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# Constitutional Law -- Interstate Transportation of Intoxicating Liquors

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the difficulty, even if it is assumed that the Court is committed to one rule. The "place of performance" rule offers an even more attenuated "connection with the substance of the contract obligations" in view of the Court's summary dismissal of the proposition that payment—the usual performance of insurance contracts—was to take place in Mississippi. And, while courts have sometimes respected the manifested intention of the parties as to what law should govern their contract, any statutory enactment requiring them to stipulate that the laws of the jurisdiction in which the insured interest was located should govern would undoubtedly come within the prohibitions of *Allgeyer v. Louisiana*.<sup>15</sup>

D. W. MARKHAM.

### Constitutional Law—Interstate Transportation of Intoxicating Liquors.

A recent Georgia case involving the confiscation of an interstate shipment of beer emphasizes the renewed importance of the problem of interstate liquor traffic.<sup>1</sup> It was early established that a state in the exercise of its police power could close saloons and prohibit the manufacture and sale of intoxicating liquors,<sup>2</sup> but a state could not prohibit carriers from bringing liquors into the state without interfering with interstate commerce.<sup>3</sup> Thereupon the open saloons gave way to the shops of local agents which, under the protection of the Commerce Clause, were able to operate without state interference so long as sales were made in the original package.<sup>4</sup> Congress then passed the Wilson Act,<sup>5</sup> which the prohibitionists thought would put an end to the seeming evasions of the state laws. This act was held valid,<sup>6</sup> but it was interpreted quite literally, in *Rhodes v. Iowa*,<sup>7</sup> to mean that the state laws could take effect upon liquor shipped into the state only after arrival and delivery to the consignee. Thus while the consignee might be prohibited from selling it, he was free to have it shipped in for his

<sup>15</sup> 165 U. S. 580, 17 Sup. Ct. 427, 41 L. ed. 832 (1897), cited note 6, *supra*.

A statute so worded as to clearly indicate that it was an assertion of the state's power over persons and property within its borders might present a stronger case for validity. However, the localization of an insurable interest within a certain state does not, logically, require the localization of contracts concerning that interest within the same state.

<sup>1</sup> *Ryman v. Legg*, 176 S. E. 403 (Ga. 1934).

<sup>2</sup> *Mugler v. Kansas*, 123 U. S. 623, 8 Sup. Ct. 273, 31 L. ed. 205 (1887).

<sup>3</sup> *Bowman v. Chicago & N. W. Ry.*, 125 U. S. 465, 8 Sup. Ct. 689, 31 L. ed. 700 (1888).

<sup>4</sup> *Leisy v. Hardin*, 135 U. S. 100, 10 Sup. Ct. 681, 34 L. ed. 128 (1890).

<sup>5</sup> 26 STAT. 313 (1890), 27 U. S. C. A. §121 (1934 Supp.).

<sup>6</sup> *In re Rahrer*, 140 U. S. 545, 11 Sup. Ct. 865, 35 L. ed. 572 (1891).

<sup>7</sup> 170 U. S. 412, 18 Sup. Ct. 664, 42 L. ed. 1088 (1898).

personal consumption. This condition existed until 1913 when Congress passed the Webb-Kenyon Act,<sup>8</sup> which divested intoxicating liquors of their interstate character and thereby enabled and permitted the dry state of destination to exercise control the moment the shipment crossed its borders. In spite of the word "prohibited" this act contained no penal provision and its violation was not a federal offense.<sup>9</sup> Four years later Congress took a rather drastic step in adopting the Reed Amendment,<sup>10</sup> which made it a federal offense to advertise liquors in dry states and "to order, purchase, or cause" intoxicating liquors (except for scientific, etc., purposes) to be transported in interstate commerce into a state the laws of which prohibit their manufacture or sale for beverage purposes. In 1919, upon the ratification of the Eighteenth Amendment,<sup>11</sup> the "manufacture, sale, or transportation" of intoxicating liquors designed for beverage purposes was forbidden, and Congress and the several states were given concurrent power to enforce national prohibition by appropriate means. The federal Beer Act<sup>12</sup> enacted in March, 1933, removed the prohibition of the Volstead Act as to 3.2 per centum beer, wines, etc., and incorporated sections similar to the Webb-Kenyon Act<sup>13</sup> and the Reed Amendment<sup>14</sup> to prevent the shipment of same into states the laws of which forbid the manufacture or sale of such beverages. In the absence of these sections, light wines and beers could probably have been shipped into the bone-dry states under protection of the Commerce Clause upon the theory they were not intoxicating liquors. The last major event was the ratification in December, 1933, of the Twenty-first Amendment,<sup>15</sup> which (1) repealed the Eighteenth Amendment and the Volstead Act,<sup>16</sup> and (2) prohibited the "transportation, or importation into any State, Territory, or Possession of the United States for use or delivery therein of intoxicating liquors in violation of the laws thereof."

The scope of the Wilson and Webb-Kenyon Acts was held not to be limited by the National Prohibition Act or the Eighteenth Amendment.<sup>17</sup> Since these acts are not inconsistent with the Twenty-first

<sup>8</sup> 37 STAT. 699 (1913), 27 U. S. C. A. §122 (1934 Supp.). Held constitutional, *James Clark Distilling Co. v. Western Maryland Ry.*, 242 U. S. 311, 37 Sup. Ct. 180, 61 L. ed. 326 (1917).

<sup>9</sup> *Dowling and Hubbard, Divesting an Article of its Interstate Character* (1920), 5 MINN. L. REV. 100, 253.

<sup>10</sup> 39 STAT. 1069 (1917), 18 U. S. C. A. §341, 27 U. S. C. A. §123 (1933 Supp.).

