

ANASTACIO LAUREL, PETITIONER, VS. ERIBERTO MISA, AS DIRECTOR OF PRISONS, RESPONDENT.

G.R. No. L-200. March 28, 1946

Ponente: BENGZON, J.

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BENGZON, J.:

Anastasio Laurel demands his release from Bilibid Prison, mainly asserting that Commonwealth Act No. 682, creating the People's Court, specially section 19, under which he is detained as a political prisoner, is unconstitutional and void. The Solicitor General, meeting the issue, sustains the validity of the whole law.

According to the pleadings, the petitioner, a Filipino citizen, was arrested in Camarines Sur in May, 1945, by the United States Army, and was interned, under a commitment order "for his active collaboration with the Japanese during the Japanese occupation," but in September, 1945, he was turned over to the Commonwealth Government, and since then has been under the custody of the respondent Director of Prisons.

The legality of the petitioner's arrest and detention by the military authorities of the United States is now beyond question.[1] His present incarceration, which is merely a continuation of his previous apprehension, has lasted "more than six hours" counted from his delivery to the respondent; but section 19 of Commonwealth Act No. 682 provides in part as follows:

"Upon delivery by the Commander-in-Chief of the Armed Forces of the United States in the Philippines of the persons detained by him as political prisoners, to the Commonwealth Government, the Office of Special Prosecutors shall receive all records, documents, exhibits and such other things as the Government of the United States may have turned over in connection with and/or affecting said political prisoners, examine the aforesaid records, documents, exhibits, etc., and take, as speedily as possible, such action as may be proper: Provided, however, * * *. And, provided, further, That, in the interest of public security, the provisions of article one, hundred twenty-five of the Revised Penal Code, as amended, shall be deemed, as they are hereby, suspended, insofar as the aforesaid political prisoners are concerned, until the filing of the corresponding information with the People's Court, but the period of suspension shall, not be more than six (6) months from the formal delivery of said political prisoners by the Commander-in-Chief of the Armed Forces of the United States in the Philippines to the Commonwealth Government."

In view of this provision, and the statement of the Solicitor-General that even on the date the petition was presented his office had, ready for filing, an information charging herein petitioner with treason, we fail to see how petitioner's release may now be decreed.

However, he contends that the aforesaid section violates our Constitution, because it is (a) discriminatory in nature; (b) unlawful delegation of legislative powers; and (c) retroactive in operation.

(a) It is first argued that the suspension is not general in application, it being made operative only to "the political prisoners concerned," that other citizens are not denied the six-hour limitation in article 125 of the Revised Penal Code, that such discrimination is unexcusable and amounts to denial of the equal protection of the laws.

It is accepted doctrine in constitutional law that the "equal protection" clause does not prevent the Legislature from establishing classes of individuals or objects upon which different rules shall operate—so long as the classification is not unreasonable.[2] Instances of valid classification are numerous. The point to be determined then, is whether the differentiation in the case of the political prisoner is unreasonable or arbitrary.

One of the proclamations issued by General MacArthur upon his arrival in Leyte (December 29, 1944) referred to those Filipino citizens who had voluntarily given aid, comfort and sustenance to the Japanese. It announced his purpose to hold them in restraint for the duration of the war, "whereafter they shall be turned over to the Philippine Government for its judgment upon their respective cases." When active hostilities with Japan terminated, General MacArthur ordered the delivery to the Commonwealth of all the prisoners theretofore taken under his said proclamation. There were 6,000 in round numbers. The problem was momentous and urgent. Criminal informations against all, or a majority, or even a substantial number of them could not be properly filed in the six-hour period. They could not obviously be turned loose, considering the conditions of peace and order, and the safety of the prisoners themselves. So the President, by virtue of his emergency powers, promulgated Executive Order No. 65 suspending article 125 of the Revised Penal Code, for not more than thirty days, with regard to said detainees or internees, having found such suspension necessary "to enable the Government to fulfill its responsibilities and to adopt temporary measures in relation with their custody and the investigation, prosecution and disposal of their respective cases." The Order added that it shall be in force and effect until the Congress shall provide otherwise. Congress later approved Commonwealth Act No. 682, establishing the People's Court and the Office of Special Prosecutors for the prosecution and trial of crimes against national security committed during the second World War. It found the thirty-day period too short compared with the facilities available to the prosecution, and set the limit at six months.

Considering the circumstances, we are not prepared to hold the extension of the period for the political detainees was unreasonable. The Legislature chose to give the prosecutor's office sufficient time to investigate and to file the proper charge—or to discharge those whom it may find innocent. If time had not been granted, the prosecutor would perhaps have been forced to indict all the detainees indiscriminately; reserving, of course, its right subsequently to request the liberation of those it may think not guilty. But such wholesale indictment was obviously neither practical nor desirable. We will allow that there may be some dispute as to the wisdom or adequacy of the extension. Yet the point is primarily for the Legislature to decide. The only issue is the power to promulgate special rules for the custody and investigation of active collaborationists, and so long as reasons exist in support of the legislative action courts should be careful not to deny it.

In this connection, it must be stated there can really be no substantial ground to assail the six-month extension, in view of the provisions authorizing the release under bail. Article 125 of the Revised Penal Code was intended to prevent any abuse resulting from confining a person without informing him of his offense and without permitting him to go on bail. Commonwealth Act No. 682 gives no occasion to such abuse.

The political prisoners know, or ought to know, they are being kept for crimes against national security. And they are generally permitted to furnish bail bonds.

(b) There is hardly any merit to the argument that as "the duration of the suspension of article 125 is placed in the hands of the Special Prosecutor's Office," the section constitutes an invalid delegation of legislative powers; for as explained by the Solicitor-General, the result—some informations filed before, others afterwards—is merely the "consequence of the fact that six thousand informations could not be filed simultaneously, and that some one had to be first or some one else, necessarily the last." The law, in effect, permitted the Solicitor-General to file the informations within six months. And statutes permitting officers to perform their duties within certain periods of time may not surely be declared invalid delegations of legislative power.

(c) Nor is the position correct that section 19 is retro-active in its operation. It refers to detention after its passage—not before. Incidentally, there is no constitutional objection to retroactive statutes where they relate, to remedies or procedure.[3]

The argument is advanced that when he was arrested, (May, 1945), article 125 of the Revised Penal Code was in force, and petitioner could have asked for release after six hours and, therefore, Commonwealth Act No. 682 that takes away that right is ex post facto, retroactive and fundamentally objectionable. The premises are incorrect. In May, 1945, he could not have asked for release after six hours. In other words, he would not have been discharged from custody. (Raquiza vs. Bradford, supra.) Article 125 of the Revised Penal Code was in force, it is true; but not as to him. The laws of the Commonwealth were revived in Camarines Sur by operation of General MacArthur's proclamation of October 23, 1944, upon its liberation from enemy control; but subject to his reservation to hold active collaborationists in restraint "for the duration of the war." So, persons apprehended under that directive, for treasonable collaboration, could not necessarily invoke the benefits of article 125 of the Revised Penal Code.

Undoubtedly the Legislature could validly repeal section 125 of the Revised Penal Code. Had it done so, herein petitioner would have no ground to protest on constitutional principles, as he could claim no vested right to the continued enforcement of said section.[4]Therefore, a fortiori he may not complain, if, instead of repealing that section, our law-making body merely suspended its operation for a definite period of time. Should he counter that such repeal or suspension must be general to be valid, he will be referred to the preceding considerations regarding classification and the equal protection of the laws.

Wherefore, we perceive no irreconcilable conflict between the Constitution and the challenged portions of section 19 of Commonwealth Act No. 682.

The other features of the People's Court Act which are the subject of denunciation by petitioner do not, in our opinion, require specific elucidation at this time, because he has not as yet been held into that court, and the issues appear to have no important or necessary connection with his current deprivation of liberty.[5]

The petition for the writ of habeas corpus will be denied. With costs.

Moran, C. J., Jaranilla, Feria, De Joya, Pablo, Hilado, and Briones, J.J., concur.

[1] See Raquiza vs. Bradford (75 Phil., 50).

[2] See 6 R. C. L., section 369; Tañada. Constitution of the Philippines, p. 74; 16 C. J. S., p. 954 et seq.

[3] See 16 C. J. S., p. 865 et seq.

[4]See 16 C. J. S., section 223.

[5] Yangco vs. Board of Public Utility Commissioners (36 Phil., 120).

