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NOTES AND COMMENTS

Constitutional Law—Arrest—Search and Seizure

Defendant was arrested by federal agents in the front room of his four-room apartment under valid warrants of arrest charging him with violation of the National Stolen Property Act. While he remained handcuffed in the living room the arresting officers conducted a meticulous five-hour search of the entire apartment, looking through clothes, chest and bureau drawers, personal effects, under the carpets, and generally ransacking the home. Near the close of the search, evidence of violation of the Selective Service Act was discovered in a sealed envelope taken from a bedroom dresser drawer. There was no search warrant. Prior to trial for the latter offense, defendant's motion to suppress the evidence as having been obtained by search violating his rights under the Fourth Amendment was denied, and objections to the evidence on trial were overruled.¹ A divided United States Supreme Court affirmed the conviction on the grounds that the search was incidental to lawful arrest and conducted in good faith to find instruments of the crime and was therefore not unreasonable.²

The Fourth Amendment to the United States Constitution³ guarantees to the people the right "to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." A search and seizure conducted under authority of a validly executed search warrant is not unreasonable.⁴ Likewise, a search and seizure conducted without warrant, but as an incident to a lawful arrest is not unreasonable.⁵ The

¹ The federal courts are committed to the rule initially announced in *Boyd v. United States*, 116 U. S. 616 (1886) that evidence obtained from a person by unlawful search and seizure is, on proper objection, inadmissible against him in any criminal proceeding. *Gouled v. United States*, 255 U. S. 298 (1921); *Weeks v. United States*, 232 U. S. 383 (1914). Not all of the states adhere to the federal rule; see CORNELIUS, *THE LAW OF SEARCH AND SEIZURE* §7, pp. 46-7 (1926).

² *Harris v. United States*, — U. S. —, 67 Sup. Ct. 1098, 91 L. ed. (Adv. Ops.) 1013 (1946). Cancelled checks, thought to have been stolen by Harris and used to effect a forgery were the object of the search as instruments of the crime. The Chief Justice, writing for the majority of the court, emphasizes the point that the thoroughness of the search was not inappropriate for the discovery of such objects. This was also stressed in the opinion of the lower court, 151 F. 2d 837 (C. C. A. 10th 1945), the conclusion being reached that by its nature and purpose a search incidental to lawful arrest may be more extensive than that conducted under a valid search warrant.

³ Similar or identical provisions are contained in the constitutions of each of the forty-eight states. They are collected in CORNELIUS, *op. cit. supra*, note 13, §2.

⁴ *Gouled v. United States*, 255 U. S. 298, 308 (1921).

⁵ Since the constitutional provisions for the security of the person and property are to be construed liberally to prevent encroachment upon individual rights, the implication is generally drawn from the Fourth Amendment that ordinarily searches conducted without the authority of a search warrant are unreasonable. *Gouled v. United States*, 255 U. S. 298 (1921); *Byars v. United States*, 273 U. S. 28, 32

extent to which the search and seizure may be carried in the first instance is governed by the terms of the warrant itself.⁶ In the latter the extent of the search is defined by the courts. Generally the police have the power, upon the making of a lawful arrest, to search without warrant the person of the accused and the place where the arrest is made for fruits of the crime or instruments by which it was committed or weapons that might be used to escape custody.⁷ There is no real problem regarding the extent to which the arrested person may be searched—the pockets of the clothing he is wearing may be searched,⁸ clothing temporarily laid aside,⁹ a suit case or bag, whether carried in the hand¹⁰ or lying nearby.¹¹ Articles, such as keys, thus seized from the person have been used to gain access to the person's automobile or building, and search thereof held reasonable.¹²

There has been considerable confusion in the courts, however, in their efforts to determine the extent to which a search of the place of arrest may be carried, and it is with this problem that the court in the principal case is concerned. The most common tests devised to define the "place" of arrest are phrased in such variable language as "the immediate surroundings," "the premises within the prisoners control, or

(1927). "The most important exception, however, to the necessity for a search warrant is the right of search and seizure as an incident to lawful arrest." *ROTTSCHEAFER, AMERICAN CONSTITUTIONAL LAW* 745 (1939). This right has been practiced since early times, *People v. Chiagles*, 237 N. Y. 193, 142 N. E. 583 (1923), and has not been affected by constitutional limitations. Not only is it within the power of the police to search without warrant upon arrest, but "... it is also their duty. . . ." *Smith v. Jerome*, 47 Misc. 22, 23, 93 N. Y. S. 202 (1905).

