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# Our Constitutional Prohibition Against Unreasonable Searches and Seizures

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## OUR CONSTITUTIONAL PROHIBITION AGAINST UNREASONABLE SEARCHES AND SEIZURES

A constitution is in fact a fundamental law, or basis of government, and falls strictly within the definition of law as given by Mr. Justice Blackstone. It is a rule of action prescribed by the supreme power in a state, regulating the rights and duties of the whole community, says Justice Storey.

By the Constitution of a State or a Nation we mean those of its rules or laws which determine the form of its government, and the respective rights and duties of the government toward the citizens and of the citizens towards the government. A Constitution differs from a statute in that a statute must provide the details of the subject of which it treats, whereas a Constitution usually states general principles, and builds the substantial foundation and general framework of the law and government.

Section 10 of the Constitution of Kentucky which forbids unreasonable searches and seizures had its fatherhood in the 4th Amendment to the Constitution of the United States, proposed in 1789 and adopted in 1791, along with nine other important additions to our national fundamental law. That amendment is contained in what is commonly known and called the "Bill of Rights," being an enumeration of those rights which the people expressly reserve to themselves when they adopted our organic law.

Our Federal Constitution as originally drafted contained no provisions against unreasonable search and seizure but before the expiration of two years from its adoption an amendment was proposed to the effect that the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

In the same year, 1792, Kentucky adopted its first Constitution, incorporating a provision, section 9 of article 12, reading:

“The people shall be secure in their persons, houses, papers and possessions from unreasonable seizures and searches; and that no warrant to search any place, or to seize any person or thing, shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation.”

In due course legislation was adopted by both the Federal and State governments, putting into effect these constitutional interdictions.

In colonial days our fathers were intensely interested in security from unreasonable search and seizure. The English government, through its colonial officers in America, harassed our people upon every pretext by invading their homes for the purpose of making search and to seize anything, whether described or not, in the warrant, if it appeared to offend the law or the ideas of propriety of the searcher making the raid. Private lockers and vaults, including private and confidential papers, and the most sacred possessions were invaded sometimes in the most wanton way, and it was these unwarranted and unreasonable searches allowed by the mother country which indelibly fixed upon the minds and hearts of our fathers the absolute necessity for a bulwark against such invasions if the home of Americans were to be, indeed, their castle.

In construing the 4th Amendment to the United States Constitution it has been ruled that a violation takes place when a representative of any branch or subdivision of the government gains entrance to the home or office of a person suspected of crime, by stealth, through social acquaintance, or in the guise of a business call, and subsequently makes a secret search in the absence of the suspected person, and seizes papers to be used in evidence against him. The admission in evidence against a defendant of a paper secretly seized from his possession by a representative of the United States government, in violation of Const. Amend. 4, is contrary to Constitutional Amendment 5, providing that no person shall in any criminal case be compelled to be a witness against himself. The use in evidence of papers seized in a search unconstitutional under Constitutional Amendment 4 is, in effect, to compel a defendant to become a witness against himself contrary to Amendment 5.

It is well settled that the provisions of the Federal Constitution against unreasonable searches and seizures is a limitation on the powers of the Federal government, and not a limitation on the powers of the State, nevertheless the constitutions of the several states generally contain the same or similar limitations on the State government. Indeed, the first ten amendments to the Federal Constitution, including, of course, the 4th, refer to powers exercised by the government of the United States and not those of the individual states. In other words, the 4th Amendment is not concerned with State action, and deals only with Federal action. Almost from the beginning this principle has been consistently recognized by the Supreme Court of the United States.<sup>1</sup> In the leading cases of *Twining v. New Jersey*,<sup>2</sup> it was decided that the first eight amendments are restrictive only of national actions, and while the 14th Amendment restrained and limited State action, it did not take up and protect citizens of the states from actions by the states as to all matters enumerated in the first eight amendments, and that exemption from compulsory self-incrimination in the state court is not secured by the 5th Amendment to the Federal Constitution, nor is it one of the fundamental rights, immunities and privileges of citizens of the United States, or an element of due process of law within the meaning of the Federal Constitution or the 14th Amendment thereto.

