff'd*, 192 U. S. 585, 24 Sup. Ct. 372 (1904); *People v. Chiagles*, 237 N. Y. 193, 142 N. E. 583 (1923); *People v. Defore*, *supra* note 7. The Supreme Court has apparently overruled its own judgment in *People v. Adams*; *see People v. Defore*, *supra* note 7, at 21, 150 N. E. at 587.

<sup>17</sup> *People v. Adams*, *supra* note 16; *People v. Defore*, *supra* note 7; *RICHARDSON, EVIDENCE* (1928) §101 a.

<sup>18</sup> *People v. Defore*, *supra* note 7, at 21, 150 N. E. at 587, 588; Note (1928) 2 ST. JOHN'S L. REV. 196.