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indivisible penalties [*People vs. Asturias*, G.R. No. 61126, January 31, 1985, 134 SCRA 405; *People vs. Arizola*, G.R. No. 59713, March 15, 1982, 112 SCRA 615; *People vs. Roque*, G.R. No. 53470, June 26, 1981, 105 SCRA 117]. Secondly, in all cases in which the law prescribes a penalty of two indivisible penalties and there are neither mitigating nor aggravating circumstances present, as in the case at bar, the proper penalty is the lesser penalty or *reclusion perpetua*. [Revised Penal Code, Article 63(2); *People vs. Lamberte*, G.R. No. 65151, July 11, 1986, 142 SCRA 685].

WHEREFORE, the judgment of conviction is affirmed but the penalty is modified. Accused-appellants Murphy Banzales and Josephine Dialola are hereby sentenced to *reclusion perpetua* and to indemnify the victim, Rosalina Ricafort, in the amount of ₱30,000.00. Costs against accused-appellants.

SO ORDERED.

Gutierrez, Jr., Paras, Padilla, Bidin, and *Cortes, JJ.*, concur.

EN BANC

[G.R. No. 74457. March 20, 1987]

RESTITUTO YNOT, *petitioner*, *vs.* **INTERMEDIATE APPELLATE COURT, THE STATION COMMANDER, INTEGRATED NATIONAL POLICE, BAROTAC NUEVO, ILOILO and THE REGIONAL DIRECTOR, BUREAU OF ANIMAL INDUSTRY, REGION IV, ILOILO CITY**, *respondents.*

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SYLLABUS

1. **POLITICAL LAW; JUDICIARY; JUDICIAL POWER; LOWER COURTS ARE NOT PREVENTED FROM RESOLVING CONSTITUTIONAL QUESTIONS.**— This Court has declared that while lower courts should observe a becoming modesty in examining constitutional questions, they are nonetheless not prevented from resolving the same whenever warranted, subject only to review by the highest tribunal. We have jurisdiction under the Constitution to "review, revise, reverse, modify or affirm on appeal or *certiorari*, as the law or rules of court may provide," final judgments and orders of lower courts in, among others, all cases involving the constitutionality of certain measures. This simply means that the resolution of such cases may be made in the first instance by these lower courts. And while it is true that laws are presumed to be constitutional, that presumption is not by any means conclusive and in fact may be rebutted. Indeed, if there be a clear showing of their invalidity, and of the need to declare them so, then "will be the time to make the hammer fall, and heavily," to recall Justice Laurel's trenchant warning. Stated otherwise, courts should not follow the path of least resistance by simply presuming the constitutionality of a law when it is questioned. On the contrary, they should probe the issue more deeply, to relieve the abscess, paraphrasing another distinguished jurist, and so heal the wound or excise the affliction. Judicial power authorizes this; and when the exercise is demanded, there should be no shirking of the task for fear of retaliation, or loss of favor, or popular censure, or any other similar inhibition unworthy of the bench, especially this Court.

2. **CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; THE VERY ELASTICITY OF THE DUE PROCESS CLAUSE WAS MEANT TO MAKE IT ADAPT EASILY TO EVERY SITUATION, ENLARGING OR CONSTRICTING ITS PROTECTION AS THE CHANGING TIMES AND CIRCUMSTANCES MAY REQUIRE.**— It is part of the art of constitution-making that the provisions of the charter be cast in precise and unmistakable language to avoid controversies that might arise on their correct interpretation. That is the ideal. In the case of the due process clause, however, this rule was deliberately not followed and the wording was purposely kept ambiguous. In fact, a proposal to delineate it more clearly was

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submitted in the Constitutional Convention of 1934, but it was rejected by Delegate Jose P. Laurel, Chairman of the Committee on the Bill of Rights, who forcefully argued against it. He was sustained by the body. The due process clause was kept intentionally vague so it would remain also conveniently resilient. This was felt necessary because due process is not, like some provisions of the fundamental law, an "iron rule" laying down an implacable and immutable command for all seasons and all persons. Flexibility must be the best virtue of the guaranty. The very elasticity of the due process clause was meant to make it adapt easily to every situation, enlarging or constricting its protection as the changing times and circumstances may require.

