

Social and Economic Rights: Security and Property and Guaranties of Due Process, Equal Protection and Non-Impairment

By

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I. SECURITY—

While the Constitution of the Philippines is patterned in general after the Constitution of the United States, in one important respect it is a definite improvement. The Constitution of the Philippines, in addition to the protection it affords the traditional political and civil rights found in Anglo-Saxon Constitutions, likewise provides for social and economic rights. These social and economic rights can all be summarized under the term security.

The Constitution specifically provides that the promotion of social justice to insure the well-being and the economic security of all the people should be the concern of the State.¹ Likewise, it is made the duty of the State to afford protection to labor, specially to working women and minors and to regulate the relation between owners and tenants and between labor and capital, in industry and in agriculture.² It authorizes Congress upon payment of just compensation to expropriate lands to be subdivided into small lots and conveyed at cost to individuals.³ And it requires of the government to establish and maintain a complete and adequate system of public education and to provide at least free public primary instruction, and citizenship training to adult citizens.⁴ The State likewise is enjoined to create scholarships in arts, science and letters for specially gifted citizens.⁵

That such social and economic rights should be embodied in the Constitution is not surprising, considering that the members of the Constitutional Convention, in the words of Justice Laurel, were aware of the surging unrest and dissatisfaction resulting from economic and social distress which was threatening the stability of governments the world over. For at the time of the framing of the Constitution, the Philippines along with the United States and other countries of the world, was just recovering from the effects of the grave depression in the thirties. The problem of maintaining decent living conditions for the great majority of the Filipino

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¹ Art. II, Section 5.

² Art. XIV, Section 6.

³ Art. XIII, Section 4.

⁴ Art. XIV, Section 5.

⁵ Art. XIV, Section 4.

people became more acute than ever. And the Filipino leaders inside and outside the Constitutional Convention realized that the experiment in democracy in the Philippines would fail unless their needs were attended to and provided for in the Constitution. More specifically, at that time the Sakdal movement, which was a manifestation of unrest in many large haciendas, was gaining ground. And in the City of Manila and in few other localities which were beginning to be industrialized, even if on a small scale, Communists were busy organizing labor into what they hoped would be the vanguard of the Communist movement in the Philippines.

Evidently, the Filipino leaders believed that a Constitution which recognizes merely the claims of the citizen to civil and political rights would be inadequate under the circumstances then existing. There was a greater realization on their part that the respect and deference to which every human being is entitled would not be attained in the absence of security. Liberty and equality would be empty words if the individual's basic needs were not satisfied. Conditions of unemployment imperil the health not only of the breadwinner but of his dependents. Work in dangerous and unsafe conditions has taken its toll in the lives of many working men. Peasants reduced to penury by economic causes beyond their control hardly exhibit the dignity which is supposed to be inherent in every human personality. The distress occasioned to the family of a discharged employee or occasioned by illness, accident, or old age is a fact that does not admit of any denial. In all such cases groups of human being have been reduced to bare subsistence level.

At that time also the United States under the leadership of Franklin Delano Roosevelt was engaged in social experimentation not only to meet the problems created by the depression but also to assure the stability of capitalism in times of scarcity. While the American Constitution had no guaranty of social and economic rights, legislation along those lines was a feature of the program of President Roosevelt. A clear statement of his position, made some years later, shows the importance of security for freedom and liberty. In the words of President Roosevelt:

"We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence."⁶

The danger inherent in the situation he points out clearly—

"Necessitous men are not free men. People who are hungry and out of a job are the stuff of which dictatorships are made."⁷

II. PROPERTY—

The Constitution specifically provides that no person may be deprived of his life, liberty or property without due process of law.⁸

⁶ Speech of January 12, 1944.

⁷ Speech of January 12, 1944. See Arts. 22-28 of Declaration of Human Rights.

⁸ Article III, Section 1, Clause 1.

The extent of the protection accorded to property under the Constitution is set forth in the case of *Guido v. Rural Progress*⁹ thus:

"Hand in hand with the announced principle, herein invoked, that 'the promotion of social justice to insure the well-being and economic security of all the people should be the concern of the state,' is a declaration, with which the former should be reconciled that 'the Philippines is a Republican state' created to secure to the Filipino people 'the blessings of independence under a regime of justice, liberty and democracy'. Democracy, as a way of life, enshrined in the Constitution, embraces as its necessary components freedom of conscience, freedom of expression, and freedom in the pursuit of happiness. Along with these freedoms are included economic freedom and freedom of enterprise within reasonable bounds and under proper control. In paving the way for the breaking up of existing large estates, trusts in perpetuity, feudalism, and their concomitant evils, the Constitution did not propose to destroy or undermine property rights, or to advocate equal distribution of wealth, or to authorize the taking of what is in excess of one's personal needs and the giving of it to another. Evincing much concern for the protection of property, the Constitution distinctly recognizes the preferred position which real estate has occupied in law for ages. Property is bound up with every aspect of social life in a democracy as democracy is conceived in the Constitution. The Constitution realizes the indispensable role which property, owned in reasonable quantities and used legitimately, plays in the stimulation to economic effort and the formation and growth of a solid social middle class that is said to be the bulwark of democracy and the backbone of every progressive and happy country."

Property refers both to the thing and to the right over a thing. Traditionally, anything which has a money value and which is supposed to be within the commerce of man is embraced in the term property. Thus, as a thing, it may be either movable or immovable. And if movable it may be either tangible or intangible, such as a patent right, a chose in action, or goodwill. But property within the meaning of the above constitutional provision has reference more to the right over the thing. Cohen speaks of it as a property right in relation not between an owner and a thing, but between the owner and other individuals in reference to things.¹⁰ The same thought finds expression in the Restatement on Property where property is used to denote legal relations between persons with respect to a thing.

Such right as against persons with reference to a thing may be the all-inclusive one of ownership or dominion or it may refer to

⁹ G. R. No. L-2089. This case has been relied upon in the subsequent case of *City of Manila v. Arellano Law Colleges*, G. R. No. L-2929.
¹⁰ Law and Social Order, p. 45.

such lesser right arising from possession, lease, loan, deposit, pledge and mortgage. The right to enter into a contract is likewise a property right and under the prevailing social and economic order perhaps is one of the most valuable property rights. The right to engage in business is likewise property. Whether the all-inclusive right of ownership or any lesser right, the essence of private property is always the right to exclude others.

