

CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The “Contemplation of Justice” *Boyd v. United States, 116 U.S. 616 (1886)*



If it is law, it will be found in our books; if it is not to be found there it is not law.

The great end for which men entered into society was to secure their property. That right is preserved sacred and incommunicable in all instances where it has not been taken away or abridged by some public law for the good of the whole.

The 6th section of the act of June 22, 1874, entitled "An act to amend the customs revenue laws," &c., which section authorizes a court of the United States, in revenue cases, on motion of the government attorney, to require the defendant or claimant to produce in court his private books, invoice and papers, or else the allegations of the attorney to be taken as confessed: *Held*, to be unconstitutional and void a applied to suits for penalties or to establish a forfeiture of the party's goods, **as being repugnant to the Fourth and Fifth Amendments of the Constitution.**

Where proceedings were *in rem* to establish a forfeiture of certain goods alleged to have been fraudulently imported without paying the duties thereon, pursuant to the 12th section of said act: *Held*, That an order of the court made under said 5th section, requiring the claimants of the goods to produce a certain invoice in court for the inspection of the government attorney, and to be offered in evidence by him, was an unconstitutional exercise of authority, and that the inspection of the invoice by the attorney, and its admission in evidence, were erroneous and unconstitutional proceedings.

It does not require actual entry upon premises and search for and seizure of papers to constitute an unreasonable search and seizure within the meaning of the Fourth Amendment; a compulsory production of a party's private books and papers to be used against himself or his property in a criminal or penal proceeding, or for a forfeiture, is within the spirit and meaning of the Amendment.

It is equivalent to a compulsory production of papers to make the nonproduction of them a confession of the allegations which it is pretended they will prove.

Thoughts, Words and Actions for Plaintiff's Quintessential Rights of the First Amendment:
Truths that manifest Life, Liberty & Pursuit of Happiness pursuant to the Free Exercise Clause

A proceeding to forfeit a person's goods for an offence against the laws, though civil in form, and whether *in rem* or *in personam*, is a "criminal case" within the meaning of that part of the Fifth Amendment which declares that no person "shall be compelled, in any criminal case, to be a witness against himself."

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

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

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Search and seizure of a man's private paper to be used in evidence for the purpose of convicting him of a crime, recovering a penalty, or of forfeiting his property is totally different from the search and seizure of stolen goods, dutiable articles on which the duties have not been paid, and the like, which rightfully belong to the custody of the law.

Constitutional provision for the security of person and property should be liberally construed.

As, therefore, suits for penalties and forfeitures incurred by the commission of offences against the law are of this *quasi*-criminal nature, we think that they are within the reason of criminal proceedings for all the purposes of the Fourth Amendment of the Constitution, and of that portion of the Fifth Amendment which declares that no person shall be compelled in any criminal case to be a witness against himself, and we are further of opinion that a compulsory production of the private books and papers of the owner of goods sought to be forfeited in such a suit is compelling

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him to be a witness against himself within the meaning of the Fifth Amendment to the Constitution, and is the equivalent of a search and seizure -- and an unreasonable search and seizure -- within the meaning of the Fourth Amendment. Though the proceeding in question is divested of many of the aggravating incidents of actual search and seizure, yet, as before said, it contains their substance and essence, and effects their substantial purpose. **It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure.** This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. **It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis*.** We have no doubt that the legislative body is actuated by the same motives, but the vast accumulation of public business brought before it sometimes prevents it, on a first presentation, from noticing objections which become developed by time and the practical application of the objectionable law. (Emphasis added)