⁶ *People v. Preuss*, 225 Mich. 115, 195 N. W. 684 (1923).

⁷ If the arrest is not lawful, then any search following as an incident thereto is unlawful. *Peru v. United States*, 4 F. 2d 881 (C. C. A. 8th 1925). Also, the arrest must precede the search in point of time or at least be contemporaneous with it, *United States v. Derman*, 66 F. Supp. 511 (S. D. N. Y. 1946); and further, it must usually appear clearly to the court that the entry was sought for the purpose of arrest, not search. *Papani v. United States*, 84 F. 2d 160 (C. C. A. 9th 1936); *United States v. Vleck*, 17 F. Supp. 110 (D. C. Neb. 1936).

⁸ *People v. Chiagles*, 237 N. Y. 193, 142 N. E. 583 (1923).

⁹ *People v. Manko*, 189 N. Y. Supp. 357 (Sup. Ct. 1921).

¹⁰ *Pena v. State*, 111 Tex. Cr. R. 218, 12 S. W. 2d 1015 (1929); *cf. State v. Jenkins*, 195 N. C. 747, 143 S. E. 538 (1928) (where arrested person refused to allow search of suitcase, officer may detain him until search warrant is obtained).

¹¹ *Ragland v. Commonwealth*, 204 Ky. 598, 265 S. W. 15 (1924); *People v. Ruthenburg*, 229 Mich. 315, 202 N. W. 358 (1925).

¹² In *People v. Garrett*, 232 Mich. 366, 205 N. W. 95 (1925) an automobile key was seized during search of the arrested person, the auto several blocks away unlocked and a search thereof held reasonable. Search of a building allowed in *Martin v. United States*, 155 F. 2d 503 (C. C. A. 5th 1946) where entry gained by key taken during search of the owner arrested beside it. A trunk check may be taken from the person lawfully arrested and used to obtain and search the trunk. *United States v. Wilson*, 163 Fed. 338 (C. C. S. D. N. Y. 1908); *accord, Dibello v. United States*, 19 F. 2d 749 (C. C. A. 8th 1927) (key taken from bar in plain view of arresting officers used to gain access to nearby basement). *But cf. State v. Rebasti*, 306 Mo. 336, 267 S. W. 858 (1924) (search of safety deposit box without warrant held unreasonable after key to box seized from arrested person).

within his possession," or "the area to which his unlawful activities extend"; and in applying them to a multitude of fact situations not wholly consistent results have been reached. Though "each particular case involving the question of an unreasonable search and seizure must be determined on its own facts and circumstances,"¹³ what limitations will be imposed in a given case upon search of the place of arrest depends in large measure upon where the accused is apprehended; i.e., whether in an automobile, in his yard, business establishment, or home. Examination of some of the results announced and legal reasoning employed in these situations will aid in appraising the import of the case under comment.

Extensive freedom is allowed the arresting officer in the automobile cases. Thus, as incidental to lawful arrest of a driver, search may be made inside the car,¹⁴ behind the cushions,¹⁵ in the side pockets,¹⁶ and in the back compartments,¹⁷ on the theory that the entire vehicle is in the driver's possession and control. And this is true even though the search and seizure have no relation to the offense which prompted the arrest,¹⁸ whether it be speeding,¹⁹ a traffic violation,²⁰ or drunkenness.²¹ As a result of the famous *Carroll*²² case, arrest of a driver and search of

¹³ *Dibello v. United States*, 19 F. 2d 749 (C. C. A. 8th 1927); *Go-Bart Importing Co. v. United States*, 282 U. S. 344, 357 (1931) ("There is no formula for the determination of reasonableness. Each case is to be decided on its own facts and circumstances").

