

SEARCH AND SEIZURE

FOURTH AMENDMENT

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 Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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History and Scope of the Amendment

History.—Few provisions of the Bill of Rights grew so directly out of the experience of the colonials as the Fourth Amendment, embodying as it did the protection against the use of the “writs of assistance.” But though the insistence on freedom from unreasonable searches and seizures as a fundamental right gained expression in the colonies late and as a result of experience,¹ there was also a rich English experience to draw on. “Every man’s house is his castle” was a maxim much celebrated in England, as *Saman’s Case* demonstrated in 1603.² A civil case of execution of process, *Saman’s Case* nonetheless recognized the right of the homeowner to defend his house against unlawful entry even by the King’s agents, but at the same time recognized the authority of the appropriate officers to break and enter upon notice in order to arrest or to execute the King’s process. Most famous of the English cases was *Entick v. Carrington*,³ one of a series of civil actions against state officers who, pursuant to general warrants, had raided many homes and

¹ Apparently the first statement of freedom from unreasonable searches and seizures appeared in The Rights of the Colonists and a List of Infringements and Violations of Rights, 1772, in the drafting of which Samuel Adams took the lead. 1 B. SCHWARTZ, THE BILL OF RIGHTS: A DOCUMENTARY HISTORY 199, 205–06 (1971).

² 5 Coke’s Repts. 91a, 77 Eng. Rep. 194 (K.B. 1604). One of the most forceful expressions of the maxim was that of William Pitt in Parliament in 1763: “The poorest man may in his cottage bid defiance to all the force of the crown. It may be frail—its roof may shake—the wind may blow through it—the storm may enter, the rain may enter—but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement.”

³ 19 Howell’s State Trials 1029, 95 Eng. 807 (1705).