OZAETA, J., with whom concurs PARAS, J., concurring in the result:

I concur with the majority in upholding the constitutionality of section 19 of the People's Court Act. In the view I held in the Raquiza case the detention of the petitioner by the military authorities was illegal for lack of due process. But the same thing cannot be said as to his present detention by the respondent Director of Prisons, especially now that an information for treason has been filed against him.

DISSENTING:**PERFECTO, J.,**

On or about May 6, 1945, petitioner was arrested by the C. I. C., United States Army, Camarines Sur. On September 6, 1945 he was turned over to the Commonwealth Government by the United States Army and since that date he remained in prison under the personal custody of the respondent Director of Prisons, and now he comes before us complaining that his arrest and detention are illegal and in violation of many of his constitutional rights, in that: "(a) He was arrested and detained without a lawful warrant of arrest. (See Constitution, Article III, section 3.) (b) No information or charge has been lodged against him, informing him of the nature and cause of his arrest. (See Constitution, Article III, section 17.) (c) He was not given an opportunity to confront the witnesses who caused his arrest and detention. (See Constitution, Article III, section 17.) (d) He was not accorded the benefit of compulsory process to secure the attendance of witnesses in his behalf. (See Constitution, Article III, section 17.) (e) He was and is being denied the right to a prompt, speedy and public trial. (See Constitution, Article III, section 17.) (f) His arrest and detention was and is without due process of law. (See Constitution, Article III, section 15.) (g) He was not accorded the equal protection of the laws. (See Constitution, Article III, section 1.) (h) He was subjected to cruel and unusual punishment. (See Constitution, Article III, section 19.) (i) He was committed to prison and detained by the respondent under a bill of attainder. (See Constitution, Article III, section 11.)"

Petitioner also maintains that the People's Court Act No. 682, under which the respondent herein purports to act, violates not only the spirit but also the letter of the fundamental law in many ways, in that: " (a) It constitutes an assault upon the independence of the judiciary. (See Tydings-McDuffie Law, section 2, par. [a].) (b) It deprives the accused of certain rights already acquired at the time of its passage, and therefore is ex post facto in nature. (See Constitution, Article III, section 11.) (c) It partakes of the nature of a bill of attainder. (See Constitution, Article III, section 11.) (d) It denies the equal protection of the laws. (See Constitution, Article III, section 1.) (e) It provides for cruel and unusual punishment. (See Constitution, Article III, section 19.) (f) It deprives the citizen of his day in court. (See Constitution, Article III, section 21.) (g) It constitutes an unlawful delegation of legislative and executive functions. (See Tydings-McDuffie Law, section 2, par. [a].) (h) It covers more than one subject matter. (See Constitution, Article VI, section 12, par. 1.) (i) It authorizes the charging of multifarious crimes in one complaint or information thereby making it impossible to be informed of the real nature and cause of the accusation against the accused. (See Constitution, Article III, section 17.) (j) It denies the constitutional right of a person to bail before conviction. (See Constitution, Article III, section 16.)"

Consequently, petitioner prays that Commonwealth Act No. 682 be declared unconstitutional and null and void, that his detention, irrespective of the validity of said act, be declared illegal and in violation of many of his constitutional rights, and that an order be issued for his complete and absolute release.

Respondent answered that, pursuant to the authority of the proclamation issued by the Commander in Chief of the American Armed Forces, Southwest Pacific Area, General Douglas MacArthur, dated December 29, 1944, petitioner was arrested and thereafter detained on May 10, 1945, under a security commitment order, issued by the commanding officer of 904th Counter Intelligence Corps Detachment, United States Army, upon the charge of "active collaboration with the Japanese during the Japanese occupation" ; that his subsequent detention as a political prisoner, upon the transfer of his person to the Commonwealth Government by the United States Army, pursuant to the terms of the proclamation issued by General Douglas MacArthur on December 29, 1944, of Executive Order No. 65, issued by the President of the Philippines on September 3, 1945, and pursuant to the provisions of Commonwealth Act No. 682, approved on September 25, 1945, was a mere logical sequence of his previous commitment and hence equally valid and legal.

Respondent alleges also that petitioner has not as yet availed of the benefits of section 19 of Commonwealth Act No. 682, which confers upon political prisoners the privilege of securing their release on bail upon proper application therefor with the People's Court; that Commonwealth Act No. 682 does not trench upon, nor contravene any of the provisions of the Constitution; that it is not ex post facto in nature in that it suspends, in the interests of national security, the provision of article 125 of the Revised Penal Code for a period of not more than six months, which is fully justified by the practical necessities of the situation, considering the circumstances that there are more than 6,000 political prisoners charged with the grave crime of treason and other offenses against national security; that said law does not materially impair the substantial rights of the accused to have the question of his guilt determined according to the substantive law existing at the time of the commission of the offense, that it is not a bill of attainder, since it does not inflict punishment without a judicial trial; that it neither deprives the citizen of his day in court, nor it provides for cruel and unusual punishment; that it applies equally and uniformly to all persons similarly situated; that it complies with the constitutional requisites of due process of law as applied in criminal procedure; that it does not contravene the constitutional requirement that the accused must be informed of the nature of the accusation against him; that instead of suppressing or denying the constitutional right of an accused to bail before conviction, said act recognizes and concedes to all accused in section 19 the right to bail, except those charged with capital offenses when evidence of guilt is strong; that the information against the petitioner, charging him with treason upon ten counts was ready for filing in the People's Court even on the date the petition in this proceeding was presented; and that in due deference to this Supreme Court, the filing of said information has been held in abeyance pending the final disposition of this habeas corpus proceeding.

For purposes of this discussion, the discrepancy between petitioner and respondent as to the correct date when petitioner was arrested, May 6 or May 10, cannot affect the merits of the case.

Without a lawful warrant of arrest.—Whether the arrest took place on May 6, 1945, as alleged by petitioner or on May 10, as alleged by respondent, there is absolutely no question that petitioner was arrested without any lawful warrant of arrest.

Section 1:3 of Article III of the Constitution provides that "no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized." This provision, considered in connection with the provision of section 1:1 of Article III of the Constitution and section 1:15 of the same article that no person shall be deprived of liberty or be held to answer for a criminal offense without due process of law, implies necessarily that one of the essential requisites for depriving a person of his liberty, when he is accused of an offense, is the existence of a warrant of arrest issued in accordance with the provisions of the Constitution.

We are of opinion that the arrest of petitioner was executed in flagrant violation of the above-mentioned constitutional provisions.

No information as to any charge.—The Constitution provides that one of the fundamental rights of an accused is "to be informed of the nature and cause of the accusation against him." (Section 1:17, Article III of the Constitution.)

This constitutional guarantee appears equally to have been violated in petitioner's case.

Respondent's allegation that petitioner is detained because of his active collaboration with the Japanese during the Japanese occupation does not inform petitioner of the nature and cause of the accusation against him, it appearing that there is no such offense described in any law applicable to petitioner as "active collaboration with the

Japanese during the Japanese regime."

Meeting witnesses face to face.—Petitioner complains that he was not given an opportunity to confront his witnesses who caused his arrest and detention.

The complaint is equally well-taken. There is nothing in the record to show that before, during, or at any time after his arrest, petitioner has ever been accorded the opportunity of meeting the witnesses "face to face" as provided in section 1:17 of Article III of the Constitution.

Attendance of witnesses in his behalf.—Petitioner complains he was not accorded of the benefit of compulsory process to secure the attendance of witnesses in his behalf as provided in section 1:17 of Article III of the Constitution. This allegation has not been disputed.

We have, therefore, here another flagrant violation of a constitutional right of petitioner.

Speedy and public trial.—Petitioner invokes also his constitutional right to "have a speedy and public trial" as provided in section 1:17 of Article III of the Constitution.

There is absolutely no question that this constitutional right of petitioner has been equally violated.

Equal protection of the laws.—Petitioner complains that he was not accorded equal protection of the laws as provided in section 1:1 of Article III of the Constitution.

Petitioner's allegation is equally well-founded, there being no question as to the fact that he was and he is being deprived of several of his fundamental rights under the Constitution without any legal process.

Cruel and unusual punishment.—Petitioner complains that he was subjected to cruel and unusual punishment in violation of section 1:19 of Article III of the Constitution.

There is no question that petitioner is being deprived of his liberty without any information or complaint charging him of any specified offense under the laws of the land.

So it appears that he is being, in effect, subjected to the punishment of deprivation of liberty for almost one year, without an definite information as to when will it end. This means that he is being subjected to imprisonment for an indefinite term. It is certainly a cruel and unusual punishment, not only because it is not authorized by any law of the land, but because it is meted out to petitioner for no specific offense at all. The violation of section 1: 19 of Article III of the Constitution is indispensable.

