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## Criminal Law -- Prohibition -- Purchase of Liquor

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sult would have been reached in the present case by the application of some such principle.

The wrong complained of was not one peculiar to the plaintiffs; furthermore, there had been an intervention by a dishonest official, an independent third party, between the negligence of the directors and the injury complained of. If, as here, the individual creditor who has been injured as a remote result of the defendant's negligence is allowed to recover for an injury not peculiar to himself without joining the corporation, or its receiver, litigation will be increased with the probable result that in such cases the aggressive creditors, and those who are financially able to prosecute lawsuits will be enabled to attach the available assets of the tort-feasors leaving the others to such recovery as may be had from the corporate assets left in the hands of the receiver.

ALLEN LANGSTON.

### Criminal Law—Prohibition—Purchase of Liquor

Officers found a quantity of liquor, something less than a gallon, in the defendant's room which the defendant admitted having purchased for his own use. The defendant was indicted for transporting, purchasing, possessing, and having in possession for the purpose of sale intoxicating liquor. Upon a verdict of "guilty of purchasing liquor," the defendant appealed, contending that since the Volstead Act does not prohibit the purchase of liquor and the Turlington Act<sup>1</sup> was adopted to make the state law conform to the national law, the State was limited in its power to legislate more stringently upon the subject than Congress had done. *Held*, The state law prohibiting the purchase of liquor for beverage purposes is not in conflict with the federal law which does not prohibit purchase thereof.<sup>2</sup>

The Eighteenth Amendment is not the source of power of states to adopt and enforce prohibitory measures, but the power of the states is that originally belonging to them and preserved to them under the first ten amendments.<sup>3</sup> The concurrent power clause of

<sup>1</sup>N. C. Pub. Laws, 1923, c. 1, §2. "No person shall manufacture, sell, barter, transport, import, export, deliver, furnish, *purchase*, or possess any intoxicating liquors except as authorized in this act; and all provisions of this act shall be liberally construed to the end that the use of intoxicating liquors as a beverage shall be prevented." (Italics ours.) (An Act to Make the State Law Conform to the National Law in Relation to Intoxicating Liquors.)

<sup>2</sup>State v. Lassiter, 198 N. C. 352, 151 S. E. 721 (1930).

<sup>3</sup>Vigliotti v. Pennsylvania, 258 U. S. 403, 42 Sup. Ct. 330, 66 L. ed. 686 (1921); U. S. v. Lanza, 260 U. S. 377, 43 Sup. Ct. 141, 67 L. ed. 314 (1922); Hebert v. Louisiana, 272 U. S. 312, 47 Sup. Ct. 103, 71 L. ed. 270 (1926).

the Eighteenth Amendment negated any inference that the amendment changed the source of police power of the states concerning intoxicating liquors or deprived them of that power, except in that it prevented them from authorizing what federal law prohibited.<sup>4</sup> Each state, as also Congress, may exercise independent judgment in selecting and shaping measures to enforce prohibition.<sup>5</sup> State prohibitory laws are in aid of and concurrent with the Eighteenth Amendment and Volstead Act<sup>6</sup> and, unless repugnant to the purpose thereof, are not invalid because more drastic in their nature.<sup>7</sup>

It is a mooted question at present whether there is anything in the Volstead Act making it a crime to purchase liquor. It has recently been urged that a buyer can be prosecuted as an accessory of the seller if the purchase involves transportation to the former,<sup>8</sup> but this contention had been overruled.<sup>9</sup> The purchaser is not guilty of the crime of aiding and abetting the crime of selling, and his coöperation would seem to be insufficient to make him chargeable with conspiracy.<sup>10</sup> Also the buyer's immunity is based on other grounds than lack of coöperation.<sup>11</sup> The immunity which attaches to the victims in certain offenses does not always protect such persons when prosecuted with conspiracy to commit the offenses in question.<sup>12</sup> It would

<sup>4</sup> *Rhode Island v. Palmer*, 253 U. S. 350, 40 Sup. Ct. 486, 588, 64 L. ed. 946 (1921); *Commonwealth v. Nickerson*, 236 Mass. 296, 128 N. E. 273, 10 A. L. R. 1568 (1920); *State v. Montgomery*, 121 Wash. 617, 209 Pac. 1099 (1922); *Commonwealth v. Gardner*, 297 Pa. 498, 147 Atl. 527 (1929).

<sup>5</sup> *National Prohibition Cases*, 253 U. S. 350, 40 Sup. Ct. 486, 64 L. ed. 946 (1919); *U. S. v. Lanza*, *supra* note 3.

<sup>6</sup> *Rhode Island v. Palmer*, *supra* note 4; *State v. Booher*, 148 Wash. 149, 268 Pac. 167 (1928).