¹⁴ *State v. Hughlett et al.*, 124 Wash. 366, 214 Pac. 841 (1923).

¹⁵ *Haverstick v. State*, 196 Ind. 145, 147 N. E. 625 (1925).

¹⁶ *Callahan v. State*, 42 Okl. Cr. R. 425, 276 Pac. 494 (1929).

¹⁷ *Thomas v. State*, 196 Ind. 234, 146 N. E. 850 (1925).

¹⁸ *Haverstick v. State*, 196 Ind. 145, 147 N. E. 625 (1925) ("The fact that articles found on his person or in his immediate possession were being used in the commission of an offense other than the one for which the arrest was made is not sufficient cause for excluding evidence of what the search discloses."); *Toliver v. State*, 133 Miss. 789, 98 So. 342 (1923); Note 18 CALIF. L. REV. 673 (1930). There is some doubt as to the application of this reasoning where premises other than automobiles are involved; thus, in *United States v. Boyd*, 1 F. 2d 1019 (W. D. Wash. 1924) where an officer detected odor of smoking opium, was admitted to the house and there seized narcotics, he was not also authorized to seize liquor; the crime committed in his presence only supplied the function of a search warrant and authorized a search only for the particular offense. However, in *United States v. Charles*, 8 F. 2d 302 (N. D. Cal. 1925) a seizure under similar circumstances was allowed. Although the problem of the proper subject of seizure is directly involved in the principal case, it is beyond the scope of the present note. For other cases see *United States v. Seltzer*, 5 F. 2d 364 (D. Mass. 1925) (counterfeit stamps seized during search for liquor); *People v. Harter*, 244 Mich. 346, 221 N. W. 302 (1928) (liquor seized while looking through house for person); *People v. Woodward*, 220 Mich. 511, 190 N. W. 721 (1922) (house entered to arrest disorderly occupants, liquor in plain view seized).

¹⁹ *Jameson v. State*, 196 Ind. 483, 149 N. E. 51 (1925).

²⁰ *United States v. Jankowski*, 28 F. 2d 800 (C. C. A. 2d 1928).

²¹ *Patrick v. Commonwealth*, 199 Ky. 83, 250 S. W. 507 (1923). As to search of wagon following arrest for drunkenness see *Cole v. Commonwealth*, 201 Ky. 543, 257 S. W. 713 (1924); *Woods v. State*, 37 Okl. Cr. R. 377, 258 Pac. 816 (1927).

²² *Carroll v. United States*, 267 U. S. 132 (1925) (since automobiles, ships, wagons and other vehicles are easily removed beyond the hand of the law long

the automobile on public highways is reasonable if the officer has probable cause to believe goods are thereby being illegally transported. In such case, keys may be taken from the person and used to gain access to compartments of the car.²³

Where the person is arrested on his own property the right of search extends a reasonable distance from the place of arrest to include the land,²⁴ garages,²⁵ sheds²⁶ and other buildings not used as a dwelling. Thus, 25 feet has been held a reasonable distance because not beyond the extent of the offender's unlawful activities;²⁷ likewise, a barn 100 feet away, since it ". . . was in the immediate vicinity of the place where the arrest was made."²⁸ But, under these circumstances the private dwelling may not be searched, the power of search incidental to lawful arrest existing as to the home only when the accused is apprehended within it.²⁹ It was so held in the leading case of *Agnello v. United States*³⁰ where officers searched Agnello's home shortly after arresting him in another's house several doors away. The right to search the dwelling without warrant was similarly denied where defendant was arrested in front of his house,³¹ in his yard,³² in an automobile driving away from the house,³³ at his place of work.³⁴ Although there

before a search warrant can be obtained, as to them a different rule from that relating to the search of the dwelling must be employed); see Note 4 Tex. L. Rev. 241 (1926) reviewing the rule of the *Carroll* case in the light of later decisions, emphasizing its limited scope in supporting search on probable cause.