The Supreme Court of the Philippines has recognized that vested right constitutes property.¹¹ So does a perfected mining claim.¹² The right to earn one's daily wage is likewise a property right, to the overwhelming majority of the population perhaps the most indispensable right.¹³ A public office though is not property according to the Supreme Court.¹⁴ Neither is the license authorizing the operation and exploitation of a cockpit.¹⁵

It seems to be considered, as Pound points out, that an individual in civilized society has a claim to what he discovers and reduces to his power, what he creates by his labor, physical or mental, or what he acquires under the prevailing social, economic or legal system by exchange, purchase, gift or succession.¹⁶ In this sense, the right of property guaranteed by him is essential to his security.

It is in this sense that the provision on the Universal Declaration of Human Rights is to be understood. Article 17 thereof provides:

"Everyone has the right to own property alone as well as in association with others.

"No one shall be arbitrarily deprived of his property."

The above article is merely a reflection of constitutional provisions in almost all civilized countries respecting the right of property. Nowhere perhaps has property received more protection than in the American Constitution and decisions applying its provisions.

As an aspect of security, therefore, in the sense of a property right as the right to earn a living and to have those possessions necessary for a decent existence, it deserves the fullest and most ample protection that the due process clause can afford. For a property in that sense is justifiable whether under the outmoded natural right theory, or the now no longer in fashion labor theory, or even the prevailing social welfare theory.

Where the property right, however, takes the form of concentrated wealth, whether derived from industry, commerce, agriculture or finance, its limitation is less objectionable. Especially

¹¹ *Balboa v. Farrales*, 51 Phil. 498.

¹² *McDaniel v. Apacible*, 42 Phil. 749.

¹³ *National Labor Union v. Court*, 40 O. G. 3rd Sup., 37.

¹⁴ *Cornejo v. Gabriel*, 41 Phil. 188.

¹⁵ *Pedro v. Prov. Board*, 56 Phil. 123.

¹⁶ Pound, *Introduction to the Philosophy of Law*, 195.

so where the Constitution like that of the Philippines assures social and economic rights. Precisely, it has been shown that property rights of this character may be employed to exploit and to oppress others. They may result in placing the many at the mercy of the few, and they do curtail the opportunity of the many for attaining the security that is their due in a democratic society.

Every curtailment of property rights in the later sense, therefore, which is likely to be resisted by the allegation that there is deprivation of due process is to be scrutinized carefully, lest in paying heed to such an objection, the governmental effort to reduce the inequalities of wealth be nullified.

There was a time in American constitutional history in the period shortly before 1900 and up to the administration of President Roosevelt, when the American Supreme Court was the bulwark of property right in the above sense. This was accomplished by the inclusion of *corporations* within the term *persons* protected under the due process clause.

By 1937, however the Supreme Court of the United States was less receptive to such complaints on the part of American corporate interests. At that time the liberal dissenting opinions of the great jurists, Holmes and Brandeis, became the view of the majority of the court. In this change of attitude, the leadership of President Roosevelt contributed greatly.

In the Philippines, even had there been no such shift of attitude by the United States Supreme Court, such judicial timidity in the face of protests from property owners finds no justification in view of the many explicit provisions in the Constitution, under which property rights are curtailed in the interests of the great majority of the people so as to assure them their social and economic rights.

III. POLICE POWER, TAXATION, AND EMINENT DOMAIN—

To promote security, the government may make use of its police power, of taxation, and of eminent domain. The exercise of such powers, however, may curtail property rights, not always in the case of the former where only the liberty of an individual but not his property may be involved. Taxation and eminent domain on the contrary affect solely property rights. These three powers if wisely exercised may be the means through which the social and economic rights may be assured to all. To the extent, however, that individuals or corporations may be deprived of their property rights, they may invoke their constitutional rights to due process, equal protection, and non-impairment. And adjustment must be had, therefore, between the competing values of security and property. This is one of the most difficult problems of constitutional law.

Police power, taxation, and eminent domain may be distinguished thus: "The police power differs from taxation and eminent domain because the compensation of the individual is not immediate or, possibly apparent, and because, in the application of certain laws

or regulations enacted pursuant to the police power, annoyance and financial loss may even be caused the citizen, leaving the reward of the individual to be reaped through his altruistic recognition that the just restraint is for the public good. Eminent domain differs from taxation in that in the former case the citizen surrenders something beyond his due proportion to the state. Of course other distinctions exist, as can readily be discerned by a comparison of the essentials of the three powers as hereafter enunciated, but they are difficult to point out in a general way until actual facts arise for resolution."¹⁷

A. POLICE POWER—

As defined in the recent case of *Primicias v. Fugoso*,¹⁸ police power is the power to prescribe regulations, to promote the health, morals, education, good order or safety, or the general welfare of the people. It is based on the maxim *salus populi suprema est lex*. It thus springs from the obligation of the state to protect its citizens and provide for the safety and welfare of society. It has been characterized as the most essential, insistent and the least illimitable of powers, extending as it does to all the great public needs and dealing with conditions as to bring out of them the greatest welfare of the people. Its importance then for the attainment of legitimate governmental ends, which under a welfare state include the promotion of social and economic rights, more specifically a decent livelihood for all its citizens, cannot be overestimated.

Nor is the concept of general welfare which is the task of police power to promote static. The development of civilization, the rapidly increasing population, the growth of public opinion, the emphasis on security make clear the duty of the government to look after and care for the interests of the individuals of the state. Thus matters have been brought within the police power which formerly were not so considered.

On the legislative organs of the government, whether national or local, primarily rest the exercise of the police power which, as above defined, is the power to prescribe regulations to promote the health, morals, peace, good order, safety and general welfare of the people. However, the executive branch of the Philippines under its power to promulgate rules and regulations to implement legislation duly enacted may likewise exercise police power measures. In view of the requirements of due process, equal protection and other applicable constitutional guaranties, however, the exercise of such police power in so far as it may affect the life, liberty or property of any person is subject to judicial inquiry. And where such exercise of police power may be considered as either capricious, discriminatory, whimsical, arbitrary, unjust or unreasonable, a denial of due process or of the equal protection clause or any other applicable constitutional guaranty may be found by the courts.

Legislative discretion, however, is necessarily vested in the legislative organs of the state to determine what the general wel-

¹⁷ Malcolm, Phil. Const. Law, pp. 327-328.