<sup>7</sup> *Powell v. State*, 98 Ala. App. 101, 90 So. 138 (1921); *People v. Wood*, 264 Pac. 298 (Cal. App. 1928); *State v. Hammond*, 188 N. C. 602, 125 S. E. 402, 404 (1924); *State v. Barksdale*, 181 N. C. 621, 107 S. E. 505 (1921); *Youman v. Com.*, 193 Ky. 536, 237 S. W. 6 (1922); writ of error dismissed, 261 U. S. 625, 43 Sup. Ct. 358, 67 L. ed. 833 (1923).

<sup>8</sup> *U. S. v. Kerper*, 29 F. (2d) 744 (D. C. Pa. 1928).

<sup>9</sup> *Norris v. U. S.*, 34 F. (2d) 839 (C. C. A. 3rd, 1929). Certiorari was granted on March 3, 1930. See the *U. S. Daily* (March 4, 1930), page 1, column 1.

<sup>10</sup> *Singer v. U. S.*, 278 Fed. 415 (C. C. A. 3rd, 1922), certiorari denied, 258 U. S. 620, 42 Sup. Ct. 272, 66 L. ed. 795 (1922); *Lott v. U. S.*, 205 Fed. 28, 29, 46 L. R. A. (N. S.) 409 (C. C. A. 9th, 1913); *State v. Teahan*, 50 Conn. 92 (1882).

<sup>11</sup> *State v. Teahan*, *supra* note 10 (the purchaser approaches the sale on the wrong side); *Commonwealth v. Willard*, 39 Mass. 476 (1839) (the substantive crime is too trivial to punish the abettor); *Vannata v. U. S.*, 289 Fed. 424, 428 (C. C. A. 2nd, 1923) (statute in denouncing seller impliedly exempts the buyer).

<sup>12</sup> *White Slave Act*, see *U. S. v. Holte*, 236 U. S. 140, 35 Sup. Ct. 271, 59 L. ed. 504 (1914); *Abortion*, see *Fixmer v. People*, 153 Ill. 123, 38 N. E. 667 (1894) (decision under state statute).

seem easier as a matter of policy to punish the buyer for conspiracy to transport than to punish buying directly. Some courts in prosecuting for selling hold that the exemption of the purchaser does not extend to his agent<sup>13</sup> and in disregard of actual facts twist the relationship into one of agency for the seller.<sup>14</sup> However, the general rule is that the agent of the buyer is not guilty of selling provided he has no interest in the liquor or the price and acts solely as the intermediary for the buyer and not in subterfuge to aid the seller.<sup>15</sup>

The provisions of the National Prohibition Act and the Turlington Act are to be construed liberally to the end that the use of intoxicating liquors as a beverage may be prevented.<sup>16</sup> To accomplish this result the Turlington Act, which includes the word "purchase" in its list of offenses,<sup>17</sup> would seem to be more effectively worded than the national act. But the difficult problem raised by Prohibition has not been inadequacy of statute but inability of enforcement. The instant case raises an interesting query: Why have there been no cases in the North Carolina Supreme Court for the purchase of liquor in the seven years between the passage of the Turlington Act and the present case? It may be that the word "purchase" was inadvertently included in the state act, the legislature giving it no special significance at the time, or that the courts have followed public opinion, restricting punishment to the seller alone. As a matter of public policy the benefits derived from logically convicting the buyer as well as the seller of liquor may be more than counterbalanced by the risk incurred of greater disregard for law.

TRAVIS BROWN.

<sup>13</sup> *Buchanan v. State*, 40 Okla. Cr. 645, 112 Pac. 32, 32 L. R. A. (N. S.) 83 (1910); *State v. Gear*, 72 Ore. 501, 143 Pac. 890 (1914); *Walters v. State*, 127 Miss. 324, 90 So. 76 (1921).

<sup>14</sup> *Mo Yaen v. State*, 18 Ariz. 491, 163 Pac. 135 (1917); *Wigington v. U. S.*, 296 Fed. 125 (C. C. A. 4th, 1924), certiorari denied, 264 U. S. 596, 44 Sup. Ct. 454, 68 L. ed. 867 (1924).

<sup>15</sup> *Mitchell v. State*, 148 Ala. 678, 41 So. 951 (1906); *State v. Colonial Club*, 154 N. C. 177, 69 S. E. 771, 31 L. R. A. (N. S.) 387 (1910); *Cunningham v. State*, 105 Ga. 676, 31 S. E. 585 (1898); *Lindsay v. State*, 143 Ark. 140, 219 S. W. 1025 (1920).

<sup>16</sup> National Prohibition Act (27 U. S. C. A., 41 Stat. 305), c. 12, §2, "and all provisions of this chapter shall be liberally construed to the end that the use of intoxicating liquors as a beverage may be prevented." These same words are contained in the Turlington Act, *supra* note 1.

<sup>17</sup> See *State v. Winston*, 194 N. C. 243, 139 S. E. 240 (1927); *State v. Hickey*, 198 N. C. 45, 150 S. E. 615 (1929) (declaring the seller and purchaser equally liable under the law).