Search warrants, as we know them, did not exist at common law in early times and Lord Coke in his day denied their legality. The granting of such writs later came about gradually and quietly as do such practices, being a pernicious encroachment of autocratic government upon the rights of the people. These encroachments at first were hardly perceptible and therefore indulged, but continued until finally they became so burdensome and oppressive that the people rose up against them and caused Parliament, in 1766, to pass resolutions condemning general warrants for the seizure of persons, their books and papers.

So to avoid the dangers of unlimited search and seizure that is to say, unreasonable search and seizure, framers of Kentucky's first Constitution as well as all subsequent documents of similar nature included a prohibition against unreasonable

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<sup>1</sup> *Barron v. Baltimore*, 7 Pet. 243; 8 L. Ed. 672; *Fox v. Ohio*, 5 How. 410; 12 L. Ed. 213-223.

<sup>2</sup> 211 U. S. 78; 53 L. Ed. 97; 29 Sup. Ct. Rep. 14.

search and seizures in substance the same as that to which we have referred. All present authority, therefore, for the issuance of search warrants, and the exercise of authority thereunder results from written law, either constitutional or statutory.

Glancing back over our cases from the beginning of the history of our highest court in Kentucky we find that very few arose involving the question of search and seizure until very recent years. The first reported case to reach the Kentucky Court of Appeals was that of *Reed v. Rice*.<sup>3</sup> That litigation arose over the custody of slaves, and was a suit by Rice to recover damages for trespass against Reed who executed the search warrant, as he contended, unlawfully. There the court held that one who acts in good faith upon the command of an officer to aid in the execution of process, may justify, although the process may not be regular and valid; but he who acts officiously must show a valid process. Judge Underwood prepared and delivered the opinion for the court. No question of unreasonableness of search and seizure was presented save as that question was made by the contention of Rice that the process was insufficient.

The next case cited in our Digest under the head of "Unreasonable Searches and Seizures," is styled *Commonwealth v. Wetzel*.<sup>4</sup> That search warrant was issued for the purpose of discovering gambling tables and other paraphernalia used in games of chance, under a special statute authorizing justices of the peace to issue search warrants for the purpose of discovering and seizing such paraphernalia. The opinion in that case was prepared by Judge Lewis in 1886. In the case of *Hughes v. Commonwealth*,<sup>5</sup> the right of search and seizure was questioned by one who was arrested on suspicion of having concealed upon or about his person a deadly weapon, and it was held that an officer has no right to search a person upon suspicion that he is carrying concealed a deadly weapon in violation of law, and the statutes which furnish the legislative construction of what is reasonable search and seizure does not authorize such search. The opinion in the Hughes case was delivered by Judge Durrelle for the court in 1897. Thus it will be seen that through more than one hundred (100) years of the history of Ken-

<sup>3</sup> 2 J. J. Marshall 45.

<sup>4</sup> 34 Ky. 537.

<sup>5</sup> 19 Ky. L. R. 479, 41 S. W. 294.

tucky's highest court there were but three cases adjudged in which questions of search and seizure were involved.

Kentuckians were not, therefore, greatly annoyed or harassed by these unusual processes called "Search Warrants" during the formative and the greater part of the progressive period of the Commonwealth.

A search warrant is defined as a process issued by a court of competent jurisdiction, requiring the officer to whom it is addressed to search a house or other place therein specified, for the property therein alleged to have been stolen, concealed, or kept in violation of law, and commanding the officer in case he finds the thing sought to bring it, together with the body of the person occupying the house and whose name is set forth in the warrant before the magistrate or judge issuing the warrant, or some other justice of the peace, or authorized officer. Formerly searches under warrant were lawful only in daytime, but now they may be made either day or night, according to the terms of the warrant. A search ordinarily implies a quest by an officer of the law; and a seizure contemplates a forcible dispossession of the owner or the possession of the thing sought.