Petitioner complains that those responsible for his detention appear to have never heard of such trifles as those contained in the Bill of Rights and even if they did, they contend that the Constitution was never meant for the "untouchables" known in the contemporary Philippine history as "collaborators," and that no one can imagine a more glaring case for the granting of a writ of habeas corpus than that of the petitioner, it appearing that the circumstances of his arrest are self-demonstrative of the most scandalous violation of the Bill of Rights ever perpetrated under the American flag.

Petitioner, as has been shown, appears well supported in his complaint.

Now, as one of the questions raised in this case, let us determine the validity of that portion of section 19 of Commonwealth Act No. 682, an act creating the People's Court, which provides as follows:

"* * * And, provided, further, That, in the interest of public security, the provisions of article one hundred twenty-five of the Revised Penal Code, as amended, shall be deemed, as they are hereby, suspended, insofar as the aforesaid political prisoners are concerned, until the filing of the corresponding information with the

People's Court, but the period of suspension shall not be more than six (6) months from the formal delivery of said political prisoners by the Commander-in-Chief of the Armed Forces of the United States in the Philippines to the Commonwealth Government."

The provision of the Revised Penal Code which has been virtually suspended by this law is:

"ART. 125. Delay in the delivery of detained persons to the proper judicial authorities.—The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of six hours." (As amended by Act No. 3940.)

The pertinent provisions of our fundamental law which limit the powers of the legislative branch of our government in the enactment of laws are as follows:

"ART. III.—BILL OF RIGHTS

"SECTION 1. (1) No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

* * * * *

"(15) No person shall be held to answer for a criminal offense without due process of law.

* * * * *

"(17) In all criminal prosecutions the accused shall be presumed to be innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses in his behalf." "Development of the Doctrine of Due Process of Law.

"Though the words 'due process of law' have not a long history, the doctrine implied by them has a history in Anglo-American law which extends for more than seven hundred years—back, indeed, to the signing of Magna Charta. And yet, notwithstanding this long period during which countless opportunities have presented themselves for its application and judicial definition, the doctrine has not yet received a statement in such a form that its specific applications can, in all cases, be determined. This failure has been due, not to any lack of judicial effort or acumen, but to the very nature of the doctrine which, asserting a fundamental principle of justice rather than a specific rule of law, is not susceptible of more than general statement. The result is, that the meaning of the phrase has to be sought in the history of its specific applications, and, as the variety of these possible applications is infinite, it will probably never be possible to say that the full content of that meaning has been determined. In *Twining vs. New Jersey* (211 U. S., 78), we find the court saying: 'Few phrases in the law are so elusive of exact apprehension as this. This court has always declined to give a comprehensive definition of it, and has preferred that its full meaning should be gradually ascertained by the process of inclusion and exclusion in the course of the decisions of cases as they arise.' So also in *Davidson vs. New Orleans* (96 U. S., 97), the court said: 'to define what it is for a state to deprive a person of life, liberty or property without due process of law, in terms which would cover every exercise of power thus forbidden to the state, and exclude those which are not, no more useful construction could be furnished by this or any other court to any part of the fundamental law.' And, later in the same opinion: 'There is wisdom in the ascertains of the intent and application of such an important phrase in the Federal Constitution by the gradual process of judicial inclusion and exclusion as the cases presented for decision shall require, with the reasoning on which such discussions may be founded.'

"In *Holden vs. Hardy* (169 U. S., 366) the court said: 'This court has never attempted to define with precision the words "due process of law." It is sufficient to say that there are certain immutable principles of justice

which inhere in the very idea of free government which no member of the Union may disregard.'

"It would appear, then, that a complete knowledge of the meaning of the doctrine of due process of law in American constitutional jurisprudence can be obtained only by a study of every case in which its application has been sought. * * *"

"Per Legem Terras.

"The historical antecedents of the phrase 'due process of law' may be clearly traced back to the expression *per legem terrae* as it occurs in the Charter wrung by the Barons from King John. The 39th chapter of that document provides that 'no freeman shall be taken, or imprisoned, or disseized, or outlawed, or exiled, or in any way destroyed; nor shall we go upon him nor send upon him, but by the lawful judgment of his peers or by the law of the land' (*per legem terrae*). In the later re-issues and reaffirmations of this charter by Henry III, in 1216, 1217 and 1225, this provision was repeated, with, however, in the issues of 1217 and 1225, the addition of the words after disseized, 'of his freehold, or liberties, or free customs,' (*de libero tenemento suo vel libertatibus, vel liberis consuetudinibus suis*).

"The words of Magna Charta, *per legem terrae*, probably had at this time the technical meaning that no civil or criminal plea should be decided against a freeman until he had been given the opportunity to furnish the customary 'proof which the law, as it then stood, recognized and permitted him to offer. This proof might be by battle, or ordeal, or by compurgation. Whatever form it might assume it was technically known as a law (*lex*), that is, as a test according to which the defendant's claim was to be upheld or denied. (McKechnie, *Magna Charta*, 102, 441, 442; Thayer, *Evidence*, 200; Bigelow, *History of Procedure*, 155. Thayer and Bigelow are cited by McKechnie.)

"In the various petitions of the Parliament in the Fourteenth Century against the arbitrary acts of the King's Council, the guaranty of the law of the land was appealed to, and these petitions, when assented to by the King, became, of course, statutes of the realm. Thus, in 1331, in Stat. 5 Edw. III, C. 9, it was declared that 'no man from henceforth shall be attacked by any accusation, nor forejudged of life or limb, nor his lands, tenements, goods nor chattels Beized into the King's hands against the form of the Great Charter and the law of the land.' So again, in 1351, in Stat. 25, Edw. III, C 4, it was declared that 'from henceforth none shall be taken by petition or suggestion made to our lord the King or his Council, unless it be by presentment or indictment of his good and lawful people of the same neighborhood, where such deeds be done, in due manner, or by process made by writ original at the common law, nor that none be ousted of his franchises, nor of his household, unless he be fully brought in to answer and forejudged of the same by the courts of the law.' Still again, in 1355, in Stat. 28, Edw. III, C. 3, there was a substantially similar provision, and there, for what would appear to be the first time, we have the modern phrase employed. 'No man,' it was declared, 'of what state or condition soever he be, shall be put out of his lands, or tenements, nor taken, nor imprisoned, nor indicted, nor put to death, without he be brought in to answer by due process of law.' (*Par due proces de lei*.) (Cf. McGehee, *Due Process of Law*, Chap. I.)

"It is thus apparent that in these petitions and statutes of Edward III, the phrases 'due process of law' and 'the law of the land' had come to be synonymous, both indicating, as the substance of the petitions shows, that the guaranty insisted upon was that persons should not be imprisoned except upon due indictment, or without an opportunity on their parts to test the legality of their arrest and detention, and that their property should not be taken except in proceedings conducted in due form in which fair opportunity was offered to the one claiming ownership or right to possession to appear and show cause, if any, why the seizure should not be made.

"The Petition of Right of 1628, approved by Charles I, recited various arbitrary acts complained of, and appealed to 'the laws and franchises of the realm.' Coke, in his Second Institute, defined the phrase *per legem terrae* as meaning 'the common law, statute law or custom of England,' and then declared: 'For the true sense and exposition of these words, see the Statute 37, Edw. III, C. 8, where the words 'by the law of the land' are rendered 'without due process of law', for there it is said, though it be contained in the Great Charter, that no

man be taken, imprisoned, or put out of his freehold without due process of law; that is by indictment or presentment of good and lawful men where such deeds be done or by writ original of the common law.

"It was in this sense as employed in the statutes of Edward III and by Coke, and as relating solely to matters of procedure, that the phrase due process of law was introduced into American law." (3 Willoughby on the Constitution of the United States, 2d ed., sections 1113, 1114, pp. 1685, 1688,)

"English and American Use of the Phrase 'Due Process of Law'

Contrasted.

"Coming now to American practice we find that the exact phrase 'due process of law' was not employed in any of the eleven State constitutions adopted prior to the Federal Constitution, but that it early found expression in substance, if not in very words, in those instruments. The very words do, however, appear in the Declaration of Rights of the State of New York, adopted in 1777, and in one of the amendments proposed by that State to the Federal Constitution as drafted by the Convention of 1787. The first appearance of the express provision in an American instrument of government is in the Fifth Article of Amendment to the Constitution of the United States, adopted in 1791. That amendment provides, inter alia, that 'nor shall any person * * * be deprived of life, liberty or property, without due process of law.' The Federal imposition of this requirement upon the States did not come until 1868 when the Fourteenth Amendment was ratified.

