

(261 U. S. 385)

**SILVERTHORNE LUMBER CO., Inc., et al.
v. UNITED STATES.**

(Argued Dec. 12, 1919. Decided Jan. 26, 1920.)

No. 358.

**1. SEARCHES AND SEIZURES ⇨7—KNOWLEDGE
GAINED BY GOVERNMENT'S WRONG MAY NOT
BE USED.**

Knowledge gained by government's wrongful search and seizure may not, on return by order of the court, of the original articles, be used to call on the owners by subpoenas to produce them; so that they may not be punished for disobeying an order to comply with the subpoenas.

**2. SEARCHES AND SEIZURES ⇨7—CORPORATION
TO BE PROTECTED.**

The rights of a corporation against unlawful search and seizure are to be protected, even if the same result might be achieved by the government in a lawful way.

The Chief Justice and Mr. Justice Pitney, dissenting.

In Error to the District Court of the United States for the Western District of New York.

Judgment for contempt was rendered against the Silverthorne Lumber Company, Incorporated, and another for disobedience of an order to comply with subpoenas to produce papers in a prosecution by the United States, and they bring error. Reversed.

Messrs. Frederic D. McKenney and Myer Cohen, both of Washington, D. C., and William D. Guthrie, of New York City, for plaintiffs in error.

Mr. Assistant Attorney General Stewart, for the United States.

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*Mr. Justice HOLMES delivered the opinion of the Court.

This is a writ of error brought to reverse a judgment of the District Court fining the Silverthorne Lumber Company two hundred and fifty dollars for contempt of court and ordering Frederick W. Silverthorne to be imprisoned until he should purge himself of a similar contempt. The contempt in question was a refusal to obey subpoenas and an order of Court to produce books and documents of the company before the grand jury to be used in regard to alleged violation of the statutes of the United States by the said Silverthorne and his father. One ground of the refusal was that the order of the Court infringed the rights of the parties under the Fourth Amendment of the Constitution of the United States.

The facts are simple. An indictment upon a single specific charge having been brought against the two Silverthornes men-

tioned, they both were arrested at their homes early in the morning of February 25, and were detained in custody a number of hours. While they were thus detained representatives of the Department of Justice and the United States marshal without a shadow of authority went to the office of their company and made a clean sweep of all the books, papers and documents found there. All the employes were taken or directed to go to the office of the District Attorney of the United States to which also the books, &c., were taken at once. An application was made as soon as might be to

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the District *Court for a return of what thus had been taken unlawfully. It was opposed by the District Attorney so far as he had found evidence against the plaintiffs in error, and it was stated that the evidence so obtained was before the grand jury. Color had been given by the District Attorney to the approach of those concerned in the act by an invalid subpoena for certain documents relating to the charge in the indictment then on file. Thus the case is not that of knowledge acquired through the wrongful act of a stranger, but it must be assumed that the Government planned or at all events ratified the whole performance. Photographs and copies of material papers were made and a new indictment was framed based upon the knowledge thus obtained. The District Court ordered a return of the originals but impounded the photographs and copies. Subpoenas to produce the originals then were served and on the refusal of the plaintiffs in error to produce them the Court made an order that the subpoenas should be complied with, although it had found that all the papers had been seized in violation of the parties' constitutional rights. The refusal to obey this order is the contempt alleged. The Government now, while in form repudiating and condemning the illegal seizure, seeks to maintain its right to avail itself of the knowledge obtained by that means which otherwise it would not have had.

[1, 2] The proposition could not be presented more nakedly. It is that although of course its seizure was an outrage which the Government now regrets, it may study the papers before it returns them, copy them, and then may use the knowledge that it has gained to call upon the owners in a more regular form to produce them; that the protection of the Constitution covers the physical possession but not any advantages that the Government can gain over the object of its pursuit by doing the forbidden act. *Weeks v. United States*, 232 U. S. 383, 34 Sup. Ct. 341, 58 L. Ed. 652, L. R. A. 1915B, 834, Ann. Cas. 1915C, 1177, to be sure, had established that laying the papers directly