3. **ID.; ID.; ID.; MINIMUM REQUIREMENTS.**— The minimum requirements of due process are notice and hearing which, generally speaking, may not be dispensed with because they are intended as a safeguard against official arbitrariness. It is a gratifying commentary on our judicial system that the jurisprudence of this country is rich with applications of this guaranty as proof of our fealty to the rule of law and the ancient rudiments of fair play. We have consistently declared that every person, faced by the awesome power of the State, is entitled to "the law of the land," which Daniel Webster described almost two hundred years ago in the famous Dartmouth College Case, as "the law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial." It has to be so if the rights of every person are to be secured beyond the reach of officials who, out of mistaken zeal or plain arrogance, would degrade the due process clause into a worn and empty catchword.

4. **ID.; ID.; ID.; ID.; EXCEPTIONS.**— This is not to say that notice and hearing are imperative in every case for, to be sure, there are a number of admitted exceptions. The conclusive presumption, for example, bars the admission of contrary evidence as long as such presumption is based on human experience or there is a rational connection between the fact proved and the fact ultimately presumed therefrom. There are instances when the need for expeditious action will justify omission of these requisites, as in the summary abatement of a nuisance *per se*, like a mad dog on the loose, which may be killed on sight because of the immediate danger it poses to the safety and lives of the people. Pornographic materials,

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contaminated meat and narcotic drugs are inherently pernicious and may be summarily destroyed. The passport of a person sought for a criminal offense may be cancelled without hearing, to compel his return to the country he has fled. Filthy restaurants may be summarily padlocked in the interest of the public health and bawdy houses to protect the public morals. In such instances, previous judicial hearing may be omitted without violation of due process in view of the nature of the property involved or the urgency of the need to protect the general welfare from a clear and present danger.

5. ID.; ID.; ID.; PROTECTION OF THE GENERAL WELFARE IS THE PARTICULAR FUNCTION OF THE POLICE POWER WHICH BOTH RESTRAIN AND IS RESTRAINED BY DUE PROCESS.— The protection of the general welfare is the particular function of the police power which both restraint and is restrained by due process. The police power is simply defined as the power inherent in the State to regulate liberty and property for the promotion of the general welfare. By reason of its function, it extends to all the great public needs and is described as the most pervasive, the least limitable and the most demanding of the three inherent powers of the State, far outpacing taxation and eminent domain. The individual, as a member of society, is hemmed in by the police power, which affects him even before he is born and follows him still after he is dead — from the womb to beyond the tomb — in practically everything he does or owns. Its reach is virtually limitless. It is a ubiquitous and often unwelcome intrusion. Even so, as long as the activity or the property has some relevance to the public welfare, its regulation under the police power is not only proper but necessary. And the justification is found in the venerable Latin maxims, *Salus populi est suprema lex* and *Sic utere tuo ut alienum non laedas*, which call for the subordination of individual interests to the benefit of the greater number.

6. ID.; ID.; ID.; VIOLATION THEREOF PRESENT IN CASE AT BAR.— To sum up then, we find that the challenged measure is an invalid exercise of the police power because the method employed to conserve the carabaos is not reasonably necessary to the purpose of the law and, worse, is unduly oppressive. Due process is violated because the owner of the property confiscated is denied the right to be heard in his defense and is immediately condemned and punished. The conferment on the administrative authorities of the power to adjudge the guilt

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of the supposed offender is a clear encroachment on judicial functions and militates against the doctrine of separation of powers. There is, finally, also an invalid delegation of legislative powers to the officers mentioned therein who are granted unlimited discretion in the distribution of the properties arbitrarily taken. For these reasons, we hereby declare Executive Order No. 626-A unconstitutional.