"It is a very remarkable fact that not until our written Constitution was more than half a century old did the phrase receive an interpretation and application which approximates that which it has today, and not, indeed, until a hundred years had passed away was resort had to it as the usual device of those disapproving of the acts of their legislatures. This, however, is no doubt in a measure explainable by the fact that not until 'the increased complexity of social and industrial life had led, upon the one hand, to the use by the State and Federal Governments of administrative process more or less summary in character and, upon the other hand, to a marked increase in the regulative control of law over private acts and the use of public property, did there appear the necessity for the appeal to this limitation by those who conceived themselves injured by the exercise of such administrative powers or by the enforcement of these legislative regulations.

"In two most important respects the application in America of the requirement of due process of law has differed from that which it had received in England prior to 1776, and which, indeed, it still receives in that country. These are: (1) that, in the United States, it operates as a limitation upon the legislative as well as upon the executive branch of the government, and (2) that it relates to substantive as well as to procedural rights. This second application is, however, one which, as we shall see, was not at first developed.

"Before the requirement could be recognized as one imposed upon the legislature there had first to be established the doctrine that the courts, when called upon to apply the enactments of the lawmaking branch of the government of which they themselves constitute the judiciary, may declare the invalidity of enactments which, in their judgment, conflict with the provisions of the written Constitution. This doctrine, as is well known, was not accepted without protest, but may be said to have received final and decisive sanction as a fundamental principle of American constitutional jurisprudence in the great opinion of Marshall, rendered in 1803, in the case of *Marbury vs. Madison* (1 Cr., 137).

"That, as contrasted with English practice, the requirement of due process of law was a limitation upon the legislative power, so far, at least, as to render void an enactment authorizing a taking of life, liberty or property by an arbitrary or otherwise defective procedure, seems early to have been held, the argument being founded upon the obvious fact that, as contrasted with the English constitutional documents, American written instruments of government and their accompanying Bills of Rights have for their primary aim the delimitation of the powers of all the departments of government,— of the legislative as well as the executive and judicial." (3 Willoughby, 2d ed., section 1115, pp. 1689, 1690.)

"The possibility, under a popular form of government, of oppression in the form of laws enacted by their own representatives, does not appear to have been keenly felt by the people. So far, however, as it was apprehended, the early view seems to have been that the restraints of natural law would be operative, according to the doctrine that the law-making branch of every government is inherently without the power arbitrarily and oppressively to invade the sphere of private rights of persons and property. This natural law doctrine, though it can never be said to have gained a definite establishment, even for a time, nevertheless received frequent obiter assertion, and its influence was for a long time seen in discussions of our higher courts. Thus, for example, in 1875, in *Loan Association vs. Topeka* the court said: 'It must be conceded that there are such rights in every free government beyond the control of the state,—a government which recognized no such rights, which held the lives, the liberty and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power is, after all, but a despotism * * *. The theory of our governments, state and municipal, is opposed to the deposit of unlimited power anywhere. The executive, the legislative and the judicial branches of these governments are all of limited and defined powers. There are limitations on such power which grow out of the essential nature of all free governments—implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name. No court, for instance, would hesitate to declare void a statute which enacted that A and B who were husband and wife to each other should be so no longer, but that A should thereafter be the husband of C, and B the wife of D, or which should enact that the homestead now owned by A should henceforth be the property of B.' " 3 Willoughby, *United States Constitutional Law*, section 1116, pp. 1692, 1693.)

"There are certain general principles, well settled, however, which narrow the field of discussion, and may serve as helps to correct conclusions. These principles grow out of the proposition universally accepted by American courts on the authority of Coke, that the words 'due process of law' are equivalent in meaning to the words 'law of the land,' contained in that chapter of Magna Charta which provides that 'no freeman shall be taken, or imprisoned, or disseized, or outlawed, or exiled, or any wise destroyed; nor shall we go upon him, nor send upon him, but by lawful judgment of his peers, or by the law of the land.' "

"In *Hagar vs. Reclamation Dist.* it was said: 'It is sufficient to say that by due process of law is meant one which, following the forms of law, is appropriate to the case and just to the parties to be affected. It must be pursued in the, ordinary mode prescribed by law, it must be adapted to the end to be attained, and whenever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justness of the judgment sought. The clause, therefore, means that there can be no proceeding against life, liberty, or property which may result in deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights.'

" 'By the law of the land,' said Webster in a much quoted paragraph, 'is most clearly intended the general law which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty and property and immunities under the protection of general rules which govern society. Everything which may pass under the form of an enactment is not law of the land.'" (3 Willoughby, 2d ed., pp. 1708, 1709.)

"The fact that the requirement as to due process includes, to a very considerable extent at least, the guarantee of equal protection of the laws, is especially shown in the opinion of the court in *Smyth vs. Ames* where it is said: 'The equal protection of the laws, which by the Fourteenth Amendment no State can deny to the individual, forbids legislation, in whatever form it may be enacted, by which the property of an individual is, without compensation, wrested from him for the benefit of another, or of the public'

"The possible distinction between the two prohibitions we find touched upon by Chief Justice Taft in his opinion in *Truax vs. Corrigan*. He there said: 'It may be that they (the two prohibitions) overlap, that a violation of one may involve at times the violation of the other, but the spheres of the protection they offer are not conterminous. * * * The due process clause * * * of course tends to secure equality of law in the sense that it

makes a required minimum of protection for everyone's right of life, liberty, and property, which the Congress or the legislature may not withhold. Our whole system of law is predicated on the general fundamental principle of equality of application of the law. * * * But the framers and adopters of this (Fourteenth) Amendment were not content to depend on a mere minimum secured by the due process clause, or upon the spirit of equality which might not be insisted on by local public opinion. They therefore embodied that spirit in a specific guaranty. The guaranty was aimed at undue favor and individual or class privilege, on the one hand, and at hostile discrimination or the oppression of inequality, on the other. It sought an equality of treatment of all persons, even though all enjoyed the protection of due process.' Thus, in the instant case, the Chief Justice pointed out that the State statute under examination which prohibited interference by injunctions in disputes between employers and employees concerning terms or conditions of employment resulted in the recognition of one set of actions against ordinary tortfeasors and another set against tortfeasors in labor disputes. The contention that no one has a vested right to injunctive relief, he said, did not meet the objection that the granting of equitable relief to one man or set of men, and denying it to others under like circumstances and in the same jurisdiction was a denial of the equal protection of the laws.

"In *Hayes vs. Missouri* the court said of the Fourteenth Amendment that it 'does not prohibit legislation which is limited either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subject to such legislation shall be treated alike, under like circumstances and conditions both in the privileges conferred and in the liabilities imposed.' Having quoted this statement, Chief Justice Taft in *Truax vs. Corrigan* added: 'Indeed, protection is not protection unless it does so. Immunity granted to a class, however limited, having the effect to deprive another class, however limited, of a personal or property right, is just as clearly a denial of equal protection of the laws to the latter class as if the immunity were in favor of, or the deprivation of right permitted worked against, a larger class.' ,

"From what has been said it is clear that, in many cases, laws which have been held invalid as denying due process of law might also have been so held as denying equal protection of the laws, or vice-versa, and that, in fact, in not a few cases the courts have referred to both prohibitions leaving it uncertain which prohibition was deemed the most pertinent and potent in the premises.

"One of the best general statements of the scope and intent of the provision for the equal protection of the laws is that given by Justice Field in his opinion in *Barbier vs. Connolly*, in which, speaking for the court, he said:

" 'The Fourteenth Amendment in declaring that no State "shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," undoubtedly intended, not only that there should be no arbitrary deprivation of life or liberty or arbitrary spoliation of property but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits by anyone except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses.' " (3 Willoughby 2d ed., pp. 1928, 1930.)

"The legislature may suspend the operation of the general laws of the State, but when it does so the suspension must be general, and cannot be made for individual cases or for particular localities. Privileges may be granted to particular individuals when by so doing the rights of others are not interfered with; disabilities may be removed; the legislature as *parens patriae*, when not forbidden, may grant authority to the guardians or trustees of incompetent persons to exercise a statutory control over their estates for their assistance, comfort, or support, or for the discharge of legal or equitable liens upon their property; but every one has a right to demand that he be governed by general rules, and a special statute which, without his consent, singles his case out as one to be

regulated by a different law from that which is applied in all similar cases, would not be legitimate legislation, but would be such an arbitrary mandate as is not within the province of free governments. Those make the laws 'are to govern by promulgated, established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favorite at court and the countryman at plough.' This is a maxim in constitutional law, and by it we may test the authority and binding force of legislative enactments." (Cooley's Constitutional Limitations, 7th ed., pp. 558, 559.)