¹⁸ 45 O. G. 3280.

fare is and what measures are necessary for the attainment of such objective, subject to the limitation that the determination as to what is proper exercise of police power is not final or conclusive but is subject to judicial review. Care should be taken that the scope of judicial inquiry in deciding the question of power is not confused with the scope of legislative authority in deciding matters of policy. Philippine decisions have held that if the means adopted are reasonably necessary for the attainment of the end in view, not arbitrary nor unduly oppressive upon the individual, and in the interest of the public generally rather than of a particular class, the exercise of police power is to be upheld as valid.

This is another way of saying that the requirements of due process and equal protection, as to reasonableness, justice, and absence of arbitrariness have been met. It thus appears that everytime a police power measure is assailed, the courts are called upon to adjust and harmonize the conflicting claims of governmental power and individual rights.

B. TAXATION—

To make effective whatever program the government may have in promoting security, money is needed. The needs of a service or a welfare state for revenues may be satisfied mostly through the taxing power. The floating of bonds and imposing of penalties, fines and forfeitures, and the exaction of licenses may likewise help. Even in the case of governmental indebtedness, however, the taxing power is still ultimately relied upon to pay such debts.

Taxation is a term ordinarily used to refer to the sovereign power to raise revenue for any public purpose.¹⁹ And taxes are the enforced proportional contribution from persons, property and privilege levied by the state by virtue of sovereignty.²⁰ The term is properly applied to those exactions which are levied for distinctly governmental purposes. Fees for such governmental public services as the water of a sewage system do not come under the category. Neither does a toll which proceeds from proprietorship as distinguished from a tax which is a demand of sovereignty.²¹ Neither is a special assessment which, as distinguished from a tax, can be levied on land only, may not be made a personal liability, and is based wholly on benefits and is exceptional both as to time and locality.²²

A tax is an exaction emanating from the exercise of sovereign right of taxation for the support of the government and for the performance of public services. It is not considered a debt in the ordinary sense. There is no element of contractual obligation, the claim for the government for taxes being paramount to all other demands.

¹⁹ 1 Cooley on Taxation, 4th ed., 72.

²⁰ 1 Cooley on Taxation, 4th ed., 61.

²¹ *Cu Unjieng v. Patstone*, 42 Phil. 818.

²² *Apostolic Prefect v. City Treasurer*, 40 O. G. 14th Sup. 117.

The Constitution ²³ in so far as the taxing power is concerned provides as follows:

"The rule of taxation shall be uniform.

"The Congress may by law authorize the President, subject to such limitations and restrictions as it may impose, to fix, within specified limits, tariffs, rates, import or export quotas, and tonnage and wharfage dues.

"Cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable or educational purposes shall be exempt from taxation."

1. *Uniformity*—

Uniformity in taxation means that all taxable articles or kinds of property of the same class shall be taxed at the same rate. Different articles may be taxed at different amounts, provided the rate is uniform on the same class everywhere with all people.²⁴ No question is or could be made of the state to enact laws based on a reasonable classification of the objects of legislation or of the person whom it affects. Neither the rule of uniformity nor the equal protection clause prohibits this. The broad distinction as to classification in taxing matters possessed by the legislature has long been recognized. And although the wide discretion as to classification often results in narrow distinctions, these distinctions if reasonably related to the object of the legislation are sufficient to justify the classification. The equal protection clause was not intended to compel the state to adopt an iron rule of equal taxation. The rule of equality permits many practical inequalities. It does not require a precise scientific uniformity nor preclude the legislature from changing its mind in making an otherwise permissible choice of subjects.

In *Churchill v. Concepcion*,²⁵ a statute imposing a P2.00 tax per square meter upon electric signs, billboards, and advertising space was held not to offend against uniformity clause, which does not require that tax be imposed according to value. In the case of *Philippine Trust Co. v. Yatco*,²⁶ the capital and deposit tax on banks exempting a bank which was a federal instrumentality, at a time when the Philippines was under the American administration, and an instrumentality of the United States Federal Government operating in the Philippines did not violate the requirement of uniformity.

In the recent case of *Eastern Theatrical Co., Inc. v. Alfonso*,²⁷ it was held that the fact that some places of amusement are not taxed while others, such as cinematographs, theatres, vaudeville companies, theatrical shows, and boxing exhibitions, are taxed,

²³ Art. VI, Section 22.

²⁴ *De Villata v. Stanley*, 32 Phil. 541.

²⁵ 34 Phil. 989.

²⁶ 40 O. G. 6th Sup., 120.

²⁷ G. R. No. L-1104.

is no argument at all against the equality and uniformity of the tax imposition.

2. Exemptions—

In a decision prior to the Constitution interpreting a statute exempting property used exclusively for religious, charitable or educational purposes, it was held that the buildings and grounds of the YMCA, an institution devoted to religious, charitable and educational ends, not founded and conducted for profit, are tax exempt.²⁸ In another case, *Bishop of Nueva Segovia v. Provincial Board*,²⁹ it was held that a vegetable garden adjacent to the convent intended to supply the needs of a parish priest and a lot formerly a cemetery but thereafter used to furnish shelter for those who participate in religious activities, are exempted from taxation.

In the case of *Apostolic Prefect v. City Treasurer*,³⁰ it was held by the Supreme Court that the property owned by the Apostolic Prefect and used for religious and educational purposes is liable for special assessment, the case not coming within the meaning of the exemption provided for the above constitutional provision. It is this case that distinguishes a special assessment from a tax.

Where the exemption is embodied in a contract, a later taxing statute, as held in the case of *Casanovas v. Hord*,³¹ cannot impair the obligation. In this case, Section 184 of Act No. 1189, taxing mining claims was held void in so far as it was contrary to the terms of an existing deed granted by the Spanish government to the owners of mining claims specifying the nature and amount of the tax to be paid on said claims.

The right of taxation, however, will not be held to have been surrendered unless the intention to surrender it is manifested by words too plain to be mistaken. When an exemption is claimed, it must be shown indisputably to exist.³² If made to rest merely on the assertion that another person may not have paid or have not been required to pay taxes, it will not succeed.³³ And a tax on gross earnings of electric light, heat and power plant under its charter, will not be construed as being in substitution of income and percentage taxes.³⁴ Nor may stockholders avail themselves of an exemption granted in express terms to the corporation only.³⁵ But where lands of public domain are leased at a stipulated rental and the lease does not contain any provision for the payment of taxes by lessee, the land is exempted.³⁶

²⁸ *Y.M.C.A. v. Collector*, 33 Phil. 217.

²⁹ 51 Phil. 352.