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before the grand jury was *unwarranted, but

it is taken to mean only that two steps are required instead of one. In our opinion such is not the law. It reduces the Fourth Amendment to a form of words. 232 U. S. 393, 34 Sup. Ct. 341, 58 L. Ed. 652, L. R. A. 1915B, 834, Ann. Cas. 1915C, 1177. The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all. Of course this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others, but the knowledge gained by the Government's own wrong cannot be used by it in the way proposed. The numerous decisions, like *Adams v. New York*, 192 U. S. 585, 24 Sup. Ct. 372, 48 L. Ed. 575, holding that a collateral inquiry into the mode in which evidence has been got will not be allowed when the question is raised for the first time at the trial, are no authority in the present proceeding, as is explained in *Weeks v. United States*, 232 U. S. 383, 394, 395, 34 Sup. Ct. 341, 58 L. Ed. 652, L. R. A. 1915B, 834, Ann. Cas. 1915C, 1177. Whether some of those decisions have gone too far or have given wrong reasons it is unnecessary to inquire; the principle applicable to the present case seems to us plain. It is stated satisfactorily in *Flagg v. United States*, 233 Fed. 481, 483, 147 C. C. A. 367. In *Linn v. United States*, 251 Fed. 476, 480, 163 C. C. A. 470, it was thought that a different rule applied to a corporation, on the ground that it was not privileged from producing its books and papers. But the rights of a corporation against unlawful search and seizure are to be protected even if the same result might have been achieved in a lawful way.

Judgment reversed.

The CHIEF JUSTICE and Mr. Justice PITNEY dissent.

(251 U. S. 396)

BROOKS-SCANLON CO. v. RAILROAD COMMISSION OF LOUISIANA.

(Argued Jan. 6, 1920. Decided Feb. 2, 1920.)

No. 386.

1. RAILROADS §57 — OPERATION AT LOSS CANNOT BE REQUIRED.

A company cannot be compelled to operate its railroad where it cannot do so without loss therefrom, though its other business of lumbering be sufficiently remunerative to absorb the loss and make returns on its entire business.

2. RAILROADS §57—MAY DISCONTINUE OPERATION AT LOSS.

If a company operating a lumber business and a railroad be taken to have granted to the

public an interest in the use of the railroad, it may withdraw its grant by discontinuing the use when that use can be kept up only at a loss.

3. COURTS §107—RECITAL OF OPINION NOT A FINDING OF FACT.

Recital of opinion after sustaining order of Railroad Commission requiring plaintiff to operate its railroad, on the ground that plaintiff's other business of lumbering was successful enough to stand a loss on the road, that the commission's order calls on plaintiff "to submit a new schedule for transportation which may be operated * * * at a profit for plaintiff," cannot be considered as a finding that such a schedule can be submitted; there being no evidence warranting such a finding.

4. CONSTITUTIONAL LAW §297—STATE CANNOT AUTHORIZE CONSTITUTIONALLY RAILROAD OPERATION AT LOSS.

Whatever may be the forms required by local law of a company desiring to discontinue its railroad business, it cannot authorize the Railroad Commission or the court to do what the federal Constitution forbids, which is the effect of an order of the one and an injunction of the other compelling it to operate, though at a loss.

On Writ of Certiorari to the Supreme Court of the State of Louisiana.

Suit by the Brooks-Scanlon Company against the Railroad Commission of Louisiana. Judgments adverse to defendant were reversed by the Supreme Court of Louisiana (144 La. 1086, 81 South. 727), and plaintiff brings certiorari. Reversed.

Messrs. J. Blanc Monroe, of New Orleans, La., Robert R. Reid, of Hammond, La., and Monte M. Lemann, of New Orleans, La., for petitioner.

Mr. Wylie M. Barrow, of Baton Rouge, La., for respondent.

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*Mr. Justice HOLMES delivered the opinion of the Court.

This is a suit by the Brooks-Scanlon Company, a Minnesota corporation organized to manufacture and deal in lumber and to carry on other incidental business, against the Railroad Commission of Louisiana. It seeks to set aside an order (Number 2228) of the Commission requiring the plaintiff either directly or through arrangements made with the Kentwood and Eastern Railway Company, to operate its narrow gauge railroad between Kentwood and Hackley in Louisiana upon schedules and days to be approved by the Commission. The plaintiff alleges that the order cannot be complied with except at a loss of more than \$1,500 a month, and that to compel compliance would deprive the plaintiff of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States, with