"Equality of rights, privileges, and capacities unquestionably should be the aim of the law; and if special privileges are granted, or special burdens or restrictions imposed in any case, it must be presumed that the legislature designed to depart as little as possible from this fundamental maxim of government.

"The State, it is to be presumed, has no favors to bestow, and designs to inflict no arbitrary deprivation of rights. Special privileges are always obnoxious, and discriminations against persons or classes are still more so; and, as a rule of construction, it is to be presumed they were probably not contemplated or designed. (Cooley's Constitutional Limitations, 7th ed., pp. 562, 563.)

"It is usual for state constitutions and statutes to provide for the accused a speedy and public trial. By a speedy trial is meant one that can be had as soon after indictment as the prosecution can with reasonable diligence prepare for, regard being had to the terms of court; a trial conducted according to fixed rules, regulations, and proceedings of law, free from vexatious, capricious, and oppressive delays. The term 'speedy' as thus used, being a word of indeterminate meaning, permits legislative definition to some extent; and the authorities uniformly hold that such statutes are enacted for the purpose of enforcing the constitutional right, and that they constitute a legislative construction or definition of the constitutional provision, and must be construed fairly to the accomplishment of that end. Any act of the legislature which infringes the constitutional provision is necessarily nugatory." (16 C. J., pp. 439, 440.)

" 'The purpose of the statute (1) is to prevent continued incarceration without opportunity to the accused, within a reasonable time, to meet the proofs upon which the charge is based.' (State vs. Miller, 72 Wash., 154, 159, 163; 129 P., 1140.) (2) 'The constitutional privilege of a speedy trial was intended to prevent an arbitrary, indefinite imprisonment, without any opportunity to the accused to face his accusers in a public trial. It was never intended as furnishing a technical means for escaping trial.' (State vs. Miller, supra.) (3) 'The sole object and purpose of all the laws from first to last, was to ensure a speedy trial to the accused, and to guard against a protracted imprisonment or harassment by a criminal prosecution, an object but little if any less interesting to the public than to him.' (Com. vs. Adcock, 8 Grat. [49 Va.], 661, 680.) (Quote Denham vs. Robinson, 72 W. Va., 243, 255; 77 S. E., 970; 45 L. R. A., N. S., 1123; Ann. Cas. 1915D, 997.) (See also Ex parte Santee (2 Va. Cas. [4 Va.], 363, 365) (where the court said: That whilst it has an eye to the solemn duty of protecting the public against the wrongs of those who are regardless of their obligations to society, and to the delays which the Commonwealth may unavoidably encounter in prosecuting breaches of these obligations, it is studious to shield the accused from the consequences of the laches of those to whom the duty of conducting the prosecution may. have been assigned. The public has rights as well as the accused, and one of the first of these is, that of redressing, or punishing their wrongs. It would not seem reasonable that this right, so necessary for the preservation of society, should be forfeited without its default).

" 'This provision of our constitutions must receive a reasonable interpretation. It cannot be held to mean that in all the possible vicissitudes of human affairs, a person who is accused of a crime shall have a speedy and public trial in due form of law, because there may be times when the civil administration will be suspended by the force of uncontrollable circumstances. This constitutional provision was adopted upon general considerations growing out of the experience of past times, and was intended to prevent the government from oppressing the citizen by holding criminal prosecutions suspended over him for an indefinite time; and it was also intended to prevent delays in the customary administration of justice, by imposing upon the judicial tribunals an obligation to proceed with reasonable dispatch in the trial of criminal accusations.' (Ex parte Turman, 26 Tex., 708, 710; 84 Am. D., 598.)" (16 C. J., 440, footnote.)

"In any criminal case, the person accused may not be deprived of life, liberty, or property except by due process of law, even though he is guilty. The law by which the question of due process is determined is the law of the jurisdiction where the offense was committed and the trial is had.

"Due process of law in a criminal case requires a law creating or defining the offense, a court of competent jurisdiction, accusation in due form, notice and opportunity to defend, trial before an impartial judge or judge and jury according to established criminal procedure, and a right to be discharged unless found guilty. * * *

"While the freedom of the state and federal governments to control and regulate the procedure of their courts for the prosecution of criminal offenses is limited by the requirement of the process of law, and the procedure must not work a denial of fundamental rights of accused included within the conception of due process, no particular form or method of procedure in criminal cases is required by the guaranty of due process so long as accused has due and sufficient notice of the charge or accusation and an adequate opportunity to be heard in defense." (16 C. J. S., pp. 1171-1173.)

"An emergency existing does not increase constitutional power or diminish constitutional restrictions; hence while emergency legislation may temporarily limit available remedies, it does not contemplate the permanent denial of due process." (16 C. J. S., p. 1157.)

"Although a law is fair on its face and impartial in appearance, yet, if it is applied and administered with an evil eye and unequal hand, so as to make unjust and illegal discrimination, it is within the prohibition of the Federal Constitution." (Chy Lung vs. Freeman, 92 U. S., 275; 23 Law. ed., 550.)

"The action of a state through its officers charged with the administration of a law fair in appearance may be of such a character as to constitute a denial of the equal protection of the laws." (Bailey MS. Alabama, 219 U. S., 219; 31 Sup. Ct. Rep., 145; 55 Law. ed., 191.)

"The clause 'due process of law' means that there can be no proceeding against life, liberty or property which may result in the deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights." (Turpin vs. Lemon, 187 U. S., 51; 23 Sup. Ct. Rep., 20; 47 Law. ed., 70.)

"CRIMINAL ACCUSATIONS

"Perhaps the most important of the protections to personal liberty consist in the mode of trial which is secured to every person accused of crime. At the common law, accusations of felony were made in the form of an indictment by a grand jury; and this process is still retained in many of the States, while others have substituted in its stead an information filed by the prosecuting officer of the State or country. The mode of investigating the facts, however, is the same in all; and this is through a trial by jury, surrounded by certain safeguards which are a well understood part of the system, and which the government cannot dispense with.

"First, we may mention that the humanity of our law always presumes an accused party innocent until he is proved to be guilty. This is a presumption which attends all the proceedings against him, from their initiation until they result in a verdict, which either finds the party guilty or converts the presumption of innocence into an adjudged fact.

"If there were any mode short of confinement which would, with reasonable certainty, insure the attendance of the accused to answer the accusation, it would not be justifiable to inflict upon him that indignity, when the effect is to subject him, in a greater or less degree, to the punishment of a guilty person, while as yet it is not determined that he has committed any crime. If the punishment on conviction cannot exceed in severity the forfeiture of a large sum of money, then it is reasonable to suppose that such a sum of money, or an agreement by responsible parties to pay it to the government in case the accused should fail to appear, would be sufficient security for his attendance; and therefore, at the common law, it was customary to take security of this character in all cases of misdemeanor; one or more friends of the accused undertaking for his appearance for

trial, and agreeing that a certain sum of money should be levied of their goods and chattels, lands and tenements, if he made default. * * * The presumption of innocence is an absolute protection against conviction and punishment, except either, first on confession in open court; or, second, on proof which places the guilt beyond any reasonable doubt. Formerly, if a prisoner arraigned for felony stood mute wilfully, and refused to plead, a terrible mode was resorted to for the purpose of compelling him to do so; and this might even end in his death; but a more merciful proceeding is now substituted; the court entering a plea of not guilty for a party who, for any reason, fails to plead for himself.

"Again, it is required that the trial be speedy; and here also the injunction is addressed to the sense of justice and sound judgment of the court. In this country, where officers are specially appointed or elected to represent the people in these prosecutions, their position gives them an immense power for oppression; and it is to be feared they do not always sufficiently appreciate the responsibility, and wield the power with due regard to the legal rights and privileges of the accused. When a person charged with crime is willing to proceed at once to trial, no delay on the part of the prosecution is reasonable, except only that which is necessary for proper preparation and to secure the attendance of witnesses. Very much, however, must be left to the judgment of the prosecuting officer in these cases; and the court would not compel the government to proceed to trial at the first term after indictment found or information filed, if the officer who represents it should state, under the responsibility of his official oath, that he was not and could not be ready at that time. But further delay would not generally be allowed without a more specific showing of the causes which prevent the State proceeding to trial, including the names of the witnesses, the steps taken to procure them., and the facts expected to be proved by them, in order that the court might judge of the reasonableness of the application, and that the prisoner, might, if he saw fit to take that course, secure an immediate trial by admitting That the witnesses, if present, would testify to the facts which the prosecution have claimed could be proven by them." (Cooley's Constitutional Limitations, 7th ed., pp. 436 141.)