Although search and seizure was originally instituted largely for the purpose of discovering and recovering stolen goods, and discovering and seizing seditious and treasonable papers and uncovering unlawful plots, in recent years in Kentucky as elsewhere, it has become largely a means and instrument for the discovery and apprehension of persons engaged in violating laws against the manufacture, sale, transportation and possession of intoxicating liquors, a purpose almost if not entirely foreign to its original purpose. Occasionally a search warrant is sued out for the purpose of discovering stolen goods or locating and discovering papers of an evidential nature. But the process is now used daily alone for the purpose of discovering and apprehending persons violating what is commonly known as the "prohibition," or bone dry laws.

It will be observed from a reading of the constitutional prohibition that the inhibition against searches and seizures is limited only to such searches and seizures as are unreasonable. The legislative branch of the government is, therefore, impliedly authorized to pass such laws as do not authorize search and seizure except in reasonable cases. The decisions appear to war-

rant the generalization that a search and seizure is "unreasonable" within the meaning of the constitutional provision, where, as in the reported case of *People v. Marxyhausen*,<sup>6</sup> it is not authorized by statute, or where the statute under which the warrant is issued does not conform to the conditions under which the Constitution permits such warrants to issue; or, where the conditions prescribed by the statute have not been met; or, where the warrant is not executed within a reasonable time; or, where the search is made in an unreasonable manner, or where the seizure is of property other than that connected with the offense charged.

In *Santo v. State*,<sup>7</sup> it is said that the term "unreasonable" in the constitutions of the states has allusion to what had been practiced before the Revolution, and especially to general search warrants in which the person, place, or thing was not described; and that no such warrant is unreasonable, in the legal sense, when it is for a thing obnoxious to the laws, and of a person and place particularly described and is issued on oath manifesting probable cause.

The courts of Minnesota have held that the police power of the state concededly extends to the search, seizure, and destruction of property which is either the subject of crime or the means of perpetrating it. Now, when intoxicating liquors are kept for sale in a prohibition district, they are, with all implements to facilitate their sale, the subject of crime or the means for committing it. No one questions the validity of laws providing for the issuing of warrants for the search, seizure, and destruction of implements of gaming, lottery tickets, and obscene books, and other similar articles and means of crime. But it has been questioned by some courts whether intoxicating liquors are property of such character as to be subject to the application of this rule. It is said they do not, per se, fall within the rule; but on principle, and the great weight of judicial authority, it must be held that when they are kept for sale in violation of the laws of the state, and are intended to be used as the subject or means of crime, it is a question solely for the lawmaking power to determine whether they ought to be subjected to the rule we have stated.

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<sup>6</sup> 3 A. L. R. 1505; 171 N. W. 557.

<sup>7</sup> 2 Iowa 165; 63 Am. Dec. 487 (1855).

The most outstanding and thoroughly considered opinion of our Kentucky court of last resort upon certain phases of the law of search and seizure is that delivered in the case of *Youman v. Commonwealth*,<sup>8</sup> prepared by Chief Justice Carroll, in 1920. No search warrant was in the hands of the officer at the time he searched the Youman place and found whiskey which was later used as evidence against accused. There the court held that evidence obtained by the officer in making an unlawful search was incompetent and should have been excluded upon seasonable objection or motion; and further that property (whiskey in the Youman case) taken in the course of an unlawful search, should, on motion, be restored to the person from whom it was unlawfully taken. The opinion in that case goes into the history, in a most enlightening way, of the subject of searches and seizures. Many cases from other courts are collected, correlated and examined, and the entire subject covered in a masterly way. One could do no better, in beginning a study of this important subject as applied by the courts of Kentucky, than by reading this opinion.

Since the delivery of that opinion cases involving similar questions have presented themselves in rapid fire succession until the court has practically covered what appears to be every phase of the subject of search and seizure as defined in our Constitution.