APPEARANCES OF COUNSEL

Ramon A. Gonzales for petitioner.

D E C I S I O N

CRUZ, *J.*:

The essence of due process is distilled in the immortal cry of Themistocles to Alcibiades: "Strike — but hear me first!" It is this cry that the petitioner in effect repeats here as he challenges the constitutionality of Executive Order No. 626-A.

The said executive order reads in full as follows:

"WHEREAS, the President has given orders prohibiting the interprovincial movement of carabaos and the slaughtering of carabaos not complying with the requirements of Executive Order No. 626 particularly with respect to age;

"WHEREAS, it has been observed that despite such orders the violators still manage to circumvent the prohibition against interprovincial movement of carabaos by transporting carabeef instead; and

"WHEREAS, in order to achieve the purposes and objectives of Executive Order No. 626 and the prohibition against interprovincial movement of carabaos, it is necessary to strengthen the said Executive Order and provide for the disposition of the carabaos and carabeef subject of the violation;.

"NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby promulgate the following:

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"SECTION 1. Executive Order No. 626 is hereby amended such that henceforth, no carabao regardless of age, sex, physical condition or purpose and no carabeef shall be transported from one province to another. The carabao or carabeef transported in violation of this Executive Order as amended shall be subject to confiscation and forfeiture by the government, to be distributed to charitable institutions and other similar institutions as the Chairman of the National Meat Inspection Commission may see fit, in the case of carabeef, and to deserving farmers through dispersal as the Director of Animal Industry may see fit, in the case of carabaos.

"SECTION 2. This Executive Order shall take effect immediately.

"Done in the City of Manila, this 25th day of October, in the year of Our Lord, nineteen hundred and eighty.

(SGD.) FERDINAND E. MARCOS
President
Republic of the Philippines"

The petitioner had transported six carabaos in a pump boat from Masbate to Iloilo on January 13, 1984, when they were confiscated by the police station commander of Barotac Nuevo, Iloilo, for violation of the above measure.[1] The petitioner sued for recovery, and the Regional Trial Court of Iloilo City issued a writ of *replevin* upon his filing of a *supersedeas* bond of ₱12,000.00. After considering the merits of the case, the court sustained the confiscation of the carabaos and, since they could no longer be produced, ordered the confiscation of the bond. The court also declined to rule on the constitutionality of the executive order, as raised by the petitioner, for lack of authority and also for its presumed validity.[2]

The petitioner appealed the decision to the Intermediate Appellate Court,[*3] which upheld the trial court,[**] and he has now come before us in this petition for review on *certiorari*.

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[1] *Rollo*, pp. 7, 28, 29, 34.

[2] *Ibid.*, pp. 6-7; Annex B.

[*] Justices Coquia, Bartolome and Ejercito.

[3] *Rollo*, pp. 6, 27, 33.

[**] Judge Bethel Katalbas-Moscardon.

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The thrust of his petition is that the executive order is unconstitutional insofar as it authorizes outright confiscation of the carabao or carabeef being transported across provincial boundaries. His claim is that the penalty is invalid because it is imposed without according the owner a right to be heard before a competent and impartial court as guaranteed by due process. He complains that the measure should not have been presumed, and so sustained, as constitutional. There is also a challenge to the improper exercise of the legislative power by the former President under Amendment No. 6 of the 1973 Constitution.[4]

While also involving the same executive order, the case of *Pesigan v. Angeles*[5] is not applicable here. The question raised there was the necessity of the previous publication of the measure in the Official Gazette before it could be considered enforceable. We imposed the requirement then on the basis of due process of law. In doing so, however, this Court did not, as contended by the Solicitor General, impliedly affirm the constitutionality of Executive Order No. 626-A. That is an entirely different matter.

