AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 7: The Republican Era – Individual Rights/Property/Due Process

**Lowry v. Rainwater, 70 Mo. 152 (MO 1879)**

*The state of Missouri created a board of police commissioners for the city of St. Louis and specified that, when receiving information regarding a prohibited gaming device, the president of the board had the duty to issue a warrant to have the device seized and to use whatever force might be necessary to execute the seizure. The seized gaming device was to be “publicly destroyed by burning or otherwise” by the president of the board.*

*In May 1874, C.C. Rainwater, the acting president of the board of police commissioners, issued a warrant directing police officers to break into a private residence and seize “an extension dining table” and had it publicly destroyed as an unlawful gaming table. The owner of the table sued for damages and won in the trial court and on appeal. The state supreme court unanimously affirmed the rulings of the lower courts, holding that the statutory provision was unconstitutional. The seizure and destruction of private property without the opportunity for a judicial hearing violated the constitutional requirement that the state not deprive any person of property without due process of law.*

Judge HENRY.

. . . .

. . . . A legislative act which authorizes an officer, without notice to the owner, or even the semblance of a judicial investigation, to seize and destroy the property of a citizen, cannot be sustained under a constitutional which declares that “no State shall deprive any person of life, liberty or property without due process of law.” Lord Coke says that the words “*per legem terrae*” mean by due process of law, and being brought into court to answer according to law. In the language of Justice Curtis in *Greene v. Briggs* (1st Cir. 1852), the words “*law of the land*” do not mean any act which the assembly may choose to pass. If it did, the legislative will could inflict a forfeiture of life, liberty or property without a trial. The exposition of these words as they stand in *magna charta,* as well as in the American constitution, has been that they require “due process of law,” and in this is necessarily implied and included the right to answer to and contest the charge, and the consequent right to be discharged from it unless it be proved.” In Cooley’s *Constitutional Limitations*, the learned author says: “Nor can a party by his misconduct so forfeit a right that it may be taken from him without judicial proceedings in which the forfeiture shall be declared in due form.”

Forfeitures of rights and property cannot be adjudged by legislative acts, and confiscations without a judicial hearing after due notice would be void as not being due process of law. . . . Judge Cooley, in his work on constitutional limitations, speaking of laws to prohibit the sale and manufacture of intoxicating drinks as a beverage, declaring them a nuisance and providing for their condemnation and destruction, remarks that “it is only where, in framing such legislation, care has not been taken to observe those principles of protection which surround the persons and dwellings of individuals, securing them against unreasonable searches and seizures, and giving them a right to trial before condemnation, that the courts have felt at liberty to declare that it exceeded the proper province of police regulation.” . . . If valid, what we have regarded as guaranties of our rights of property, both in the federal and State constitutions, are unmeaning phrases, calculated to lull us into a sense of security rather than to afford us protection against invasions of what we have regarded as sacred rights.

We are not unmindful of the duty of the courts to weigh carefully all that may be urged in favor of the validity of an act of the legislative department of the government, before declaring it in conflict with the organic law, and only to announce such a conclusion when no doubt is entertained of its correctness. After a careful examination of the 7th section of the act under consideration, and numerous adjudications of the courts of other States bearing upon the question involved, we are satisfied that it is in conflict with the 14th amendment to the Federal constitution, and, therefore, invalid.

. . . . An act which, under the pretext of preserving public morals, provides for the seizure of private property, should also provide a summary mode of judicial proceedings for determining whether it is the kind of property and was used or held for purposes condemned by the act. . . . The constitutional safeguards thrown around the rights of property are not to be demolished in order to suppress gambling or gambling houses. The vices which acts authorizing these summary proceedings propose to eradicate are inconsiderable in comparison with the value of the constitutional guarantees which secure to the citizen his liberty and his property. We recognize the right of the State to adopt and the propriety of a rigorous enforcement of laws for the suppression of gambling and gambling houses, but these laws may be so framed as to harmonize with those constitutional provisions, and hasty and inconsiderate legislation which disregards them cannot be upheld.

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*Affirmed*.