Agnello v. United States, 269 U. S. 20, 33 (1925) ("Belief, however well founded, that an article sought is concealed in a dwelling house, furnishes no justification for a search of that place without a warrant. And such searches are held unlawful notwithstanding facts unquestionably showing probable cause."); and recently, "The law does not permit [a search] merely because there is probable cause to believe contraband articles may be found on the premises." *United States v. Derman*, 66 F. Supp. 511, 513 (S. D. N. Y. 1946). Courts have implied that probable cause may justify a somewhat more extensive search incident to arrest than would otherwise be deemed reasonable. *State v. Adams*, 103 W. Va. 77, 136 S. E. 703 (1927). For additional materials see Corwin, *The Supreme Court's Construction of the Self-Incrimination Clause*, 29 MICH. L. REV. 1, 207 (1903) and Note 10 N. C. LAW REV. 79 (1931).

²³ *Thomas v. State*, 196 Ind. 234, 146 N. E. 850 (1925).

²⁴ *Koth v. United States*, 16 F. 2d 59 (C. C. A. 9th 1927). Of course, open fields do not come within the protection of the Fourth Amendment, and so may be searched without warrant or arrest of owner. *Hester v. United States*, 265 U. S. 57 (1924).

²⁵ *State v. Estes*, 151 Wash. 51, 274 Pac. 1053 (1929).

²⁶ *State v. Rotolo*, 39 Wyo. 181, 270 Pac. 665 (1928).

²⁷ *Shew v. United States*, 155 F. 2d 628 (C. C. A. 4th 1946).

²⁸ *Kelly v. United States*, 61 F. 2d 843, 847 (C. C. A. 8th 1932)

²⁹ *Weeks v. United States*, 232 U. S. 383 (1914).

³⁰ 269 U. S. 20, 33 (1925) (" . . . it has always been assumed that one's house cannot lawfully be searched without a search warrant, except as an incident to a lawful arrest therein. . . . The search of a private dwelling without a warrant is in itself unreasonable and abhorrent to our laws.").

³¹ *Poulos v. United States*, 8 F. 2d 120 (C. C. A. 6th 1925); *Thomas v. State*, 27 Okl. Cr. R. 264, 226 Pac. 600 (1924).

³² *Fowler v. State*, 114 Tex. Cr. R. 69, 22 S. W. 2d 935 (1930)

³³ *Papani v. United States*, 84 F. 2d 160 (C. C. A. 9th 1936).

³⁴ *Weeks v. United States*, 232 U. S. 383. (1914).

are cases failing to apply this rule in certain situations³⁵ it has long been the federal law and adhered to by a large majority of the state courts.³⁶

There is a sharp division of opinion, most clearly exemplified in the federal cases, as to how broad an area a search incident to arrest in one's place of business may cover. The view that it may go ". . . to the extent that the offender's control and activities likely extend" is expressed in *Sayers v. United States*,³⁷ where search was allowed in private rooms across the hall from the place of arrest, the court reasoning, ". . . of a person arrested, every garment and pocket may be searched, and the same principle authorizes that of a building, generally every room may be searched."³⁸ Quoting this language with approval, lower federal courts have upheld searches of the back room in a drugstore following arrest of the owner in the front portion,³⁹ of the basement to a soft drink parlor after arrest on the main floor,⁴⁰ of a proprietor's living quarters in his hotel after arrest in the lobby,⁴¹ and search and seizure of physician's prescription card file after arrest in his office.⁴² Representing a contrary view is a statement by Judge Learned Hand