This Court has declared that while lower courts should observe a becoming modesty in examining constitutional questions, they are nonetheless not prevented from resolving the same whenever warranted, subject only to review by the highest tribunal.[6] We have jurisdiction under the Constitution to "review, revise, reverse, modify or affirm on appeal or *certiorari*, as the law or rules of court may provide," final judgments and orders of lower courts in, among others, all cases involving the constitutionality of certain measures.[7] This simply means that the resolution of such cases may be made in the first instance by these lower courts.

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[4] *Ibid.*, pp. 10, 11, 14-16, 76.

[5] 129 SCRA 174.

[6] *Espiritu vs. Fugoso*, 81 Phil. 637.

[7] Sec. 5[2(a)], Art. X, 1973 Constitution; Sec. 5[2(a)], Art. VIII, 1987 Constitution.

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And while it is true that laws are presumed to be constitutional, that presumption is not by any means conclusive and in fact may be rebutted. Indeed, if there be a clear showing of their invalidity, and of the need to declare them so, then "will be the time to make the hammer fall, and heavily,"[8] to recall Justice Laurel's trenchant warning. Stated otherwise, courts should not follow the path of least resistance by simply presuming the constitutionality of a law when it is questioned. On the contrary, they should probe the issue more deeply, to relieve the abscess, paraphrasing another distinguished jurist,[9] and so heal the wound or excise the affliction.

Judicial power authorizes this; and when the exercise is demanded, there should be no shirking of the task for fear of retaliation, or loss of favor, or popular censure, or any other similar inhibition unworthy of the bench, especially this Court.

The challenged measure is denominated an executive order but it is really presidential decree, promulgating a new rule instead of merely implementing an existing law. It was issued by President Marcos not for the purpose of taking care that the laws were faithfully executed but in the exercise of his legislative authority under Amendment No. 6. It was provided thereunder that whenever in his judgment there existed a grave emergency or a threat or imminence thereof or whenever the legislature failed or was unable to act adequately on any matter that in his judgment required immediate action, he could, in order to meet the exigency, issue decrees, orders or letters of instruction that were to have the force and effect of law. As there is no showing of any exigency to justify the exercise of that extraordinary power then, the petitioner has reason, indeed, to question the validity of the executive order. Nevertheless, since the determination of the grounds was supposed to have been made by the President "in his judgment," a phrase that

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[8] *J.* Laurel, concurring opinion, *Zandueta v. dela Costa*, 66 Phil. 615, 627.

[9] *US v. Bustos*, 37 Phil. 731.

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will lead to protracted discussion not really necessary at this time, we reserve resolution of this matter until a more appropriate occasion. For the nonce, we confine ourselves to the more fundamental question of due process.

It is part of the art of constitution-making that the provisions of the charter be cast in precise and unmistakable language to avoid controversies that might arise on their correct interpretation. That is the ideal. In the case of the due process clause, however, this rule was deliberately not followed and the wording was purposely kept ambiguous. In fact, a proposal to delineate it more clearly was submitted in the Constitutional Convention of 1934, but it was rejected by Delegate Jose P. Laurel, Chairman of the Committee on the Bill of Rights, who forcefully argued against it. He was sustained by the body.[10]

The due process clause was kept intentionally vague so it would remain also conveniently resilient. This was felt necessary because due process is not, like some provisions of the fundamental law, an "iron rule" laying down an implacable and immutable command for all seasons and all persons. Flexibility must be the best virtue of the guaranty. The very elasticity of the due process clause was meant to make it adapt easily to every situation, enlarging or constricting its protection as the changing times and circumstances may require.

Aware of this, the courts have also hesitated to adopt their own specific description of due process lest they confine themselves in a legal straitjacket that will deprive them of the elbow room they may need to vary the meaning of the clause whenever indicated. Instead, they have preferred to leave the import of the protection open-ended, as it were, to be "gradually ascertained by the process of inclusion and exclusion in the course of the decision of cases as they arise."[11] Thus, Justice Felix Frankfurter of the U.S. Supreme Court, for example, would go no farther than to define due process — and in so doing

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[10] I Aruego, *The Framing of the Constitution* (1936), pp. 153-159.