"Section 19 of our Bill of Rights provides that 'no citizen of this state shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.'

" 'Law of the land' is interpreted to mean a general public law, operating equally upon every member of the community." (Re Jilz, 3 Mo. App., 246.)

"No state shall * * * deny to any person within its jurisdiction the equal protection of the laws;" "nor shall any state deprive any person of life, liberty, or property without due process of law." * * * U. S. Constitution, section 1, article 14.

"Due process of law under the 14th Amendment and the equal protection of the law are secured if the law operates on all alike and does not subject the individual to the arbitrary exercise of the powers of government. (Duncan vs. Missouri, 152 U. S., 382; 38 Law. ed., 487; 14 Sup. Ct. Rep., 570; Hurtado vs. California, 110 U. S., 535; 28 Law. ed., 232; 4 Sup. Ct. Rep., Ill, 292.)

"Do laws operate equally upon the citizens of the Commonwealth of Texas which will imprison under like verdicts one man for a month and another for six months? Manifestly not.

"Section 3 of the Bill of Rights to the State Constitution provides:

'All freemen, when they form a social compact, have equal rights.'

"A law which makes different punishments follow the same identical criminal acts in the different political subdivisions of Texas violates both our state and Federal Constitutions. It fails to accord equal rights and equal protection of the law, and a conviction under it is not in due course of the 'law of the land.' Re Jilz (3 Mo. App., 246); Re H. F. Millon (16 Idaho, 737; 22 L. R. A. [N. S.], 1123; 102 Pac, 374), and Jackson vs. State (55 Tex. Crim. Rep., 557; 117 S. W., 818), are cited in support of our view in their reasoning.

"We think the principles announced in the case of *Ex parte Jones* (106 Tex. Crim. Rep., 185; 290 S. W., 177), apply in some degree to the instant case. It was there held that article 793, Code Crim. Proc, superseded and controlled an ordinance of the city of Dallas which allowed only 50 cents per day to be credited upon the fine of a convict for labor performed. Provisions similar to those quoted in our state constitution have been a part of Anglo-Saxon jurisprudence since there was wrung from the unwilling hands of King John at Runnymede in 1215 the Magna Charta, which itself provides that a freeman shall not be passed upon or condemned but 'by the lawful judgment of his peers and the law of the land.' 'Law of the land' has the same legal meaning as 'due process of law,' and one of its accepted meanings is that quoted above. *Re Jilz*, 3 Mo. App., 243; 3 Words & Phrases, pp. 2227-2232." (*Ex parte Sizemore*, 59 A. L. R., Annotated, pp. 430, 432.)

"And in *Re Jilz* ([1877], 3 Mo. App., 243), an act of the legislature of Missouri, which, by limiting the power of a court established in a certain county to assess punishments, varied the penalties for crimes committed therein from those fixed by the general law for the whole state, was held to be unconstitutional in so far as it had that effect, the court saying: 'A law which should prescribe death as the punishment of murder in one county, and imprisonment as the penalty for the same crime in other parts of the state, would be void, because not operating equally upon all inhabitants of the state. The general "law applicable to the state prescribes, as the punishment for the offense for which the petitioner was convicted, imprisonment in the county jail not exceeding one year, or fine not exceeding \$500, or both such fine and imprisonment. * * * A law prescribing a different punishment from this in St. Louis county is clearly unconstitutional. It follows that so much of the act referred to, establishing the court of criminal correction, as limits the punishment for this misdemeanor in St. Louis county to imprisonment for six months, is void.'

"So, in *State vs. Buchardt* (Mo.) supra, where the same legislative act was in question, the court says: 'Under our Constitution, it is not permissible to punish the same offense or violation of some public or general law by one species of punishment in one locality, and by a different or more heavy punishment in other localities in the state. A law inflicting such different penalties for the perpetration of any given crime cannot bear the test of judicial examination.'

"And, in *State vs. Gregori* ([1928], 3 Mo. 2 S. W. [2d], 747), an act of the legislature which made children seventeen years of age in counties of 50,000 population or more subject to the juvenile court act, while in counties of less than 50,000 population children seventeen years of age were not subject to the juvenile court act, but were subject to full criminal responsibility, was held unconstitutional as denying equal protection of the laws; the court stating that it was the general doctrine that the law relative to those who might be charged with and convicted of crime, as well as to the punishment to be inflicted therefor, should operate equally upon every citizen or inhabitant of the state.

"And, in *State vs. Fowler* ([1927], 193 N. C, 290; 136 S. E., 709), an act of the North Carolina legislature, applicable to five counties of the state only, which imposed as punishment for a specified offense a fine only, while a statute applicable to the whole state imposed a fine or imprisonment, was held to be unconstitutional under both the Federal and State Constitutions as a denial of the equal protection of the laws. The court says: 'But the statute under consideration cannot be sustained on the ground that it was enacted in the exercise of the police power. The question is whether it shall supersede "the law of the land"—the general public law which was designed to operate without exception or partiality throughout the state. It is needful to remember that indictment was drafted under the general law, and that the decisive question is whether offenders in the five counties referred to may lawfully be exempted from the punishment prescribed by the general law; whether they shall be subject only to a fine when the offenders in ninety-five other counties may be punished by imprisonment. In our judgment this part of section 2 is neither equal protection of the laws nor the protection of equal laws. * * * It is the grant of a special exemption from punishment or an exclusive or separate privilege which is forbidden by the cited provision. * * * The principle of uniformity in the operation of a general law extends to the punishment, and denounces as arbitrary and unreasonable the imposition in one county of any kind of punishment which is different from that which is prescribed under the general law to all who may be

guilty of the same offense. It follows that the provision limiting the punishment for the first offense to a fine must be regarded as an arbitrary class distinction which cannot be sustained because forbidden by the fundamental law, and the judgment which was pronounced by authority of the general law must be upheld." (Annotation, 59 A. L. R., Annotated, p. 434.)

"Bills of attainder were prohibited to be passed, either by the Congress or by the legislatures of the several States. Attainder, in a strict sense, means an extinction of civil and political rights and capacities; and at the common law it followed, as of course, on conviction and sentence to death for treason; and, in greater or less degree, on conviction and sentence for the different classes of felony.

"A bill of attainder was legislative conviction for alleged crime, with judgment of death. Such convictions have not been uncommon under other governments, and the power to pass these bills has been exercised by the Parliament of England at some periods in its history, under the most oppressive and unjustifiable circumstances, greatly aggravated by an arbitrary course of procedure, which had few of the incidents of a judicial investigation into alleged crime. For some time before the American Revolution, however, no one had attempted to defend it as a legitimate exercise of power; and if it would be unjustifiable anywhere, there were many reasons why it would be specially obnoxious under a free government, and why consequently its prohibition, under the existing circumstances of our country, would be a matter of more than ordinary importance. Every one must concede that a legislative body, from its numbers and organization, and from the very intimate dependence of its members upon the people, which renders them liable to be peculiarly susceptible to popular clamor, it not properly constituted to try with coolness, caution, and impartiality a criminal charge, especially in those cases in which the popular feeling is strongly excited—the very class of cases most likely to be prosecuted by this mode. And although it would be conceded that, if such bills were allowable, they should properly be presented only for offenses against the general laws of the land, and be proceeded with on the same full opportunity for investigation and defense which is afforded in the courts of the common law, yet it was remembered that in practice they were often resorted to because an obnoxious person was not subject to punishment under the general law, or because, in proceeding against him by this mode, some rule of the common law requiring a particular species of degree of evidence might be evaded, and a conviction secured on proofs that a jury would not be suffered to accept as overcoming the legal presumption of innocence. Whether the accused should necessarily be served with process; what degree or species of evidence should be required; whether the rules of law should be followed, either in determining what constituted a crime, or in dealing with the accused after conviction—were all questions which would necessarily address themselves to the legislative discretion and sense of justice; and the very qualities which are essential in a court to protect individuals on trial before them against popular clamor, or the hate of those in powers, were precisely those which were likely to prove weak or wanting in the legislative body at such a time. And what could be more obnoxious in a free government than the exercise of such a power by a popular body, controlled by a mere majority, fresh from the contests of exciting elections, and quite too apt, under the most favorable circumstances, to suspect the motives of their adversaries, and to resort to measures of doubtful propriety to secure party ends?