³⁰ 40 O. G. 14th Sup., 117.

³¹ 8 Phil. 125.

³² *Asiatic Petroleum v. Llanes*, 49 Phil. 466.

³³ *Bank of the Phil. Islands v. Trinidad*,

³⁴ *House v. Pocadas*, 53 Phil. 333.

³⁵ *Manila Gas v. Collector*, 64 Phil. 195.

³⁶ *Fairchild v. Sarmiento*, 47 Phil. 485.

C. EMINENT DOMAIN—

The right of eminent domain, belonging to every independent government, is an incident of sovereignty, and does not even require constitutional recognition. Black³⁷ defines the power thus:

"The right of eminent domain is the right of the nation or the state, or of those to whom the power has been lawfully delegated, to condemn private property to public use, and to appropriate the ownership and possession of such property for such use, upon paying to the owner a due compensation to be ascertained according to law."

It is obvious from the above definition of eminent domain that this is another governmental power the exercise of which affects property rights, and since its exercise is conditioned upon public use or benefit, the power of eminent domain lends itself to the promotion of the general or community welfare. In other words, through the judicious employment of the governmental prerogatives of eminent domain, social and economic rights may further be implemented. The very provision of the Constitution of the Philippines authorizing Congress upon payment of just compensation to expropriate lands to be subdivided into small lots and convey them to individuals is an explicit affirmation of this principle.³⁸

Another provision that shows the expanding role played by the government even if the effect be narrowing of the field of private enterprise is the provision in the Constitution empowering the state in the interest of national welfare and defense to transfer to public ownership utilities and other private enterprises to be operated by the government upon payment of just compensation.³⁹

In an early Philippine case,⁴⁰ it was held that the executive could institute expropriation proceedings at his initiative under a general grant of statutory authority. The contention there raised that the authority to maintain such a proceeding cannot be delegated to the executive is, according to the court, erroneous and apparently based on a misconception of fundamentals, the power of eminent domain being inseparable from sovereignty as essential to the existence of the State and inherent in government even in its most primitive forms. Legal provisions found in modern laws and constitutions, therefore, to the effect that private property shall not be taken for public use without compensation have their origin in the recognition of the necessity for restraining the sovereign and protecting the individual.

IV. DUE PROCESS, EQUAL PROTECTION AND NON-IMPAIRMENT—

For the protection of the individual rights that may be affected by the exercise of police power, taxation and eminent domain, the Constitution makes available such doctrines as due

³⁷ Black, 468.

³⁸ Art. XIII, section 4.

³⁹ Art. XIII, section 6.

⁴⁰ *Visayan Refining Co. v. Camus*, 40 Phil. 550.

process,⁴¹ equal protection,⁴² and non-impairment of the obligation of contract.⁴³ It is to be remembered, however, that in view of the social and economic rights that the Constitution recognizes, the invocation of the rights of due process, equal protection and non-impairment, may not always be successful. Even in the United States, after the New Deal legislation had been sustained in 1937, there is manifest a similar tendency.

The time when due process, equal protection and to some extent the non-impairment clauses have been found useful to invalidate legislation promoting security is thus now past. It is still accurate to say, however, that as property rights are protected by the Constitution, any exercise of power even if with the worthy objective of promoting security, may be tested and may be held void in appropriate cases. Every case then must be determined on its merits. There must be an adjustment and harmonization of the conflicting claims to property rights on the part of those adversely affected and to the security of those whom the legislation is intended to benefit.

A. DUE PROCESS—

The first clause of Section 1, Article III, in part provides that no person shall be deprived of life, liberty and property without due process of law. This constitutional guaranty which is a cardinal principle in American constitutional law was introduced in the Philippines by the United States at the inception of American sovereignty. The framers of the Constitution of the Philippines retained this constitutional right as a restraint on governmental action whether national or local. Thus, no legislative, executive or judicial action that may have the effect of depriving a person of his life, liberty, and property, is valid unless in conformity with the requirements of due process. Likewise, the act of local governing bodies must be in accordance with this constitutional precept to be free from constitutional infirmity.

Due process supplies the standard which must be observed for governmental action to be considered valid. And freedom from arbitrariness or reasonableness seems to be the standard that due process requires.⁴⁴ Stated differently, Justice Frankfurter considers due process to be merely the embodiment of the sporting idea of fair play.⁴⁵ American decisions likewise identify due process with immutable principles of liberty and justice which inhere in the very idea of free government, which lie at the base of political

⁴¹ No person shall be deprived of life, liberty, or property without due process of law. Art. III, Sec. 1, Clause 1.

⁴² Nor shall any person be denied the equal protection of the laws. Art. III, Sec. 1, Clause 1.

⁴³ No law impairing the obligations of contracts shall be passed. Art. III, Sec. 1, Clause 10.

⁴⁴ *Lopez v. Director of Lands*, 47 Phil. 23; *Bank of Columbia v. Okley*, 4 Wheat, 235.

⁴⁵ Frankfurter, p. 58.

and civil institutions, and which are so rooted in the traditions and conscience of the people as to be ranked as fundamental.⁴⁶

Due process, as a limitation on the exercise of governmental powers, has both a procedural and substantive significance. Thus not only what may be done by any governmental agency but also how it may be done is an appropriate subject for judicial inquiry in proper cases. Originally, from the very term "process" the restraint is on the procedural aspect alone. By the last decade of the nineteenth century, however, the American Supreme Court was firmly committed to the view that the concept "due process" has substantive significance as well. It was relied upon as a test of the validity of legislative actions. The fact that a private corporation has been considered to be embraced in the term "person" protected by "due process" was greatly responsible for this transformation of the concept from a procedural to a substantive standard.

1. *Substantive due process and police power, taxation, and eminent domain—*

When the United States acquired the Philippines, "due process" in both its procedural and substantive aspects became part and parcel of American constitutional principles that Philippine courts applied. Substantive due process was relied upon in annulling Sections 13 and 15 of Act 3071 providing for maternity leave for women workers one month before and one month after confinement on the ground that such a provision of law was a violation of the liberty of contract protected by the due process clause. But in view of the constitutional provisions on social justice and protection to labor, the above decision no longer controls.⁴⁷ There may still be reliance on substantive due process though where the facts warrant it.