[11] *Twinning vs. New Jersey*, 211 U.S. 78.

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sums it all up — as nothing more and nothing less than "the embodiment of the sporting idea of fair play."[12]

When the barons of England extracted from their sovereign liege the reluctant promise that the Crown would thenceforth not proceed against the life, liberty or property of any of its subjects except by the lawful judgment of his peers or the law of the land, they thereby won for themselves and their progeny that splendid guaranty of fairness that is now the hallmark of the free society. The solemn vow that King John made at Runnymede in 1215 has since then resounded through the ages, as a ringing reminder to all rulers, benevolent or base, that every person, when confronted by the stern visage of the law, is entitled to have his say in a fair and open hearing of his cause.

The closed mind has no place in the open society. It is part of the sporting idea of fair play to hear "the other side" before an opinion is formed or a decision is made by those who sit in judgment. Obviously, one side is only one-half of the question; the other half must also be considered if an impartial verdict is to be reached based on an informed appreciation of the issues in contention. It is indispensable that the two sides complement each other, as unto the bow the arrow, in leading to the correct ruling after examination of the problem not from one or the other perspective only but in its totality. A judgment based on less that this full appraisal, on the pretext that a hearing is unnecessary or useless, is tainted with the vice of bias or intolerance or ignorance, or worst of all, in repressive regimes, the insolence of power.

The minimum requirements of due process are notice and hearing[13] which, generally speaking, may not be dispensed with because they are intended as a safeguard against official

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[12] Frankfurter, Mr. Justice Holmes and the Supreme Court, pp. 32-33.

[13] *David vs. Aquilizan*, 94 SCRA 707; *Montemayor vs. Araneta Univ. Foundation*, 77 SCRA 321; *Lentelera vs. Amores*, 70 SCRA 37; *Flores vs. Buencamino*, 74 SCRA 332; *DBP vs. Bautista*, 26 SCRA 366; *Ong Su Han vs. Gutierrez David*, 76 Phil. 546; *Banco-Español-Filipino vs. Palanca*, 37 Phil. 921.

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arbitrariness. It is a gratifying commentary on our judicial system that the jurisprudence of this country is rich with applications of this guaranty as proof of our fealty to the rule of law and the ancient rudiments of fair play. We have consistently declared that every person, faced by the awesome power of the State, is entitled to "the law of the land," which Daniel Webster described almost two hundred years ago in the famous Dartmouth College Case,[14] as "the law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial." It has to be so if the rights of every person are to be secured beyond the reach of officials who, out of mistaken zeal or plain arrogance, would degrade the due process clause into a worn and empty catchword.

This is not to say that notice and hearing are imperative in every case for, to be sure, there are a number of admitted exceptions. The conclusive presumption, for example, bars the admission of contrary evidence as long as such presumption is based on human experience or there is a rational connection between the fact proved and the fact ultimately presumed therefrom.[15] There are instances when the need for expeditious action will justify omission of these requisites, as in the summary abatement of a nuisance *per se*, like a mad dog on the loose, which may be killed on sight because of the immediate danger it poses to the safety and lives of the people. Pornographic materials, contaminated meat and narcotic drugs are inherently pernicious and may be summarily destroyed. The passport of a person sought for a criminal offense may be cancelled without hearing, to compel his return to the country he has fled.[16] Filthy restaurants may be summarily padlocked in the interest of the public health and bawdy houses to protect the public morals.[17] In such instances, previous judicial hearing may be omitted without violation of due process in view of the nature of the

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[14] *Dartmouth College vs. Woodward*, 4 Wheaton 518.