³⁵ In *Patton v. State*, 43 Okl. Cr. R. 436, 279 Pac. 694 (1929) where D, upon approach of officers, fled from the back door of his house and was captured some 20 feet away, search of the home was allowed on grounds the arrest was immanently associated with the house, thus distinguishing the case from *Wallace v. State*, 42 Okl. Cr. R. 143, 275 Pac. 354 (1929) where D was arrested in the front yard and search of the dwelling was specifically said to be prohibited. In *State v. Evans*, 145 Wash. 4, 258 Pac. 845, 849 (1927) the court, after stating the rule allowing a search of the dwelling after arrest therein, said, "In this instance the defendant was on his way to his place of residence and the fact he was caught before he reached the place ought not to require the application of a different rule." This case and the broad language employed in *State v. Much*, 156 Wash. 403, 287 Pac. 57 (1930) have led the Washington court to some rather extreme results; *State v. Thomas*, 183 Wash. 643, 49 P. 2d 28 (1935) (search of dwelling made before arrest but allowed on grounds seizure took place with arrest); *State v. McCollum*, 17 Wash. 2d 85, 136 P. 2d 165, 141 P. 2d 613 (1943) (search of dwelling allowed a day after arrest took place in a hospital). But a vigorous dissent was filed in the latter case, and in *City of Tacoma v. Houston*, 177 P. 2d 886 (Wash. 1947), the court referred to the language of the *Evans* case quoted herein as dictum.

³⁶ Searches of the dwelling have been allowed following an arrest outside the home where officer enters with the prisoner and at his request. *Soderberg v. State*, 31 Okl. Cr. R. 88, 237 Pac. 467 (1925); *State v. Beaupre*, 149 Wash. 675, 272 Pac. 26 (1928). The latter case, relying on *Evans v. State*, *supra* note 35, probably goes to an extreme finding little sanction in other courts, inasmuch as the defendant there had been taken to jail before the search commenced. See note 56 *infra*.

³⁷ 2 F. 2d 146 (C. C. A. 9th 1924).

³⁸ *Ibid.*, at page 147. It should be noted that the court found that criminal activity, extending throughout the premises, was being carried on in officers' presence, and that the place was evidently open to the public for the sale of illegal liquor, thereby becoming a place of business and no longer a dwelling for these purposes.

³⁹ *United States v. Seltzer*, 5 F. 2d 364 (D. Mass. 1925).

⁴⁰ *Dibello v. United States*, 19 F. 2d 749 (C. C. A. 8th 1927) (using language similar to that of *Sayers* case).

⁴¹ *United States v. Charles*, 8 F. 2d 302 (N. D. Cal. 1925).

⁴² *United States v. Lindenfeld*, 142 F. 2d 829 (C. C. A. 2d 1944).

that, "Whatever the casuistry of border cases, it is broadly a totally different thing to search a man's pockets and use against him what they contain, from ransacking his house for everything which may incriminate him once you have gained lawful entry."⁴³ Apparently approving this view, the United States Supreme Court has denied the right to search articles of furniture in an office as incidental to valid arrest made in the same room, where no conspiracy or illegal activity is being carried on in the officers' presence.⁴⁴

As the courts have consistently proclaimed that one's home is to be distinguished from other types of premises for these purposes,⁴⁵ our final inquiry is, to what extent then may a search of the dwelling be conducted in a situation such as the principal case presents, *viz.*, in conjunction with a valid arrest in the dwelling? Clearly, all courts will concede that it may cover that which is within easy view of the officer as he takes the person into custody;⁴⁶ so that upon lawful entry whiskey on the table⁴⁷ or narcotics hurriedly thrown in an open closet⁴⁸ may be seized. And most courts agree that clothing,⁴⁹ furniture drawers,⁵⁰ suitcases⁵¹ and other possessions in the room⁵² are subject to examination. The courts then seem to have gone no further, strictly limiting the search to the room of arrest or those places to which the officer must go to execute the arrest,⁵³ unless the premises is deemed a place

⁴³ *United States v. Kirschenblatt*, 16 F. 2d 202, 203 (C. C. A. 2d 1926).

⁴⁴ In *Go-Bart Importing Co. v. United States*, 282 U. S. 344 (1931) a search of papers, records, desks, and a safe, following an arrest in defendant's office was held to be general and exploratory and therefore unreasonable; likewise, a search of desks, a towel cabinet, wastepaper baskets and papers in *United States v. Lefkowitz*, 285 U. S. 452 (1932). Both cases distinguished *Marron v. United States*, 275 U. S. 192 (1927) (search of room of arrest, adjoining closet, and seizure of papers allowed on grounds that in that case the criminal enterprise for which the arrest was made was being carried on in the officer's presence and things seized were visible and accessible and in the offender's control).