The foregoing observations apply not only to the exercise of the police power but to the taxing and eminent domain powers. More specifically as far as taxation is concerned, a party who is subject to tax may invoke the due process clause only if the act be so arbitrary as to compel the conclusion that it does not involve an exertion of the taxing power but constitutes in substance and effect, the direct exertion of a different and forbidden power, as, for example, the confiscation of property. Thus, if a case were presented where the abuse of the power were so extreme as to make it plain to the judicial mind that the power was exercised for the sole purpose of destroying rights guaranteed by the Constitution, then it would be the duty of the courts to say that such an arbitrary act was not merely an abuse of the power but was the exercise of an authority not conferred. A tax within the lawful power of the state may not be judicially stricken down though

⁴⁶ *Holden v. Hardy*, 169 U. S. 366; *Herbert v. Louisiana*, 272 U. S. 312; *Snyder v. Mass.*, 291 U. S. 97.

⁴⁷ *Laurel, con.*, *Ang Tibay v. Court*, *Antamok Goldfields v. Court*, 40 O. G., 8th Sup. 173; *Leyte Land Trans. v. Leyte Farmers and Laborers Union*, G. R. No. L-1877, May 12, 1948.

under the due process clause simply because its enforcement may or will result in restrictions or even destroying particular occupation or business.⁴⁸

Likewise, where a taxing statute is without any public purpose, which may be evident only when the enactment itself earmarks the particular activity for which the proceeds would be spent upon the appropriation thereof, or is beyond the jurisdiction of the government, or so retroactive in character as to have a harsh, oppressive and arbitrary effect, there may be a denial of due process. The procedure in imposing the tax may likewise fail in observing the standard of due process.

As to public purpose, it is well settled that a state taxing power in view of the due process clause can be exerted only for public and not for private ends. The requirements of due process, however, leave free scope for the exercise of a wide legislative discretion in determining what expenditures will serve the public interest. It has been recognized that the public purpose of a state for which it may raise funds by taxation embraces expenditures for its general welfare. Whether an expenditure serves a public purpose is a practical question addressed to the law-making department, and it would require a plain case of departure from every public purpose which could reasonably be conceived to justify the intervention of a court.

In the Philippines, the imposition of taxes on business enterprises as well as on wealthy individuals, with the end in view of spending the proceeds for such schemes as medical care and education for those unable to afford them, or to finance social security schemes for the victims of old age, unemployment, accident or sickness or for any other social service would seem to be free from doubt in view of the constitutional provision expressly recognizing social and economic rights.

Even in the United States the validity of such measures would now seem to be free from doubt. Thus, in the case of *Carmichael v. Southern Coal & Coke Co.*,⁴⁹ the Unemployment Compensation Act was considered valid, as support to the poor, in the words of Justice Stone, was a recognized public purpose. Expenditure of public funds for the relief of unemployment was not, therefore, void. And in the case of *Helvering v. Davis*,⁵⁰ an excise tax upon employees of eight or more to provide for old age benefits was held to be for a public purpose being in aid of general welfare. According to Justice Cardozo, the hope behind this statute was to save men and women from the poor house as well as from the haunting fear that such a lot awaits them when journey's end was near.

The rule as to when persons, property, income or business is within the taxing jurisdiction of the state is supplied by the *Manila Gas. v. Collector*⁵¹ where the Supreme Court held that interest on

⁴⁸ *Churchill v. Concepcion*, 34 Phil. 969.

⁴⁹ 301 U. S. 495.

⁵⁰ 301 U. S. 619.

⁵¹ 62 Phil. 895.

bonds and indebtedness paid by Philippine corporations to foreign corporations may be taxed. The doctrine as to jurisdiction is phrased by Justice Malcolm thus:

"The approved doctrine is that no state may tax anything not within its jurisdiction without violating the due process clause of the constitution. The taxing power of a state does not extend beyond its territorial limits, but within such limits it may tax persons, property, income, or business. If an interest in property is taxed, the situs of either the property or interest must be found within the state. If an income is taxed, the recipient thereof must have a domicile within the state or the property or business out of which the income issues must be situated within the state so that the income may be said to have a situs therein. Personal property may be separated from its owner, and he may be taxed on its account at the place where the property is although it is not the place of his own domicile and even though he is not a citizen or resident of the state which imposes the tax. But debts owing by a corporation are obligations of the debtors, and only possess value in the hands of the creditors."

And in the case of *Manila Electric Co. v. Yanco*,⁵² the Supreme Court sustained the power of the government to tax where it was shown that the insured and the risk insured against were in the Philippines and where certain incidents of the contract were to be performed here even if the insurance was effected in a foreign country and with a foreign corporation. This case and the later case of *Wells Fargo v. Collector*,⁵³ where the transmission by inheritance of 70,000 Benguet Consolidated shares with actual situs in the Philippines, the stock certificates indorsed in blank remaining here and forming part of the estate of the decedent domiciled in California at the time of death, was held taxable show an awareness by the Supreme Court of the Philippines of the grave financial dislocation that might result if intangibles, which constitute at present the bulk of wealth, would escape taxation in view of an alleged absence of jurisdiction.

As for eminent domain, it is stated in the case of *Visayan Refining Co. v. Camus*,⁵⁴ that the problem of expropriation is resolvable in its final analysis into the constitutional question of due process. The specific requirement of just compensation is merely in the nature of an added condition to the propriety of its exercise.

2. Procedural due process —

a. Due process and judicial proceedings —

In judicial proceedings, due process requires a competent court, jurisdiction lawfully acquired over the person of the defend-

⁵² 40 O. G. 3rd Sup., 121.

⁵³ 40 O. G. 8th Sup., 159.

⁵⁴ 40 Phil. 550.

ant and the subject matter of the action, opportunity to be heard given defendant, and judgment to be rendered after lawful hearing.⁵⁵

(1) *Competent court* —

A court with judicial power to hear and determine the matter before it is a competent court. It must be an impartial court. Thus the bias of the judge in favor of the prosecution as shown by his improper conduct in virtually acting as the prosecuting officer in the examination of witnesses and in taking into consideration information volunteered at an ocular inspection, which information did not even appear in the record;⁵⁶ susceptibility to undue influence exerted by local atmosphere manifestly hostile to the accused;⁵⁷ fear arising from the intimidation of a mob dominating the trial of the accused;⁵⁸ personal or official pecuniary interest in the result of the litigation,⁵⁹ all denote absence of that impartiality required by due process.