[15] *Manley v. Georgia*, 279 U.S. 1; 1 Cooley 639.

[16] *Suntay vs. People*, 101 Phil. 833.

[17] 12 C.J. 1224.

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property involved or the urgency of the need to protect the general welfare from a clear and present danger.

The protection of the general welfare is the particular function of the police power which both restrain and is restrained by due process. The police power is simply defined as the power inherent in the State to regulate liberty and property for the promotion of the general welfare.[18] By reason of its function, it extends to all the great public needs and is described as the most pervasive, the least limitable and the most demanding of the three inherent powers of the State, far outpacing taxation and eminent domain. The individual, as a member of society, is hemmed in by the police power, which affects him even before he is born and follows him still after he is dead — from the womb to beyond the tomb — in practically everything he does or owns. Its reach is virtually limitless. It is a ubiquitous and often unwelcome intrusion. Even so, as long as the activity or the property has some relevance to the public welfare, its regulation under the police power is not only proper but necessary. And the justification is found in the venerable Latin maxims, *Salus populi est suprema lex* and *Sic utere tuo ut alienum non laedas*, which call for the subordination of individual interests to the benefit of the greater number.

It is this power that is now invoked by the government to justify Executive Order No. 626-A, amending the basic rule in Executive Order No. 626, prohibiting the slaughter of carabaos except under certain conditions. The original measure was issued for the reason, as expressed in one of its Whereases, that "present conditions demand that the carabaos and the buffaloes be conserved for the benefit of the small farmers who rely on them for energy needs." We affirm at the outset the need for such a measure. In the face of the worsening energy crisis and the increased dependence of our farms on these traditional beasts of burden, the government would have been remiss, indeed, if it had not taken steps to protect and preserve them.

[18] *People v. Vera Reyes*, 67 Phil. 190; *Ermita-Malate Hotel & Motel Operators Ass. v. City Mayor*, 20 SCRA 849; *Primicias v. Fugoso*, 80 Phil. 75; *U.S. v. Ling Su Tan*, 10 Phil. 114; *Collins v. Wolfe*, 5 Phil. 297; *U.S. v. Gomez Jesus*, 31 Phil. 225; *Churchill v. Rafferty*, 32 Phil. 603.

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A similar prohibition was challenged in *United States v. Toribio*,[19] where a law regulating the registration, branding and slaughter of large cattle was claimed to be a deprivation of property without due process of law. The defendant had been convicted thereunder for having slaughtered his own carabao without the required permit, and he appealed to the Supreme Court. The conviction was affirmed. The law was sustained as a valid police measure to prevent the indiscriminate killing of carabaos, which were then badly needed by farmers. An epidemic had stricken many of these animals and the reduction of their number had resulted in an acute decline in agricultural output, which in turn had caused an incipient famine. Furthermore, because of the scarcity of the animals and the consequent increase in their price, cattle-rustling had spread alarmingly, necessitating more effective measures for the registration and branding of these animals. The Court held that the questioned statute was a valid exercise of the police power and declared in part as follows:

"To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. x x x.

"From what has been said, we think it is clear that the enactment of the provisions of the statute under consideration was required by `the interests of the public generally, as distinguished from those of a particular class' and that the prohibition of the slaughter of carabaos for human consumption, so long as these animals are fit for agricultural work or draft purposes was a `reasonably necessary' limitation on private ownership, to protect the community from the loss of the services of such animals by their slaughter by improvident owners, tempted either by greed of momentary gain, or by a desire to enjoy the luxury of animal food, even when by so doing the productive power of the community may be measurably and dangerously affected."

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[19] 15 Phil. 85.

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In the light of the tests mentioned above, we hold with the Toribio Case that the carabao, as the poor man's tractor, so to speak, has a direct relevance to the public welfare and so is a lawful subject of Executive Order No. 626. The method chosen in the basic measure is also reasonably necessary for the purpose sought to be achieved and not unduly oppressive upon individuals, again following the above-cited doctrine. There is no doubt that by banning the slaughter of these animals except where they are at least seven years old if male and eleven years old if female upon issuance of the necessary permit, the executive order will be conserving those still fit for farm work or breeding and preventing their improvident depletion.

