

Liberty, in its broad sense, must consist in the right to follow any of the ordinary callings of life without being trammelled. * * * The right to follow any of the common occupations of life is an inalienable right. * * * Legislation of this kind is on the increase. It is stealthily stealing its way into the statutes for the ostensible purpose of raising revenue for the state, when in truth and in fact the only purpose of the promoters of such legislation is to control the business to which it is directed, to shut out competition, create a monopoly, and force those unable to pay the tax and possessing a knowledge of the business to look to the ones in control of the monopoly for employment.³⁴

POSSESSING PROPERTY

There is a tendency in legislative enactments to prevent crime by making the possession of some item an unlawful act. Recent examples involve the possession of drugs, certain guns, large amounts of cash, unregistered automobiles, or unlicensed dogs. The legal problems associated with these laws have frequently been exposed in cases dealing with the possession of alcohol. In the landmark *Wynehamer* case (13 N.Y. 378), a law which required destroying all intoxicating liquors owned and possessed by any person, was invalid as depriving people of property without due process of law.

As an attempt to justify such oppressive laws, it has been common to say that such possession is *prima facie* evidence of intent to sell the alcohol. In Minnesota, such an act was passed, but the Court said that it could not be constitutionally applied to the finding of a case of whiskey in one's garage:

Possession in the eyes of the law is a perfectly innocent act. It is only the sale, or possession with intent to sell, that the law forbids and punishes. What the United States Supreme Court said in reference to possession of agricultural land by an alien is equally applicable to the possession of liquor:

³⁴ *Wilby v. State*, 47 So. 465, 466; 93 Miss. 767 (1908). See also *Mayor of City of Vicksburg v. Mullane*, 63 So. 412; 106 Miss. 199 (1913).

“Possession is an act that carries with it not even a hint of criminality. To prove such possession without more is to take hardly a step forward in support of an indictment.” *Morrison v. California*, 291 U.S. 82, 90. Yet the statute here involved makes possession—an act wholly innocent in itself—prima facie evidence which, if undisputed and unexplained, is competent and sufficient evidence of the commission of a crime. * * * “The Legislature cannot by its arbitrary will give to a perfectly lawful and innocent act an unlawful and criminal effect, or draw from acts warranted by law, and which everyone may rightfully do, an unlawful, improper and criminal intent.” *State v. Barrett*, 138 N.C. 50 S.E. 506, 512. * * * It is illogical to infer an illegal intent from mere possession of a case of intoxicating liquors at one’s home or in one’s automobile.³⁵

Laws which attempt to make possession a criminal act are unlawful for three reasons: 1) Private possession has no relation the public health, safety or morals. 2) They deprive persons of property without due process of law. 3) Such statutes create conclusive presumptions of law or fact as to one’s guilt or of unlawful purpose due to mere possession.

MISCELLANEOUS CASES ON LIBERTY AND PROPERTY RIGHTS

To further understand the nature of the rights of Liberty and Property, and the due process limitations and prohibitions upon government in dealing with them, the following case examples are offered:

CASE 1. A statute was passed authorizing an officer of the Society for Prevention of Cruelty of Animals to destroy forthwith any animal found abandoned or not properly cared for. Under the act, an officer of the Society took a man’s horse, which he believed was injured and not properly cared for, and killed it. The Supreme Judicial Court of Maine said

³⁵ *State v. Kelly*, 218 Minn. 247, 259-61, 15 N.W.2d 554, 561, 562 (1944). See also *Beasley v. State*, 246 S.W.2d 32 (Tenn. 1952).

the law “contravenes an explicit constitutional mandate,” in that “it deprived one of property without due process of law.”³⁶ There was no notice and opportunity for a judicial hearing before the deprivation of property occurred.

CASE 2. A Probate Court made an order directing two practicing physicians to examine a woman and ascertain the fact of her sanity or insanity. They reported that she was insane and the Probate Court thereupon made an order committing her to the care and custody of the State Hospital for the insane, and issued a warrant to the sheriff authorizing him to arrest her and convey her to that Hospital. These actions were done under and pursuant to certain statutes which prescribe the course of procedure for the commitment of persons into public and private hospitals for the insane. The State Supreme Court said:

The laws in question are *unconstitutional*, because they allow and sanction a denial of the protection of the law, and the deprivation of personal liberty without due process of law.

The objection to such a proceeding as that authorized by this statute does not lie in the fact that the person named may be restrained of his liberty, but in allowing it to be done without first having a judicial investigation to ascertain whether the charges made against him are true; not in committing him to the hospital [or a jail], but in doing it without first giving him an opportunity to be heard.³⁷

CASE 3. During the era of Prohibition, a Delaware law was passed providing for the seizure and sale of automobiles used in transporting liquor where its sale was prohibited. The act was held invalid as it failed to provide “notice” or opportunity for one “to be heard in defense of his rights.”³⁸

36 *Randall v. Patch*, 108 Atl. 97 (Maine, 1919). See also *Jordan v. Gaines*, 8 A.2d 585 (Me. 1939) for a similar case.

37 *State ex rel v. Billings*, 55 Minn. 467, 477-78, 57 N.W. 794 (1893).

38 *State v. Rose*, 132 Atl. 864, 33 Del. 168 (1926).

CASE 4. In cases where statutes have been passed authorizing a game warden to seize and forfeit to the state, without a hearing beforehand, all guns, dogs, decoys and fishing tackle, used by any person hunting or fishing without a license, when such license was required by law, the acts are unconstitutional and void. Such property is not illegal in itself and cannot be taken but by due process of law.³⁹

CASE 5. Where the people adopted a constitutional amendment which had the effect of depriving persons of property rights, it was held that an owner cannot be deprived of his property without process of law through the medium of a constitutional convention any more than they can through an act of legislation.⁴⁰

CASE 6. A law which empowered cities to exclude the institution or maintenance of any business avocation on the property fronting on a boulevard, violates the Missouri Constitution declaring that no person shall be deprived of property without due process of law, as the "use" of property is "property" itself.⁴¹

Legislative action has proven to be the most misused and dangerous power in the deprivation of private rights of liberty and property. History has shown that legislation is more often guided by human passion and desire than by fundamental law. New laws are desired which attempt to make all rights the mere creature of legislative gratuity.

The terms "life, liberty, and property" cover every right to which one is entitled under the Law of the Land, —in short, it embraces all that makes life worth living; and of such liberties no one can be deprived except by *due process of law*.

39 *Ruling Case Law*, vol. 6, "Constitutional Law," § 477, p. 479, citing *McConnell v. McKillip*, 71 Neb. 712, 99 N.W. 505.

40 10 *American Digest*, 2144, citing *Clark v. Mitchell*, 69 Mo. 627.

41 *City of St. Louis v. Dorr*, 41 S.W. 1094, 145 Mo. 466 (1897).