As it was not beyond the realm of probability that the trial court could not have been completely free from the psychological effect of the mob frenzy which as described in the opinion of the trial court evinced "an eager desire that collaborators be dealt with by the court" without mercy, a justice could not vote for the affirmation of death penalty.⁶⁰

Partiality by the judge may be a ground for new trial⁶¹ but not for disqualification.⁶²

(2) *Jurisdiction to be lawfully acquired over the person of the defendant and the subject matter of the action* —

Jurisdiction over the subject matter is provided for by law. Jurisdiction over defendant is acquired through the service of summons. Where defendants were not summoned, the court never acquired jurisdiction over them, the judgment rendered against them being null and void.⁶³ The summons may be served personally or through substituted service or by publication. Service by publication on a non-resident defendant satisfies the constitutional requirement of due process in an action *in rem* or *quasi in rem*, although in such cases jurisdiction over such person is not strictly essential, as jurisdiction over the res suffices.⁶⁴

In a collection case against a non-resident who was summoned by publication and who had deposited in his name a sum of money in a local bank under process of liquidation, the Supreme Court denied defendant's plea that proceedings against him would

⁵⁵ *Banco-Español v. Palanca*, 37 Phil. 921.

⁵⁶ *People v. Castañeda and Fernandez*, 63 Phil. 480.

⁵⁷ *People v. Peralta*, 37 O. G. 620.

⁵⁸ *Frank v. Mangum*, 237 U. S. 309; *Moore v. Dompsey*, 361 U. S. 86.

⁵⁹ *Tumey v. Ohio*, 273 U. S. 210.

⁶⁰ *People v. Racaza*, G. R. No. L-365; Jan. 21, 1949.

⁶¹ *Dais v. Torres*, 57 Phil. 897.

⁶² *People v. Lopez*, 43 O. G. 2313.

⁶³ *Govt. v. Asociacion*, 40 O. G., 3rd Sup., 216.

⁶⁴ *Perkins v. Dizon*, 40 O. G., 3rd Sup., 216.

deprive him of property rights without due process, as, irrespective of the nature of the proceeding as *in rem* or *quasi in rem*, he had property here within the reach of the courts.⁶⁵

Where a person is not made a party to an action, he is ordinarily not bound by the judgment thereof.⁶⁶ Thus failure to include in a foreclosure proceedings purchaser at previous execution of mortgage amounts to denial of due process as to such purchaser, if the judgment granting foreclosure and directing sale would be deemed to affect his interest.⁶⁷

While the judgment rendered in an action in personam is enforceable only against the parties but not against strangers thereto, no jurisdiction having been acquired over them,⁶⁸ where among those affected are the house guests of tenants who were not made parties to ejectment suit, there is no violation of due process as to them as they are not entitled to claim separate and independent action against them.⁶⁹

(3) Opportunity to be heard be given defendant —

A defendant cannot be declared in default for failing to answer a complaint when there is no proof that copy of the document required to be attached to the complaint to allow defendant to answer, had been served on him in accordance with law.⁷⁰ And in another case, it was held that the party was denied due process where the order declaring him in default for failure to answer as the motion to dismiss was still pending.⁷¹ Where it is shown that a party was not notified of the date of the trial which was to take place in another town and that during that month he and his children were arrested by the Japanese Military Police for illegal possession of firearms, the hearing of the case by the court in his absence and in the absence of his attorney on the assumption that he had lost interest in the case, was held a denial of his right to a day in court.⁷²

A judge who, after granting a motion for new trial filed in accordance with the provisions of section 113 of the Code of Civil Procedure, does not set aside his decision or order the reopening of the case or the holding of a new trial thereof, but proceeds to consider the documentary evidence attached to the motion without previous hearing of the parties, and amends his decision in accordance with said evidence, sentencing defendant to pay an amount greater than that which he had been sentenced to pay in the original decision, violates the constitutional right of the defendant not to be deprived of his property without due process of law, and the

⁶⁵ *Asiatic Petroleum v. Co Quico*, 40 O. G. 6th Sup. 132.

⁶⁶ *Macalindog v. De la Rosa*, 40 O. G. 3454.

⁶⁷ *Gutierrez Hnos. v. Lesaca*, 40 O. G. 2nd Sup. 271.

⁶⁸ *Fule v. Abad Santos*, 40 O. G. 975.

⁶⁹ *Brodett v. De la Rosa*, 44 O. G. 872.

⁷⁰ *Villegas v. Roldan*,

⁷¹ *Peña de Luz v. Court*, 44 O. G. 42.

⁷² *Guia v. Pulutan*, 42 O. G. 739.

amendatory judgment thus rendered is void because it is in excess of his jurisdictional power.⁷³

Likewise the right to be heard must be given a party not only in the trial court but in the appellant court. Thus where it is shown that a favorable judgment was reconsidered by the Court of Appeals upon a motion for reconsideration without giving the winning party a chance to answer, the Supreme Court held that it was denial of due process.⁷⁴

(4) *Judgment to be rendered after lawful hearing —*

The judgment must be rendered after lawful hearing.⁷⁵

(5) *The right to appeal —*

It is still a settled law in this jurisdiction that the right to appeal is not an essential element of due process.⁷⁶

b. *Due process and administrative proceedings —*

In administrative proceedings, the right of notice and hearing is not absolutely essential in certain cases: arrest of an offender pending the filing of charges; distraint of property in tax cases; suspension of officers and employees by the proper authorities pending an investigation.⁷⁷ Likewise there is no need of a notice to the *acting* appointee or any form of hearing. Such procedural requirements apply where the officer is removable only for cause. In changing an acting appointee, the appointing power has full discretion, and is not limited to removal for cause.⁷⁸

In justiciable cases, however, coming before administrative tribunal exercising quasi-judicial powers, due process requires not only notice and hearing but also (1) the consideration by the administrative tribunal of the evidence presented; (2) the existence of evidence to support the decision; (3) the substantiality of the evidence offered; (4) a decision based on the evidence presented or at least contained in the record and disclosed to the parties; (5) decision by the administrative tribunal resting on its own independent consideration of the law and facts of the controversy; and (6) decision acquainting parties with various issues involved and reasons therefore.⁷⁹

Likewise where a taxing statute affects property, the amount due being based on its values, the taxpayer must be heard whether on assessment or on appeal. No hearing is required however where the statute itself fixes the amount of the tax.

⁷³ *Buendia v. Sotto*, 39 O. G. 1688.

⁷⁴ *Montfort v. Aguinaldo*, 43 O. G. 640.

⁷⁵ *Banco-Español v. Palanca*, 37 Phil. 921.