But while conceding that the amendatory measure has the same lawful subject as the original executive order, we cannot say with equal certainty that it complies with the second requirement, *viz.*, that there be a lawful method. We note that to strengthen the original measure, Executive Order No. 626-A imposes an absolute ban not on the *slaughter* of the carabaos but on their *movement*, providing that "no carabao regardless of age, sex, physical condition or purpose (sic) and no carabeef shall be transported from one province to another." The object of the prohibition escapes us. The reasonable connection between the means employed and the purpose sought to be achieved by the questioned measure is missing.

We do not see how the prohibition of the interprovincial transport of carabaos can prevent their indiscriminate slaughter, considering that they can be killed anywhere, with no less difficulty in one province than in another. Obviously, retaining the carabaos in one province will not prevent their slaughter there, any more than moving them to another province will make it easier to kill them there. As for the carabeef, the prohibition is made to apply to it as otherwise, so says executive order, it could be easily circumvented by simply killing the animal. Perhaps so. However, if the movement of the live animals for the purpose of preventing their slaughter cannot be prohibited, it should follow that there is no reason either to prohibit their transfer as, not to be flippant, dead meat.

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Even if a reasonable relation between the means and the end were to be assumed, we would still have to reckon with the sanction that the measure applies for violation of the prohibition. The penalty is outright confiscation of the carabao or carabeef being transported, to be meted out by the executive authorities, usually the police only. In the Toribio Case, the statute was sustained because the penalty prescribed was fine and imprisonment, to be imposed by the court after trial and conviction of the accused. Under the challenged measure, significantly, no such trial is prescribed, and the property being transported is immediately impounded by the police and declared, by the measure itself, as forfeited to the government.

In the instant case, the carabaos were arbitrarily confiscated by the police station commander, were returned to the petitioner only after he had filed a complaint for recovery and given a *supersedeas* bond of ₱12,000.00, which was ordered confiscated upon his failure to produce the carabaos when ordered by the trial court. The executive order defined the prohibition, convicted the petitioner and immediately imposed punishment, which was carried out forthright. The measure struck at once and pounced upon the petitioner without giving him a chance to be heard, thus denying him the centuries-old guaranty of elementary fair play.

It has already been remarked that there are occasions when notice and hearing may be validly dispensed with notwithstanding the usual requirement for these minimum guarantees of due process. It is also conceded that summary action may be validly taken in administrative proceedings as procedural due process is not necessarily judicial only.[20] In the exceptional cases accepted, however, there is a justification for the omission of the right to a previous hearing, to wit, the *immediacy* of the problem sought to be corrected and the *urgency* of the need to correct it.

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[20] *New Filipino Maritime Agencies, Inc. vs. Rivera*, 83 SCRA 602; *Gas Corp. of the Phil. vs. Inciong*, 93 SCRA 653.

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In the case before us, there was no such pressure of time or action calling for the petitioner's peremptory treatment. The properties involved were not even inimical *per se* as to require their instant destruction. There certainly was no reason why the offense prohibited by the executive order should not have been proved first in a court of justice, with the accused being accorded all the rights safeguarded to him under the Constitution. Considering that, as we held in *Pesigan v. Angeles*,[21] Executive Order No. 626-A is penal in nature, the violation thereof should have been pronounced not by the police only but by a court of justice, which alone would have had the authority to impose the prescribed penalty, and only after trial and conviction of the accused.