A comparison of the provision in the Federal Constitution with the 10th section of Kentucky's organic law will show that the provisions of our State Constitution are somewhat broader and more general than those of the Federal Constitution upon the subject of search and seizure. For instance, it is provided in the Federal Constitution that the rights of the people to be secure in their persons, houses and *effects*, against unreasonable search and seizure shall not be violated; while in the State Constitution it is said the people shall be secure in their persons, houses, papers and *possessions* from similar invasions. One employs the word "effects," while the other uses the word "possessions." The word "effects" as defined by Bouvier, is property or wordly substance, denoting property in a more extensive sense than goods; embraces every kind of property, real and personal, including things in action; while the word "posses-

<sup>8</sup>189 Ky. 152.

sion" not only relates to the property owned but such things, both real and personal, as are under the dominion and control of the owner or possessor. In considering and construing the word "possessions," as employed in our constitutional provision, we have given it a broader and more general meaning than the word "effects" is generally allowed. In one case we held the term broad enough to preclude the right of officers to search a farm for an illicit still located in the woodland not far removed from the spring of the owner, but several hundred feet from his residence. However, we held in the case of *Brent v. Commonwealth*,<sup>9</sup> that "possessions," as used in section 10 of the State Constitution, was intended to mean those intimate things about one's person, like in kind to those previously denominated in the same provision. But a more definite description of the word cannot be given, as every case where its application is invoked must be determined upon the facts and conditions then under consideration. Looking to the origin and the history of section 10 of the Constitution and considering the word "possessions" in relationship to the other words with which it is to be construed, it is held that that section was not intended to apply to the searching of woodland located somewhat remotely from the residence.

Consistently the court has held that persons can be searched without their consent only when and after a lawful arrest has been made or search warrant has been issued and delivered for execution to the officials about to make the search.<sup>10</sup> One's house, being his castle, is free from search except under and by a duly prepared and issued search warrant based upon a statement of facts supported by oath or affirmation<sup>11</sup> reasonably calculated to induce in the mind of the magistrate or judge about to issue the warrant probable cause<sup>12</sup> for believing that the person against whom the search warrant is to issue, is and has been guilty of a violation of law<sup>13</sup> and that a search of the person, houses, papers or effects of such person will disclose a given criminal act or offense. *Youman v. Commonwealth*. Of course,

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<sup>9</sup> 194 Ky. 504.

<sup>10</sup> *LeRosen v. Commonwealth*, 200 Ky. 223.

<sup>11</sup> *Colley v. Commonwealth*, 195 Ky. 706.

<sup>12</sup> *Goode v. Commonwealth*, 199 Ky. 755.

<sup>13</sup> *Mattingly v. Com.*, 197 Ky. 583; *Caudill v. Com.*, 198 Ky. 695.

one may always waive his right of freedom from search and seizure.<sup>14</sup>

In Indiana it has been held that a statute providing that "if any person shall make an affidavit . . . that such affiant has reason to believe and does believe" that liquors are unlawfully kept in a certain place, a search warrant shall issue, does not violate a constitutional provision that no search warrant shall issue but upon probable cause supported by oath or affirmation.

The Texas court has this to say on the subject of probable cause:

"It is obviously true that the legislature cannot dispense with the requirement of the Constitution that probable cause be shown, and that, therefore, it cannot evade this limitation upon its power by an attempt to make that probable cause which plainly is not such. But have we such a case? In determining a question like this, we must take into consideration the history of the subject, and what has been regarded as probable cause, and when we find that that which the legislature has, in this instance, treated as being sufficient, has been thus long and extensively so regarded here and elsewhere, by both legislative and judicial authority, it would be difficult to say that there is such a plain and palpable violation of the Constitution as to justify the courts in declaring the statute void; and if this were the only objection to the act in question, we should hesitate long before reaching such a conclusion."