"Nor were legislative punishments of this severe character the only ones known to parliamentary history; there were others of a milder form, which were only less obnoxious in that the consequences were less terrible. These legislative convictions which imposed punishments less than that of death were called bills of pains and penalties, as distinguished from bills of attainder; but the constitutional provisions we have referred to were undoubtedly aimed at any and every species of legislative punishment for criminal or supposed criminal offenses; and the term 'bill of attainder' is used in a generic sense, which would include bills of pains and penalties also.

"The thoughtful reader will not fail to discover, in the acts of the American States during the Revolutionary period, sufficient reason for this constitutional provision, even if the still more monitory history of the English attainders had not been so freshly remembered. Some of these acts provided for the forfeiture of the estates,

within the Commonwealth, of those British subjects who had withdrawn from the jurisdiction because not satisfied that grievances existed sufficiently serious to justify the last resort of an oppressed people, or because of other reasons not satisfactory to the existing authorities ; and the only investigation provided for was an inquiry into the desertion. Others mentioned particular persons by name, adjudged them guilty of adhering to the enemies of the State, and proceeded to inflict punishment upon them so far as the presence of property within the Commonwealth would enable the government to do so. These were the resorts of a time of extreme peril, and if possible to justify them in a period of revolution, when everything was staked on success, and when the public safety would not permit too much weight to scruples concerning the private rights of those who were not aiding the popular cause, the power to repeat such acts under any conceivable circumstances in which the country could be placed again was felt to be too dangerous to be left in the legislative hands. So far as proceedings had been completed under those acts before the treaty of 1783, by the actual transfer of property, they remained valid and effectual afterwards; but so far as they were then incomplete, they were put an end to by that treaty.

"The conviction of the propriety of this constitutional provision has been so universal, that it has never been questioned, either in legislative bodies or elsewhere. Nevertheless, cases have recently arisen, growing out of the attempt to break up and destroy the government of the United States, in which the Supreme Court of the United States has adjudged certain action of Congress to be in violation of this provision and consequently void. The action referred to was designed to exclude from practice in the United States courts all persons who had taken up arms against the government during the recent rebellion, or who had voluntarily given aid and encouragement to its enemies; and the mode adopted to effect the exclusion was to require of all persons, before they should be admitted to the bar or allowed to practice, an oath negating any such disloyal action. This decision was not at first universally accepted as sound; and the Supreme Courts of West Virginia and of the District of Columbia declined to follow it, insisting that permission to practise in the courts is not a right, but a privilege, and that the withholding it for any reason of State policy or personal unfitness could not be regarded as the infliction of criminal punishment.

"The Supreme Court of the United States has also, upon the same reasoning, held a clause in the Constitution of Missouri, which, among other things, excluded all priests and clergymen from practising or teaching unless they should first take a similar oath of loyalty, to be void, overruling in so doing a decision of the Supreme Court of that State." (Cooley's Constitutional Limitations, 7th ed., pp. 368-372.)

The legal problem confronting us is characterized by the fact that we have to avoid the misleading effect resulting from the difference between the text and letter of the law and their grammatical sense and effect on one side, and as it is interpreted and applied in actual practice.

Apparently, there is nothing so harmless as the provision of section 19 of Act No. 682, suspending for a period of not more than six months the provision of article 125 of the Revised Penal Code, as amended.

Article 125 of the Revised Penal Code punishes the public officer or employee who "shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of six hours."

Said article has nothing to show that it bears constitutional sanction, It is only a part of the penal laws which are within the full jurisdiction of the legislative power to enact or not to enact. The Philippine Legislature which enacted the Revised Penal Code could have failed to do so without, by that very fact, violating any provision of the Constitution. The succeeding legislative bodies—the unicameral National Assembly and the Congress—may, without question, repeal or suspend article 125 of the Revised Penal Code, as any other article of the same, or even the whole code.

Therefore, as an abstract proposition, as a matter of legal technicality, we believe that there is absolutely no

ground for disputing the power of the legislative body to suspend or even repeal article 125 of the Revised Penal Code.

But the provision is vitiated:

(1) By the fact that it is a class legislation, excluding the political prisoners concerned from the same benefits and protection afforded all other persons by article 125.

(2) By the fact that it is interpreted and applied, not only in a negative sense as a deterrent against public officials or employees bent on encroaching and trampling upon the personal freedom of any person, but as a positive authority to said officers and employees to deprive and continue depriving the political prisoners concerned of their personal liberty, without due or any legal process of law provided the deprivation of liberty did not exceed six months, but without reckoning the previous many months of illegal detention they had already suffered before their formal transfer to the Commonwealth Government.

For these two radical and incurable defects, section 19 of Act No. 682 runs counter to the Constitution when it prohibits that no person shall be deprived of his liberty without due process of law nor shall any person be denied the equal protection of the laws. (Article III, section 1 [1], Constitution of the Philippines.)

No one can, with candor and fairness, deny the discriminatory character of the provision. If all discriminations are abhorrent under any regime of law and justice, imperatively more in a democracy such as ours, tribunals must be recreant to their duties if they fail to deny validity to such an odious legal measure, conceived, adopted, and unhappily enacted by the legislative power in one of its blundering moods in utter defiance of the fundamental law of the land.

Petitioner points out that in the provision there is an unconstitutional delegation of legislative powers, because the power to suspend the provision of article 125 of the

Revised Penal Code within the maximum period of six months, in fact, is transferred to the Special Prosecutors' Office, which may shorten or lengthen said suspension by filing the corresponding criminal information at any time it may deem convenient.

The Special Prosecutors' Office may not suspend altogether article 125 of the Revised Penal Code by filing immediately the information. It may suspend it for 10 days, by filing the information within that time. It may suspend it for one month, two months, or three months, by filing the information within the desired time. It may suspend it for a maximum period of six months just by mere inaction, by not filing any information at all. The result is, in fact, to place in the hands of the Special Prosecutors' Office the power to suspend article 125 for any length of time within the maximum period of six months. And what is worst is that the suspension that the Special Prosecutors' Office may decree is individualized, and not of general effect to all the political prisoners concerned, thus making the Special Prosecutors' Office a kind of dictatorship which may dispense its favors and disfavor to individual prisoners under no other test than its convenience and whims.

Evidently, petitioner's complaint is well-taken, giving additional ground for the nullity of the provision in question, the legislative power having been reserved by the Constitution exclusively to Congress.

Lastly, the provision in question appears to legalize the many months of illegal detention already endured by the political prisoners concerned. The legislative power can not legalize illegal detention, much more if that illegal detention has been perpetrated in utter violation of the Bill of Rights of the Constitution.

Petitioner assails the validity of the whole Act No. 682, aside from what has been already said about section 19 thereof, upon the following grounds:

- (1) Because it is an ex post facto law, violating section 1(11), Article III, of the Constitution, petitioner having been deprived of his acquired right to be freed, under penalty to his detainers, within six hours after his detention under article 125 of the Revised Penal Code.
- (2) Because section 2 set up a legal trap by which a person, accused in the information of an offense, may be convicted and sentenced for a different one, thus violating his constitutional right "to be informed of the nature and cause of the accusation against him." (Section 1 [17], Article III, Constitution of the Philippines.)
- (3) Because it creates a special court to try cases arising years before its creation, transferring a jurisdiction belonging to courts of first instance to the People's Court, a blunder identical in nature and viciousness to the former practice of shuffling judges of first instance, the judicial rigodon resorted to before to suit certain purposes of the government and which was stopped by Judge Borromeo's courageous defense of the independence of the judiciary, in a leading case before the Supreme Court which made history.
- (4) Because the creation of the People's Court is a judicial gerrymandering.
- (5) Because the name "People's Court" suggests a political entity, a popular dispenser of political justice, in contrast with the stable, impartial, cultured nature of a judiciary, detached from momentary interests and influences.
- (6) Because the self-extinguishing character of the People's Court makes it an agency for special mission, more an agency of the legislature than that of the administration of justice.
- (7) Because it disqualifies members of the judiciary who served under the Japanese regime.

We cannot but recognize that strength of the objections, specially objections (1), (2) and (7).

But we are not ready to support petitioner's contention that the whole act should be declared null and void, considering that the unconstitutional provisions thereof may be segregated and the remaining portions of the text may stand on their own feet.

Objection (1) adds only another ground to show the unconstitutionality of the provision of section 19, suspending article 125 of the Revised Penal Code; and objection (2) only affects the corresponding provision of section 2 of the act. Objection (7), upon which we have already expressed our opinion in the case of *De la Rama vs. Misa* (42 Off. Gaz., 1544), only affects the provision concerning the disqualification of certain justices of the Supreme Court.

