PEOPLE v. HILDABRIDLE.

SAME v. WEISSENBORN.

SAME v. CARTER.

EDWARDS, J. *(concurring).* I concur with Mr. Justice VOELKER'S result in this case, but only upon the first of the grounds which he discusses pertaining to illegal search and seizure. The officers who made these arrests did so after entering upon property privately owned and posted as "private." Their justification for their entrance was a claimed attempt to serve warrants for arrest previously procured upon sworn information. The record discloses 2 warrants based upon a complaint made on June 15. 1956, pertaining to a claimed indecent exposure of the persons named on that same date.

The record discloses no attempt to serve these warrants or to arrest these people on that date or subsequently until June 30th when the entry complained of by appellants was made by the officer. It should be noted that none of the defendants-appellants in this proceeding are identified as those for whom warrants were issued. Under these circumstances, I agree with Justice VOELKER that the warrants were obtained as a subterfuge for gaining entrance and without any purpose of making the specific arrests for which they called. See *Gouled v. United States,* 255 US 298, 305 (41 S Ct 261, 65 L ed 647):

"The prohibition of the Fourth Amendment against all unreasonable searches and seizures and if for a government officer to obtain entrance to a man's house or office by force or by an illegal threat or show of force, amounting to coercion, and then to search for and seize his private papers would be an unreasonable and therefore a prohibited search and seizure, as it certainly would be, it is impossible to successfully contend that a like search and seizure would be a reasonable one if only admission were obtained by stealth instead of by force or coercion."

It may, however, be argued that the invasion of these private premises by the officers was justified under the "open field" rule. *Hester v. United States,* 265 US 57 (44 S Ct 445, 68 L ed 898). See annotation, 74 ALR 1418, 1454.

My Brother's opinion has provided sufficient facts to indicate that the officers in question, absent lawful warrant, did illegally invade the curtilage of the dwellings here concerned.

In *People v. Taylor,* 2 Mich 250, 252, this Court, adopting a quotation from Chitty,[6] has thus defined "curtilage":

"In its most comprehensive and proper legal signification it includes all that space of ground and buildings thereon, which is usually enclosed within the *general fence,* immediately surrounding a principal messuage, outbuildings and yard, closely adjoining to a dwelling-house, but it may be large enough for cattle to be *levant* and *couchant* therein."

If a man's house be his castle, the most casual view of the premises involved here, as portrayed in photographic exhibits, indicates the scene of this arrest was the courtyard.

This record convinces the writer that the arrests were made in violation of article 2, § 10, of the Michigan Constitution (1908).