PERLMAN v. UNITED STATES
247 U.S. 7 (1918)
PERLMAN
v.
UNITED STATES.
No. 752.
Supreme Court of United States.
Argued April 18, 1918.
Decided May 6, 1918.

APPEAL FROM AND ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Mr. Louis Marshall, with whom *Mr. A.A. Silberberg* was on the briefs, for appellant and plaintiff in error.

Mr. Assistant Attorney General Fitts for the United States.

MR. JUSTICE McKENNA, after stating the case as above, delivered the opinion of the court.

The United States makes a motion to dismiss on the following grounds:

"1. Appellant has no interest in the subject matter of and is not a party to the equity suit out of which the appeal arises;

"2. The order of the District Court if considered as a part of the criminal proceeding is not final, but merely interlocutory, and therefore not reviewable by this court."

We think the motion should be overruled. Referring to the impounding order it will be seen that the Government was not one of those for whom the use of the exhibits was reserved. It, therefore, had no rights under the order. Its rights — or, it is more accurate to say, its powers — were of different origin, were governmental, and would affect Perlman by their exercise. We think, therefore, that he could intervene to oppose and urge in opposition property and constitutional rights and their sanctions. His petition was in effect independent and did not lose its character by being entitled in the equity suit.

The second contention of the Government is somewhat

[247 U.S. 13]

strange, that is, that the order granted upon its solicitation was not final as to Perlman but interlocutory in a proceeding not yet brought and depending upon it to be brought. In other words, that Perlman was powerless to avert the mischief of the order but must accept its incidence and seek a remedy at some other time and in some other way. We are unable to concur.

On the merits the case is rather unique. Perlman contends that the proposed use by the United States before the grand jury of the exhibits as a basis for an indictment against him constitutes an unreasonable seizure and makes of him a compulsory witness against himself, in violation of the Fourth and Fifth Amendments. In other words, he claims the same sanctuary for the exhibits in the hands of the court as though they were in his hands and had never been published or delivered to the world. For this he invokes certain principles and cases. The principles are well established. They are paraphrases of the Constitution, giving it in cases a more precise specialization. They preclude, of

course, compulsion, either upon the individual or, under some circumstances, his property; nor is it a condition or part of compulsion that there be an actual entry upon premises, an actual search and seizure. The principles preclude as well the extortion of testimony or detrimental inferences from silence or refusals to testify.
The incidences of the cases in which the principles were declared do not help Perlman. In all of them there was force or threats or trespass upon property, some invasion of privacy or governmental extortion. In *Boyd* v. *United States,* 116 U.S. 616, there was an order of the court requiring the production of private books, invoices and papers, the alternative of refusal being that their character as asserted by counsel should be taken as confessed. In *Counselman* v. *Hitchcock,* 142 U.S. 547, there was an effort to compel a witness to disclose circumstances which might be

[247 U.S. 14]

evidence against him of the commission of an offense or might connect him with it. *Hale* v. *Henkel,* 201 U.S. 43, is of like illustration. In *United States* v. *Wong Quong Wong,* 94 Fed. Rep. 832, private letters were opened. In *United States* v. *Mills,* 185 Fed. Rep. 318, there was a general seizure of all of the defendant's business records by the United States marshal when executing a warrant of arrest. In *United States* v. *Abrams,* 230 Fed. Rep. 313, business papers were delivered to an officer under threats or promises of benefit. In *Weeks* v. *United States,* 232 U.S. 383, there was an invasion of premises without a search warrant and the carrying away of certain letters and envelopes. The latter case is especially relied on by counsel, and it is definite as to principles and as to seizures the Constitution forbids and those it permits. The distinctions are made clear and the discussion leaves nothing to be added of either principles or their illustration. But it is not like the case at bar. In it there was an invasion of the defendant's privacy, a taking from his immediate and personal possession. In the case at bar there was a voluntary exposition of the articles, for use as evidence in the District Court and in the Circuit Court of Appeals (231 Fed. Rep. 453 and 734), that judicial action should be based upon them, action prayed for by him against another. And they served his purpose; they prevailed as proof and secured a judgment for him.
There was again exposition of them and use as evidence in *Perlman Rim Co.* v. *Firestone Tire & Rubber Co.* In that case, it is true, Perlman was not nominally a party, but he was interested in the suit and its success. His patent depended upon it. They were part of his evidence, necessary supports and illustrations of it, as much, therefore, a part of his testimony as his spoken word, as much a part of the records of the court as the stenographer's notes. Their tangibility did not change their character as evidence. Indeed, it gave emphasis to the notes and

[247 U.S. 15]

a more pertinent strength, and was deemed necessary to their completeness and understanding. As is usual in a patent case, there was exposition and illustration by exhibits. And their production was voluntary, no form of constraint or compulsion or extortion was put upon him, and that some one of them must exist is the test of immunity. *Holt* v. *United States,* 218 U.S. 245, 252. Therefore, as said by counsel for the Government, "Having let go the exhibits, so that they have become a part of the judicial records, he is not now in position to suppress the story they tell."

But Perlman insists that he owned the exhibits and appears to contend that his ownership exempted them from any use by the Government without his consent. The extent of the insistence is rather elusive of measurement. It seems to be that the owner of property must be considered as having a constructive possession of it wherever it be and in whosesoever hands it be, and it is always, therefore, in a kind of asylum of constitutional privilege. And to be of avail the contention must be pushed to this extreme. It is opposed, however, by all the cited cases. They, as we have said, make the criterion of immunity not the ownership of property but the "physical or moral compulsion" exerted.

As we have seen, Perlman delivered the exhibits to publicity, made them the means of advantage. They, for the purposes of justice, were taken from his possession and volition into the control and custody of the court. Upon formal motion they were released for the use of the Government, a use as meritorious in consideration as that which determined the ruling in *Ex parte Uppercu,*239 U.S. 435.

Order affirmed.