Regarding objections (3), (4), (5), and (6), although they are meritorious, we believe that they are offset by the collegiate character of the newly created court. We are inclined to believe that the main purpose in creating the People's Court was precisely to afford those who will be charged and tried before it a special safeguard, in the fact that more than one judge will have to hear and try a case, to counterbalance the prevailing prejudice in the community against the persons who are accused for having allegedly collaborated with the enemy. For this reason, we are of opinion that the act creating the People's Court must not be invalidated.

But it is our hope that its creation will not set a precedent that will sanction a wrong principle. Generally speaking, the creation of temporary tribunals to administer justice in specifically predetermined existing cases is contrary to the nature and character of judicial functions and the purposes of the administration of justice, which must be characterized by the independence of judicial officers, independence that cannot be secured without guaranteeing the stability of tenure of office.

Judges are not supposed to decide on what may appear right or wrong in the evanescent moment when the voice of passion grows louder in the market of human activities. They must not make decisions in the spur of news that

make screaming headlines and arouse the uncontrollable emotions of political leaders or of the populace. They must decide between right and wrong by the criterion of universal conscience, by the judgment, not only of the fleeting instance of evolving history, but the unending caravans of generations to come.

The inherent justice of their decisions must continue being sensed as the treasured human heritage long long after they had rendered their inescapable tribute to death, like the aroma which continues enriching and sweetening the air long after the flowers have been crushed in the chemist's retorts to give way to their perfumed essence, like the beauty of the temples and palaces of Palmyra which continues charming our memory millenniums after they have become just dusty ruins, like the heavenly melodies which continue lingering in our ears long after we have heard those musical gems, such as the masterpieces of Bach and the symphonies of Beethoven, like light emitted by stars which ceased to exist centuries ago still traveling in the immensity of space to attract our admiration and arouse dreams of immortality.

In order that judges could render judgments of lasting value which would embody the wisdom of the ages and the moral sense of all time, it is necessary that they should preside over tribunals which must be looked upon as permanent institutions of justice, not temporary makeshifts, more appropriate to serve ephemeral purposes than to be the inviolable temples of an eternal goddess. And the judges themselves, to acquire the Olympic serenity, the awesome and noble austerity, the hieratic aloofness, the majestic equanimity proper of their great mission, there being none greater that can be entrusted to a person as the image of God, must feel, by the permanency, stability, and security of their tenure of office, that they owe an undivided loyalty, not to any transient idols or to any momentary masters, no matter how powerful they are, but to the inseparable twin divinities of truth and justice.

Judge Robert N. Wilkin said that the special function of a judicial officer is to determine what is right and what is wrong, not only for the clamorous present, but for silent generations yet to come. From him we quote these illuminating paragraphs:

"The guiding force in social evolution is not to be found in the arbitrary will of groups, nor in a common purpose. It is to be found in the law of our nature, that imminent or inherent law founded on the characteristics of human kind. 'A law instilled and not imposed,' as Cicero said, 'a law in which we are fashioned, not instructed. It is not created by proclamation or legislative fiat. It is discovered by patient research and spiritual insight.

"The true judge must have something of the vision of a prophet. He must be able to see the trends of his time extended, so that principles which he announces may be adjusted to conditions yet to come. The observation of Graham Wallas that a great judge needs a touch of the qualities that make a poet has been quoted with approval by Professor Chafee, Justice Cardozo, and others. Poets, as has been stated, bear the same relation to society as the antennas of an insect to its body; they are 'feelers' of the body politic. Their sensibilities are more acute, more advanced than those of their contemporaries, and what they feel and express today their fellows will feel and understand tomorrow. Poets, prophets, judges—they are God's elect; we cannot elect them.

"The great judge cannot be a child of his age. If his judgments are to be great they must be timeless, or at least timed to the future. The spirit of the law should enable him to transcend the spirit of his times and he should be able to speak *sub specie aeternitatis*. What a desecration of the office to choose its incumbent by any system which forces him to temporize!

"Judges in early times were priests, or more accurately stated, the priests performed the functions of judges. There is still much about the judicial office that is priestly. This has ever seemed quite natural to those who took seriously their first legal learning from Blackstone, who stated at the outset that all human laws depend upon divine law. While for a time that teaching seemed out of fashion, the more recent trend is to acknowledge again our subjection to a law of nature, a law divine. Be that as it may, it will not be disputed that a proper performance of judicial duties requires a devotion quite similar to the consecration of the priest.

Judges, like the clergy, should be kept unspotted from the world. Any personal interest, selfish concern, or party consciousness, corrupts not only the judge but the judicial function. Any want of honest detachment in the judge undermines public faith in judicial administration. As has frequently been stated, it is quite as important to the public that judges should be free from the appearance of evil as that they should be free from actual evil. The prevalent disrespect for law is prompted not so much by corruption in the courts, as by that system of choosing judges which makes every judge suspect.

"The taking of judicial office should be much like the taking of holy orders—one should not do so who is unwilling to suffer a kind of civil death. The only way in which one can be worthy of the office is by submerging self in the performance of the duties of the office. A judge should be only the voice of the law. As Cicero said, 'While the law is a voiceless magistrate, the magistrate is law made vocal.' It is arrogant presumption for a judge to pose as anything more, and gross indiscretion for him to assert his own voice. The only way in which he can avoid violation of the injunction, 'Judge not, that ye be not judged,' is by pronouncing, not his personal will, but the judgment of the law. How otherwise could a judge impose a death sentence and live in peace? If the judgment is his own, the blood of the condemned is upon him. If his judgment is at the behest of popular clamor he has given sanction to lynching. But if his judgment is the pronouncement of the law, the judicial function is fulfilled and his conscience is clear. The judicial robe should submerge personality and make its bearer, like a priest in vestment, an impersonal part of a divine function." (The Judicial Function and the Need of Professional Section of Judges by Robert N. Wilkin, Journal of the American Judicature Society, Vol. 29, No. 4, Dec, 1945.)

The facts of current experience showed the imperative need of an intellectual overhauling as part of the work of post-war rehabilitation in all orders of our national life. Many elemental tenets and ideals need be restated, if not rediscovered. The worries and psychological shocks caused by the Japanese initial victories and brutal oppressions concomitant with their occupation of our country, had the effect of warping the mentality and sense of moral values of not a negligible number of persons. There are men whose intellectual outlook and views of freedom and fundamental human rights, tethered by defective development of ideology, are not only outmoded, but absolutely incompatible with the trends of progress, whose brains appear not to be completely freed from the embryonic amnion and are in need of allantoic nutrition, who would rather wield the bludgeon of jungle arbitrariness and make a coffin of serfs of free people, than abide by the constitutional precepts and the noble doctrines of the UNO Charter, whose juridical ideas, rather than in the forum of modern democracy, have their proper place among the fossils of apteryx, megatheria and dinosaurs' museum and, notwithstanding, are being hailed in apparently responsible sectors of the press as heroes of progressiveness. Such nonsense and intellectual travesty are inconceivable except in a topsy-turvy world which has adopted the thyrsus as the choicest emblem of human happiness, where the frenzied mental processes have been inverted as if in the Corinthian order, the frieze, cornice, and architrave are placed at the foot of the column and above it the stylobate.

Among the basic concepts that must be included in the wholesale intellectual overhauling which we need undergo, if we have to follow the mental, social, legal, and moral thread which was cut at the impact of the disastrous invasion of our soil, is the one we have on personal liberty, upon which the traditional democratic principles we had been accepting and following before the enemy occupation, as part of the nature of our social and political institutions, appear to have been forgotten, the present case being one of a series of instances evidencing it, as can be seen in our opinions in *Raquiza vs. Bradford* (75 Phil., 50) ; *Reyes vs. Crisologo* (75 Phil., 225) ; *Duran vs. Abad Santos* (75 Phil., 410) ; *Herras Teehankee vs. Rovira* (75 Phil., 634) ; *Herras Teehankee vs. Director of Prisons* p. 756, *poz*; *Tafiada vs. Quirino* (42 Off. Gaz., 394), the pronouncements in which we are reiterating here.

The moral hiatus in our national life is over, and in this hour of resumption of democratic processes, there is an imperative need, as one of the cornerstones of our national structure, to redefine and reaffirm our pre-war

concept of human freedom.

The petitioner is entitled to be immediately set free, and we vote for restoring him to his personal freedom of which he was deprived without any legal process.

Petition denied.

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