Every search warrant must indicate with reasonable certainty the premises or place to be searched, and thing sought, describing them as nearly as may be."<sup>15</sup> Under a constitutional provision that no warrant to search any place, or seize any person, or thing, shall issue "without a special designation of the place to be searched," the locality must be definite, certain and fixed and must be capable of being described and specially designated; hence, a statute authorizing search for and seizure of intoxicating liquors unlawfully kept cannot properly be construed as warranting the search for and seizure of liquors in a valise, alleged merely to be in the possession of the defendant, but not alleged to be in any definite and fixed locality or place. It is not necessary to state with mathematical accuracy the character or quantity of the article to be seized, inasmuch as the only de-

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<sup>14</sup> *Banks v. Com.*, 190 Ky. 330; *Bruner v. Com.*, 192 Ky. 386; *Ash v. Com.*, 193 Ky. 452; *Helton v. Com.*, 195 Ky. 678; *Lewis v. Com.*, 197 Ky. 449.

<sup>15</sup> *Taylor v. Com.*, 198 Ky. 728; *Caudill & McLemore v. Com.*, 198 Ky. 695; *Wilkinson v. Com.*, 200 Ky. 399.

scription which it is possible to give in such cases must be a somewhat general one.

In the case of *Wilkerson v. Commonwealth*, we said this provision of the Constitution does not require absolute accuracy, but a description that reasonably indentified the article or place to be searched is sufficient.

The affidavit upon which a search warrant may issue must set forth facts and not conclusions of the affiant; his opinion or belief is sufficient.<sup>16</sup> The court has held, however, that an affidavit which states that the affiant believes another has in possession intoxicating liquors in violation of law and then sets forth facts upon which his belief is based, and these facts are such as are ordinarily calculated to induce in the mind of a reasonable person belief that the ultimate fact exists, the affidavit will be sufficient to support the search warrant. An illustration of this may be found in the case of *Head v. Commonwealth*,<sup>17</sup> where it was stated in the affidavit that affiant believed that a public offense had been committed by having in possession intoxicating liquors and then proceeded to set out, in substance, that the witness had only a short time previously thereto been in the place of the defendant and had seen liquors purchased there from him. A judge or magistrate is not authorized to issue a search warrant on facts personally known to him but not reduced to form of an affidavit and made a part of the record.<sup>18</sup>

Evidence obtained through and by an unwarranted search and seizure is generally held not admissible either in civil or criminal proceedings.<sup>19</sup>

If the affidavit upon which a search warrant is issued be insufficient for any reason to furnish probable cause within the meaning of the Constitution, or the search warrant is insufficient in form or substance to meet the constitutional requirement, all evidence obtained by a search or seizure made under such warrant, is incompetent and will be excluded upon motion. However, it was held by the United States Supreme Court in *Burdeau v. McDowell*,<sup>20</sup> that constitutional guarantees against unreason-

<sup>16</sup> *Adams v. Commonwealth*, 197 Ky. 255; *Carter v. Commonwealth*, 197 Ky. 400; *Hyde v. Commonwealth*, 201 Ky. 673.

<sup>17</sup> 199 Ky. 222.

<sup>18</sup> *Morse v. Com.*, 204 Ky. 672; *Clarke v. Com.*, 204 Ky. 740.

<sup>19</sup> *Holbrook v. Com.*, 197 Ky. 568; *Link v. Com.*, 199 Ky. 779; *Craft v. Com.*, 197 Ky. 612.

<sup>20</sup> 256 U. S. 465, 65 L. Ed. 1048.

able searches and seizures and self incrimination will not be violated if the Federal prosecuting authorities, to whom incriminating papers stolen by private persons have been delivered, retained them with a view to their use in a subsequent investigation by a grand jury where such papers will be part of the evidence against the accused, and may be used against him upon trial, should an indictment be returned, the government having had no part in the wrongful taking.

An interesting phase of these practices arose in the case of *Ash v. Commonwealth*,<sup>21</sup> where it was held a violation of the 10th article of our Constitution to search the handbag of a traveler without a search warrant, and solely on suspicion. But it is not an invasion of a moonshiner's constitutional rights for officers to search premises where his still is located if the still be not located on premises owned or possessed by him.<sup>22</sup> A defendant may however have all evidence obtained by spying on his premises by officers prying in at backdoors and windows excluded from consideration, if it appear that the officers were on the premises of the defendant at the time of the discovery.<sup>23</sup> This rule, however, does not apply to the evidence of a private person who, at the time of the obtention of the information, was on the premises of the defendant for other purposes.