⁷⁶ *United States v. Gomez Jesus*, 31 Phil. 218; *People v. Carlos*, 44 O. G. 4281.

⁷⁷ *Cornejo v. Gabriel*, 41 Phil. 188.

⁷⁸ *Austria v. Amante*, 45 O. G. 2809.

⁷⁹ *Ang Tibay v. Court of Industrial Relations*, 40 O. G., 7th Sup. 29.

B. EQUAL PROTECTION —

Section 1, Clause 1 of Article III, after providing that no person shall be deprived of life, liberty or property without due process of law, further provides: "nor shall any person be denied the equal protection of the laws."

This guaranty of equal protection could well be embraced in the due process clause prohibiting as it does all arbitrary, unreasonable or unfair governmental action. In the United States, while the Fourteenth Amendment to its Constitution provides for the guaranty of equal protection against state action, there is no similar guaranty against federal action in its Fifth Amendment. Notwithstanding the absence of this specific clause on equal protection the due process clause has been relied upon to attack statutes which; if enacted by the states, might have been assailed on the ground of their denial of equal protection. If it is to be distinguished from due process, it is a guaranty against arbitrary governmental action in the form of unwarranted partiality or undue favoritism.

The right to equal protection, like the right to due process, is a restraint on the three departments of the national government as well as on subordinate instrumentalities or subdivisions thereof. It is a pledge of protection under equal laws. It is more than a mere abstract right; it is a command which the state must respect and the benefit of which every person may demand. It applies to all persons within the territorial jurisdiction without regard to differences of race and includes aliens, although as far as aliens in the Philippines are concerned, certain economic rights are withheld from them in view of the nationalization provision of the Constitution with reference to public utilities and natural resources.⁸⁰

American aliens, however, under the Parity Amendment, have the right to the disposition, exploitation, development and utilization of all agricultural, timber and mineral lands of the public domain and other forms of natural resources, and the operation of public utilities under the same terms and conditions as are provided for in the case of Filipinos. Likewise, aliens are not entitled to political rights.

The guaranty of equal protection requires that all persons shall be treated alike, under like circumstances and conditions, both in the privileges conferred and the liabilities imposed. It prohibits undue favor or special privilege for any person or class or hostile discrimination against any party.

The equal protection clause as above shown does not preclude the classification of individuals or objects which may be treated differently as long as the classification is not unreasonable or arbitrary, for the equality aimed at is not disembodied equality. As long as there is no arbitrary selection or favoritism, the constitutional guaranty is satisfied. All that the Constitution enjoins is a rational discrimination as between persons or groups of per-

⁸⁰ Art. XIII and Art. XIV, Section 8.

sons in the incidence of a law. Classification then on a reasonable basis and not arbitrary or capricious, is permitted. The classification, however, to be reasonable must be based on substantial distinctions which make for real differences; it must be germane to the purpose of the law; it must not be limited to existing conditions only, and must apply equally to all the members of the class.⁸¹

1. *Law that permits and allows inequality contravenes equal protection —*

The validity of the present Probation Act was challenged in the case of *People v. Vera*.⁸² The Supreme Court found no conflict between said Act and the pardoning power of the President. Nonetheless, the Act was stricken down on the ground that section 11 thereof violated the principle of non-delegation as well as the guaranty of equal protection. Such section makes Act apply only to such provinces where the provincial boards have provided salaries for probation officers at rates not lower than those for provincial fiscals. While it does not deny equal protection, it permits of such a denial as certain provincial boards may appropriate salaries while others may not.

2. *Equal protection clause may be invoked against discriminatory application of laws —*

The above holding in the case of *People v. Vera* is foreshadowed by the leading American case of *Yick Wo v. Hopkins*.⁸³ The validity of a San Francisco ordinance providing that it was unlawful for any person or persons "to establish, maintain, or carry on a laundry within the corporate limits of San Francisco without having first obtained the consent of the Board of Supervisors except where the same is located in a building constructed either of brick or stone", was questioned in this as well as the companion case of *Lee v. Hopkins*.⁸⁴ Only one decision was rendered by the Supreme Court of the United States.

It considered such powers conferred to be naked and arbitrary allowing the Board of Supervisors "to give or withhold consent, not only as to places, but as to persons." And it was shown that the administration of the above statute was directed so exclusively against a particular class of persons as to warrant and require the conclusion that whatever may have been the intent of the ordinances as adopted, they were applied with a mind so unequal and oppressive as to amount to a practical denial of the equal protection of the laws. For, even if "the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

⁸¹ *People v. Vera*, 65 Phil. 56.

⁸² 65 Phil. 56.

⁸³ 118 U.S. 356.

⁸⁴ 118 U.S. 356.

3. *Guaranty of equal protection yields to specific constitutional provisions —*

In the case of *Co Chiong v. Cuaderno*,⁸⁵ decided by the Supreme Court on March 31, 1949, the validity of Republic Act No. 37 giving preference to Filipino citizens in the lease of public market stalls was impugned by Chinese stallholders on the ground that they were thereby deprived of their constitutional right of due process and equal protection. But the Supreme Court held against them for —

"Even if their position could be supported under said general guarantees, a hypothesis the validity of which we consider unnecessary to decide, said guarantees have to give way to the specific provision above quoted, which reserves to Filipino citizens the operation of public services or utilities."

C. NON-IMPAIRMENT OF OBLIGATIONS OF CONTRACTS —

The Constitution prohibits the enactment of any law impairing the obligation of contracts. As stated by the Supreme Court this provision further implements the constitutional right to freedom of contract.⁸⁶ Under the Civil Code a contract exists from the moment one person binds himself with respect to another to give a thing or to render service. The contract protected by the constitutional provision may be either executed or executory.

The obligation of the contract is the law which binds the parties to perform their agreement if it is not contrary to the law of the land, morals, and public order. That law must govern and control the contract in every respect in which it is intended to bear upon it whether it affects its validity, construction, or discharge. Any law which enlarges, abridges, or in any manner changes the intention of the parties necessarily impairs the contract itself.⁸⁷

In the case of *Government v. Visayan Surety*⁸⁸ the Supreme Court sustained the validity of Act No. 3688 compelling contractors to file a penal bond not only in favor of the government but also in favor of persons supplying the contractor with labor and materials in cases of public works. Against the contention that it impaired the obligation of contracts inasmuch as it grants favors to persons who are not parties to the agreements, the Supreme Court adopted as a test for impairment the taking from a party a right to which he is entitled or the deprivation of the means for enforcing such a right. There is no impairment of the obligation of contracts then if neither party is relieved by a law from performing any thing which he obligated himself to do. But if either party is absolved from performing any of these things, whether

⁸⁵ G.R. No. L-1440.