We also mark, on top of all this, the questionable manner of the disposition of the confiscated property as prescribed in the questioned executive order. It is there authorized that the seized property shall "be distributed to charitable institutions and other similar institutions as the Chairman of the National Meat Inspection Commission *may see fit*, in the case of carabeef, and to deserving farmers through dispersal as the Director of Animal Industry *may see fit*, in the case of carabaos." (Italics supplied.) The phrase "*may see fit*" is an extremely generous and dangerous condition, if condition it is. It is laden with perilous opportunities for partiality and abuse, and even corruption. One searches in vain for the usual standard and the reasonable guidelines, or better still, the limitations that the said officers must observe when they make their distribution. There is none. Their options are apparently boundless. Who shall be the fortunate beneficiaries of their generosity and by what criteria shall they be chosen? Only the officers named can supply the answer, they and they alone may choose the grantee as they see fit, and in their own exclusive discretion. Definitely, there is here a "roving commission," a wide and sweeping authority that is not "canalized within banks that keep it from overflowing," in short, a clearly profligate and therefore invalid delegation of legislative powers.

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[21] *Supra*.

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To sum up then, we find that the challenged measure is an invalid exercise of the police power because the method employed to conserve the carabaos is not reasonably necessary to the purpose of the law and, worse, is unduly oppressive. Due process is violated because the owner of the property confiscated is denied the right to be heard in his defense and is immediately condemned and punished. The conferment on the administrative authorities of the power to adjudge the guilt of the supposed offender is a clear encroachment on judicial functions and militates against the doctrine of separation of powers. There is, finally, also an invalid delegation of legislative powers to the officers mentioned therein who are granted unlimited discretion in the distribution of the properties arbitrarily taken. For these reasons, we hereby declare Executive Order No. 626-A unconstitutional.

We agree with the respondent court, however, that the police station commander who confiscated the petitioner's carabaos is not liable in damages for enforcing the executive order in accordance with its mandate. The law was at that time presumptively valid, and it was his obligation, as a member of the police, to enforce it. It would have been impertinent of him, being a mere subordinate of the President, to declare the executive order unconstitutional and, on his own responsibility alone, refuse to execute it. Even the trial court, in fact, and the Court of Appeals itself did not feel they had the competence, for all their superior authority, to question the order we now annul.

The Court notes that if the petitioner had not seen fit to assert and protect his rights as he saw them, this case would never have reached us and the taking of his property under the challenged measure would have become a *fait accompli* despite its invalidity. We commend him for his spirit. Without the present challenge, the matter would have ended in that pump boat in Masbate and another violation of the Constitution, for all its obviousness, would have been perpetrated, allowed without protest, and soon forgotten in the limbo of relinquished rights.

The strength of democracy lies not in the rights it guarantees but in the courage of the people to invoke them whenever they

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are ignored or violated. Rights are but weapons on the wall if, like expensive tapestry, all they do is embellish and impress. Rights, as weapons, must be a promise of protection. They become truly meaningful, and fulfill the role assigned to them in the free society, if they are kept bright and sharp with use by those who are not afraid to assert them.

WHEREFORE, Executive Order No. 626-A is hereby declared unconstitutional. Except as affirmed above, the decision of the Court of Appeals is reversed. The *supersedeas* bond is cancelled and the amount thereof is ordered restored to the petitioner. No costs.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Gutierrez, Jr., Paras, Gancayco, Padilla, Bidin, Sarmiento, and *Cortes, JJ.*, concur.

Melencio-Herrera and *Feliciano, JJ.*, on leave.

FIRST DIVISION

[G.R. No. L-27777. March 23, 1987]

IN THE MATTER OF THE TESTATE ESTATE OF WILLIAM C. OGAN, Deceased. NECITAS V. BINAMIRA, executrix-appellee, ISABELO V. BINAMIRA, *claimant, vs.* **NECITAS OGAN-OCCENA, FEDERICO OGAN, NANCY OGAN GIBSON, LIBORIA OGAN GARCIA,** *oppositors-appellants.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; COMPROMISE; HAS THE FORCE OF *RES JUDICATA*