The constitutional provisions against unreasonable searches and seizures is violated where the search warrant is not executed within a reasonable time. And what is a reasonable time is a question of law for the court to determine in each case, according to its circumstances. An unexplained delay of three days in the execution of such a warrant may be unreasonable.<sup>24</sup>

The sufficiency of an affidavit for search warrant has been considered and declared by the court in the following cases: *Carter v. Commonwealth*,<sup>25</sup> it was held insufficient; *Golly & Co. v. Commonwealth*,<sup>26</sup> insufficient; *Price v. Commonwealth*,<sup>27</sup> insuf-

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<sup>21</sup> 193 Ky. 452.

<sup>22</sup> *Bowling v. Commonwealth*, 193 Ky. 642; *Weber v. Commonwealth*, 202 Ky. 499.

<sup>23</sup> *Childers v. Com.*, 198 Ky. 848; *Walters v. Com.*, 199 Ky. 183; *Jordan v. Com.*, 199 Ky. 331; *Cotton v. Com.*, 200 Ky. 349.

<sup>24</sup> *Link v. Com.*, 199 Ky. 781.

<sup>25</sup> 197 Ky. 400.

<sup>26</sup> 195 Ky. 706.

<sup>27</sup> 195 Ky. 711.

ficient; *Mattingly v. Commonwealth*,<sup>28</sup> insufficient; *Caudill, &c. v. Commonwealth*,<sup>29</sup> insufficient; *Walters v. Commonwealth*,<sup>30</sup> sufficient; *Jordan v. Commonwealth*,<sup>31</sup> insufficient; *Goode v. Commonwealth*,<sup>32</sup> sufficient; *Kenney v. Commonwealth*,<sup>33</sup> sufficient; *Wilkerson v. Commonwealth*,<sup>34</sup> sufficient; *Lake v. Commonwealth*,<sup>35</sup> insufficient; *Dunn v. Commonwealth*,<sup>36</sup> sufficient; *Ingram v. Commonwealth*,<sup>37</sup> sufficient; *Moore v. Commonwealth*,<sup>38</sup> sufficient; *Poston & Crouch v. Commonwealth*,<sup>39</sup> insufficient; *Hyde v. Commonwealth*,<sup>40</sup> insufficient; *Commonwealth v. Dincler*,<sup>41</sup> insufficient; *Crouch v. Commonwealth*,<sup>42</sup> insufficient; *Munson v. Commonwealth*,<sup>43</sup> sufficient; *Maynard v. Commonwealth*,<sup>44</sup> insufficient; *Commonwealth v. Diebold*,<sup>45</sup> sufficient; *Kendall v. Commonwealth*,<sup>46</sup> sufficient; *Hardin v. Commonwealth*,<sup>47</sup> sufficient; *Caudill v. Commonwealth*,<sup>48</sup> sufficient; *Blackburn v. Commonwealth*,<sup>49</sup> sufficient; *Dolan v. Commonwealth*,<sup>50</sup> sufficient, and the accused was not permitted to show that the statements of the affidavit were in fact untrue, or to raise any question as to the accuracy or source of the affiant's information. *Abshire v. Commonwealth*,<sup>51</sup> sufficient; *Clarke v. Commonwealth*,<sup>52</sup> insufficient; *Vick v. Commonwealth*,<sup>53</sup> insufficient; *Fowler v. Commonwealth*,<sup>54</sup> sufficient; *Baker v. Com-*

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<sup>28</sup> 197 Ky. 583.

<sup>29</sup> 198 Ky. 695.

<sup>30</sup> 199 Ky. 183.

<sup>31</sup> 199 Ky. 331.

<sup>32</sup> 199 Ky. 775.

<sup>33</sup> 200 Ky. 221.

<sup>34</sup> 200 Ky. 338.

<sup>35</sup> 200 Ky. 266.