⁸⁶ *Gabriel v. Monte de Piedad*, 40 O. G. 14th Sup., 67.

⁸⁷ *U.S. v. Diaz Conde*, 42 Phil. 766.

⁸⁸ 38 O. G. 2814.

absolution is effected directly and expressly or indirectly, and only as the result of some modifications of the legal proceedings for enforcement, then there is impairment of the obligation of contracts.

Unless the law complained of then strikes at the vitality of the contract either by altering its terms or preventing its preservation or enforcement, there is no impairment within the constitutional sense. One way of avoiding the impairment of contractual obligations is not to give the law a retroactive application.

The constitutional provision in question covers contracts concerning property and does not include marriage contracts and charters granted to municipal or public corporations. A charter by the state to a private corporation is a contract. In the Philippines, however, the Constitution expressly provides that no franchise or right shall be granted to any individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the public interest so requires.⁸⁹ And while a charter to private corporations constitutes a contract, a grant of exclusive privilege is not to be implied as against the State.⁹⁰

The Constitution thus prohibits the passage of a law impairing the obligation of contracts. This constitutional prohibition is aimed at the legislative power and includes laws or ordinances of municipal corporations but does not extend to court decisions or quasi-judicial acts of administrative or executive board or officers.⁹¹

Executive orders issued by the President of the Philippines as well as administrative orders issued by Department Secretaries may likewise fall under the term *law* as above provided.

A legislative act changing existing remedies or modes of procedure does not impair the obligations of contract provided an efficacious remedy remains.⁹²

1. *Non-impairment and police power, taxation, and eminent domain* —

In a decision rendered in 1915 in the case of *United States v. Gomez Jesus*,⁹³ the Supreme Court affirmed the well-settled principle that the constitutional prohibition against laws impairing the obligation of contracts does not have the effect of restricting the power of the State to protect the public health, public morals, or public safety as the one or the other may be involved in the execution of such contracts. In appropriate cases then the non-impairment clause cannot be invoked as against the right of the State to exercise its police power.

This principle gains added weight with the inclusion in the Constitution of the provision embodying social and economic rights

⁸⁹ Art. XIV, Section 8.

⁹⁰ *Charles River Bridge v. Warren Bridge*, 11 Pet. 420.

⁹¹ Cf. *New Orleans v. Louisiana Sugar Co.* 125 U.S. 18.

⁹² *Manila Trading Co. v. Reyes*, 62 Phil. 461.

⁹³ 31 Phil. 218.

for the non-impairment clause is at the service of those whose property rights in contracts may be affected by legislation for the general welfare. With the explicit provisions in the Constitution with reference to social justice and protection to labor, the asserted invalidity of any legislation in pursuance of those constitutional directives on the ground that a possible violation of contractual rights is not likely to meet with judicial approval.

One example is that afforded by the case of *Tapang vs. Court*.⁸⁴ In that case, the argument that Commonwealth Act No. 461 (The Tenancy Law) was unconstitutional because it impaired the obligation of contracts was considered by the court to be without any force as outside of the fact that the contract entered into between the petitioner and the husband of the respondent during his lifetime and the respondent herself after his death was without a fixed period, the work being accomplished from year to year, the Constitution ordains the promotion of social justice and the protection to labor, specially to working women. There is no doubt then that the Tenancy Law tends toward that end, protecting the tenant and landlord equally and establishing rules to determine the relations that should exist between the two for their benefit.

It may happen that the exercise of the taxing power may conflict with contractual rights. Ordinarily, as was held in the case of *La Insular vs. Machuca Go-Tauco*,⁸⁵ an act of legislature imposing a new or additional tax upon goods contracted to be sold and placing the burden of paying said tax upon the purchaser, does not change the obligation of contracts between the contracting parties.

Where, however, a certain individual or judicial person is expressly exempted from taxation under a valid legislative act, such a contract may be considered a contract which cannot be impaired by a later taxing statute.

Thus, in the case of *Casanovas vs. Hord*,⁸⁶ decided on March 22, 1907, the first time where a portion of a law was declared unconstitutional by the Supreme Court, Section 134 of Act No. 1189, the Internal Revenue Law, was held void in so far as plaintiff was concerned under this principle.

In the case of *Noble vs. City of Manila*,⁸⁷ the Supreme Court of the Philippines denied the right of the city to resort to expropriation to condemn property which under a previous contract it was obligated to purchase.

The implication from the above statement is that no law providing for expropriation can impair the obligation of the other contracting party in a case where the government had previously bound itself to purchase the property in question. Where, however, the parties to the contract do not include the government or

⁸⁴ 40 O. G. 3107.

⁸⁵ 39 Phil. 567.

⁸⁶ 8 Phil. 125.

⁸⁷ 38 O. G. 2770.

any of its subdivisions, both the property subject of such contract as well as the contract rights itself may be condemned by the government upon the payment of just compensation. There can be no valid objection in this case that the exercise of the power of eminent domain impairs the obligation of contracts.

THE BARRISTER AND THE BREW

A Regina lawyer received a call from a police station at an outside point. "We have a man under arrest who wants your advice," said the policeman. So the lawyer made the necessary journey.

"What is the offense charged?" he asked.

"Making home brew," said the officer in charge. "The accused threw most of it down the sink before we made entry to the premises, but there was enough left for evidence. Caught him cold. Just smell it," said the officer to the lawyer.

The lawyer smelled it. "Water," said he.

"Well, if you can't smell, taste it," said the officer.

The lawyer tasted it. Having a constitution and a will of iron, he didn't blench. "Water," he repeated.

"Water!" roared the officer. Putting his fingers to his nose he took a taste himself, and not being as tough as the lawyer, gagged. "Pure alcohol," he sputtered.

"There is one way of making sure," said the lawyer "Just pour that stuff in an inkwell and put a match to it. If it is water, as I say, it won't burn. If it is alcohol, as you say, it will."

The obliging officer did as suggested, and the flames reached the ceiling. "I guess I must have been mistaken," said the lawyer.

"But, by gosh, the evidence is all gone," cried the officer.

"Before the prisoner is discharged for lack of evidence," said the lawyer, "I want a few minutes' conversation with him. I would like to collect a fee."

—Regina (Can.) Leader-Post

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