⁴⁵ *Davis v. United States*, 328 U. S. 582 (1946).

⁴⁶ *State v. Benson*, 91 Mont. 21, 5 P. 2d 223 (1931); *State v. Laundry*, 103 Ore. 443, 204 Pac. 958 (1922).

⁴⁷ *People v. Woodward*, 220 Mich. 511, 190 N. W. 721 (1922); *People v. Harter*, 244 Mich. 346, 221 N. W. 302 (1928).

⁴⁸ *Gaines v. State*, 28 Okl. Cr. R. 353, 230 Pac. 946 (1924).

⁴⁹ *Laney v. United States*, 294 Fed. 412 (App. D. C. 1923).

⁵⁰ *Argetakis v. State*, 24 Ariz. 599, 212 Pac. 372 (1923); *Commonwealth v. Phillips*, 244 Ky. 117, 5 S. W. 2d 887 (1928); *People v. Cona*, 180 Mich. 641, 147 N. W. 525 (1914).

⁵¹ *Argetakis v. State*, 24 Ariz. 599, 212 Pac. 372 (1923).

⁵² *Smith v. Jerome*, 47 Misc. 22, 23, 93 N. Y. S. 202 (1905) (Police may search "... the person of one lawfully arrested, and also the room ... in which he is arrested, and also any other place to which they can get lawful access. ...").

⁵³ Following the language of *Smith v. Jerome* quoted *supra* note 52, *People v. Conway*, 225 Mich. 152, 195 N. W. 679 (1923) held a warrant for arrest gave the officer "... lawful access only to that part of the house which it was necessary to enter in order to serve his warrant. Here, where he was lawfully present, he could search for evidence of the crime for which the arrest was made, but further he could not go. ..." *Accord, In re Ginsburg*, 147 F. 2d 749 (C. C. A. 2d 1945) (1½ hour search of 4 room apartment); *Commonwealth v. Phillips*, 244 Ky. 117, 5 S. W. 2d 887 (1928) (search in hall through which officer passed after making

of business,⁵⁴ or is used to carry on a criminal enterprise.⁵⁵ If the search is not completed at the time the offender is taken, no return may be made to the dwelling for that purpose.⁵⁶

Against this background, it would appear at first blush that *Harris v. United States* has carried the law of search and seizure incidental to arrest in the home far beyond any bounds heretofore established. But it is submitted that actually it introduces a new test, *viz.*, that the scope of this type of search is not to be determined by arbitrary geographical, physical or time limitations, but by whether or not the search was commensurate with its object and made in good faith.⁵⁷ It is not easy to anticipate what effect the presence of this new test will have on the law of search and seizure in the United States. In view of past cases one would be inclined to agree with Mr. Justice Jackson that "The decision will be taken, in practice, as authority for a search of any home, office or other premises if a warrant can be obtained for the arrest of any occupant and the officer chooses to make the arrest on the premises,"⁵⁸ for in grasping for the general rather than the specific, one is inclined to overlook its distinguishing feature, *viz.*, that the ". . . instrumentalities of the crimes charged in the warrants could easily have been concealed in any of the four rooms of the apartment," so that *in this case*, a more intensive and far reaching search was justified.⁵⁹ It is hoped that the case will be taken for that proposition and strictly limited to it, for it should now be clear that the measure of security afforded by the Fourth

arrest in adjoining room); *People v. Woodward*, 220 Mich. 511, 190 N. W. 721 (1922) *semble*, see dissenting opinion; *Cornelius*, *op. cit. supra* note 1, page 162. *But cf.* *State v. One Buick Automobile*, 120 Ore. 640, 253 Pac. 366 (1927) (arrest in home, search connecting garage).

⁵⁴ *United States v. 71.41 Ounces Gold*, 94 F. 2d 17 (C. C. A. 2d 1938); *Sayers v. United States*, 2 F. 2d 146 (C. C. A. 9th 1924).