<sup>36</sup> 200 Ky. 262.

<sup>37</sup> 200 Ky. 284.

<sup>38</sup> 200 Ky. 419.

<sup>39</sup> 201 Ky. 187.

<sup>40</sup> 201 Ky. 673.

<sup>41</sup> 201 Ky. 129.

<sup>42</sup> 201 Ky. 187.

<sup>43</sup> 201 Ky. 274.

<sup>44</sup> 201 Ky. 593.

<sup>45</sup> 202 Ky. 315.

<sup>46</sup> 202 Ky. 169.

<sup>47</sup> 202 Ky. 670.

<sup>48</sup> 202 Ky. 730.

<sup>49</sup> 202 Ky. 751.

<sup>50</sup> 203 Ky. 400.

<sup>51</sup> 204 Ky. 725.

<sup>52</sup> 204 Ky. 740.

<sup>53</sup> 204 Ky. 513.

<sup>54</sup> 204 Ky. 525.

*monwealth*,<sup>55</sup> insufficient; *Workman v. Commonwealth*,<sup>56</sup> insufficient; *Neal v. Commonwealth*,<sup>57</sup> sufficient.

The sufficiency of search warrants has been considered in the following cases: *Caudill & McLemore v. Commonwealth*,<sup>58</sup> sufficient; *Walters v. Commonwealth*,<sup>59</sup> sufficient; *Jordan v. Commonwealth*,<sup>60</sup> insufficient; *Wilkerson v. Commonwealth*,<sup>61</sup> sufficient; *Ingram v. Commonwealth*,<sup>62</sup> sufficient; *Kendall v. Commonwealth*,<sup>63</sup> sufficient; *Yopp v. Commonwealth*,<sup>64</sup> sufficient; *Blackburn v. Commonwealth*,<sup>65</sup> sufficient; *Morse v. Commonwealth*,<sup>66</sup> sufficient; *Ingle v. Commonwealth*,<sup>67</sup> sufficient; *Workman v. Commonwealth*,<sup>68</sup> insufficient; and *Richardson v. Commonwealth*,<sup>69</sup> sufficient.

The prohibition against unreasonable search and seizure was placed in the Constitution by its framers for the same reason similar checks and curbs were incorporated therein, preserving to the people freedom of speech and of the press, due process of law, trial by jury, religious freedom and certain other civil and political rights, one as sacred as the other. These interdictions are and have been sheltering walls behind which the humble, uninitiated, but innocent citizen, may stand secure while the storms of bigotry and fanaticism beat thereon and waste away "reason against resuming sway." What is a Constitution without a Bill of Rights, either written or unwritten? Although the original draft of the Federal Constitution contained no declaration of such rights, the framers of that imperishable document understood and no doubt had in mind that every inalienable right mentioned in the Magna Charta had become a part of the common law of England, and by adoption of this country, the law of this country and formed the basis of our personal liberty and security whether specifically stated in the compact or not.

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<sup>55</sup> 204 Ky. 536.

<sup>56</sup> 204 Ky. 544.

<sup>57</sup> 203 Ky. 353.

<sup>58</sup> 198 Ky. 695.

<sup>59</sup> 199 Ky. 183.

<sup>60</sup> 199 Ky. 331.

<sup>61</sup> 200 Ky. 399.

<sup>62</sup> 200 Ky. 284.

<sup>63</sup> 202 Ky. 169.

<sup>64</sup> 202 Ky. 716.

<sup>65</sup> 202 Ky. 751.

<sup>66</sup> 204 Ky. 672.

<sup>67</sup> 204 Ky. 518.

<sup>68</sup> 204 Ky. 544.

<sup>69</sup> 205 Ky. 434.

The rights enumerated in the Bill were, long before its drafting, imperishably fixed in the hearts of the people as the foundation of all laws and of all government, being the essence of that great American principle which holds all government derives its just powers from the consent of the governed.

FLEM D. SAMPSON,

*Justice of the Court of Appeals of Kentucky.*

Frankfort, Kentucky.