⁵⁵ *United States v. Lindenfeld*, 142 F. 2d 829 (C. C. A. 2d 1944); *Picket v. Marcucci's Liquors*, 112 Conn. 169, 151 Atl. 526 (1930); *State v. Adams*, 103 W. Va. 77, 136 S. E. 703, 704 (1927) ("In cases like this where there is no evidence before the search of the corpus delicti, we are of opinion that the search should be confined to the room or portion of the defendant's premises where the arrest is made.").

⁵⁶ *People v. Conway*, 225 Mich. 152, 195 N. W. 679 (1923); except where goods seized are too bulky to carry, *Davis v. State*, 30 Okl. Cr. R. 61, 234 Pac. 787 (1925); but then, return must not be unnecessarily delayed, *Coffelt v. State*, 36 Okl. Cr. R. 365, 254 Pac. 760 (1927).

⁵⁷ *Harris v. United States*, 67 Sup. Ct. 1098, 1102, 91 L. ed at 1017 ("... the area which reasonably may be subjected to search is not to be determined by the fortuitous circumstance that the arrest took place in the living room as contrasted to some other room of the apartment.").

⁵⁸ *Id.* at 1119, 91 L. ed. at 1036 (dissenting opinion).

⁵⁹ *Id.* at 1102, 91 L. ed. at 1017 ("Other situations may arise in which the nature and size of the object sought or the lack of effective control over the premises on the part of the persons arrested may require that the searches be less extensive."). This suggestion presents at least two more factors with which the courts must now contend, along with the already existing maze of generalities, in deciding each case on its own facts and circumstances, *i.e.*, the size of the object and the meaning of "effective control"; and contains little to aid the law enforcement officer in understanding the extent of his powers.

Amendment, one of the most essential safeguards in our Bill of Rights, depends in large part upon what limitations the courts define and maintain with respect to the right of search without warrant incidental to lawful arrest. A misunderstanding of the *Harris* case may lead to such an extension of these limitations as to necessitate a sharp reversal of policy if the constitutional guarantee is not to be lost.

ERNEST W. MACHEN, JR.

Courts—Federal Jurisdiction—Application of Res Judicata and *Erie v. Tompkins* to Achieve Uniformity of Law Within a State

In 1940, Angel, a citizen of North Carolina, purchased of Bullington, a citizen of Virginia, land situated in Virginia and gave in payment thereof a series of notes secured by a purchase money deed of trust. The contract was made in Virginia, and the notes were payable in Virginia. Angel defaulted, and Bullington, acting upon an acceleration clause, caused the trustees to sell the land. A deficiency resulted. Bullington sued Angel in a North Carolina superior court to recover the deficiency. Angel demurred to the cause of action on the basis of the following statute:

“In all sales of real property by mortgagees and/or trustees under powers of sale contained in any mortgage or deed of trust executed after February 6, 1933, or where judgment or decree is given for the foreclosure of any mortgage executed after February 6, 1933, to secure the balance of the purchase price of real property, the mortgagee or trustee or holder of the notes secured by such mortgage or deed shall not be entitled to a deficiency judgment on account of such mortgage, deed of trust, or obligation secured by the same.”¹

The demurrer was overruled and Angel appealed. Bullington challenged the constitutionality of the statute. The North Carolina Supreme Court reversed,² holding that the statute precluded the recovery of a deficiency judgment arising out of purchase money deed of trust. It said,³ “It will be noted that the limitation created by the statute is upon the jurisdiction of the court. . . . This closes the courts of this State to one who seeks a deficiency judgment on a note given for the purchase price of real property. The statute operates upon the adjective law of the state, which pertains to the practice and procedure, or legal machinery by which the substantive law is made effective, and not upon the substantive law itself.” It further said, in substance, that the legislature

¹ N. C. GEN. STAT. (1943) §45-36.

² *Bullington v. Angel*, 220 N. C. 18, 16 S. E. 2d 411 (1941).

³ *Id.* at 20, 16 S. E. 2d at 412.