<sup>11</sup> U. S. CONST.

<sup>12</sup> 48 STAT. 17 (1933), 27 U. S. C. A. §64 a-p (1934 Supp.).

<sup>13</sup> 48 STAT. 19, 27 U. S. C. A. §64j (1933).

<sup>14</sup> 48 STAT. 19, 27 U. S. C. A. §64k (1933).

<sup>15</sup> U. S. CONST.

<sup>16</sup> *United States v. Chambers*, 54 Sup. Ct. 434 (U. S. 1934).

<sup>17</sup> *McCormick & Co., Inc. v. Brown*, 286 U. S. 582, 52 Sup. Ct. 522, 76 L. ed. 1017 (1932).

Amendment, it is assumed they are now in force to the same extent. The Reed Amendment was so revised in 1934 as to eliminate the prohibition of advertising intoxicating liquors in dry states by means of the mails.<sup>18</sup> The federal restrictions apply to those states in which prohibition extends over the entire territory, not merely to parts under local option;<sup>19</sup> but in one instance they were invoked to prohibit the interstate shipment into a single dry county in Texas upon the theory that the local unit was dry by state law although the rest of the state remained wet.<sup>20</sup>

The word "commerce" as used in the constitutional sense "is a term of the largest import"<sup>21</sup> and is not restricted to a commercial or business transaction; in fact a person walking across an interstate bridge is engaged in interstate commerce.<sup>22</sup> Therefore the federal control over the transportation or importation in interstate commerce of intoxicating liquors for beverage purposes "into" dry states is not limited to common carriers;<sup>23</sup> it extends to prohibit the transportation by a person who carries the same from one state into another in his own private vehicle, not for the purposes of trade, but for his own personal use.<sup>24</sup> The intention as to ultimate destination of the goods fixes the character of transportation, whether intrastate, interstate, or foreign.<sup>25</sup> It is generally held that there is no offense until the liquor has been transported "into" the dry state.<sup>26</sup> The repeal of the Eighteenth Amendment removed the restriction upon the shipments "through" dry states as a mere incident of the transportation to another state. Under the protection of the Commerce Clause intoxicating liquors may be shipped "through" dry states,<sup>27</sup> and may be carried by persons on a train pass-

<sup>18</sup> 48 STAT. 316, 27 U. S. C. A. §123 (1934 Supp.).

<sup>19</sup> *Laughter v. U. S.*, 259 Fed. 94 (C. C. A. 6th, 1919); *United States v. Collins*, 263 Fed. 657 (C. C. A. 5th, 1919); *West Jersey & S. Ry. v. City of Millville*, 91 N. J. Law 572, 103 Atl. 245 (1918).

<sup>20</sup> *McAdams v. Wells Fargo & Co. Express*, 249 Fed. 175 (E. D. La. 1918).

<sup>21</sup> *Welton v. State of Mo.*, 91 U. S. 275, 280, 23 L. ed. 347, 350 (1875).

<sup>22</sup> *Covington & Co. Bridge Co. v. Kentucky*, 154 U. S. 204, 14 Sup. Ct. 1087, 38 L. ed. 962 (1894).

<sup>23</sup> *James Clark Distilling Co. v. Western Maryland Ry. Co.*, 242 U. S. 311, 37 Sup. Ct. 180, 61 L. ed. 326 (1917).

<sup>24</sup> *United States v. Simpson*, 252 U. S. 465, 40 Sup. Ct. 364, 64 L. ed. 665 (1919).

<sup>25</sup> *United States v. Picou*, 71 F. (2d) 854 (C. C. A. 5th, 1934).

<sup>26</sup> *United States v. Collins*, 263 Fed. 657 (C. C. A. 5th, 1919); *Moran v. U. S.*, 264 Fed. 768 (C. C. A. 6th, 1920). *Contra: Ex Parte Westbrook*, 250 Fed. 636 (S. D. Fla. 1918) (defendants attempted to carry liquor from wet Florida to dry Georgia; conviction under Reed Amendment for causing intoxicating liquors to be transported in interstate commerce although they had driven only 2 miles in Florida).

<sup>27</sup> *United States v. Gudger*, 249 U. S. 373, 39 Sup. Ct. 323, 63 L. ed. 653 (1919); *Martin v. Commonwealth*, 126 Va. 715; 100 S. E. 836 (1919).

ing through the state,<sup>28</sup> or even in a truck or automobile<sup>29</sup> in the absence of evidence to show that the parties intended to use or dispose of same within the state. This right is not lost or impaired by the transfer in the dry state of some portion of the liquor to another vehicle provided it is intended in good faith that the whole of it shall be carried directly into another state, the intent and good faith being a question for the jury.<sup>30</sup> To prevent the abuse of importation under the claim of a "through" shipment, the courts of the states through which the shipments pass may determine upon the evidence in the individual case whether the transportation is *bona fide* "through" the state.<sup>31</sup> If a "through" shipment remains in a dry state an undue length of time for a reason not incidental to the shipping conditions accompanying the transportation, it loses the protection of interstate commerce and becomes subject to local laws.<sup>32</sup> The Supreme Court of Tennessee has held that if it is unlawful to sell intoxicating liquors in the state of destination, then the liquor is not a legitimate article of interstate commerce and is therefore amenable to the laws of the state to which it is brought or through which it passes.<sup>33</sup> If this case is followed, North Carolina may prosecute one who transports liquor through the state from wet Virginia to presently dry South Carolina.

The Reed Amendment as construed in *United States v. Hill*<sup>34</sup> goes beyond the previous federal acts, which were designed to aid the states in enforcing their own laws. If a state permits importation or receipt of liquor for personal use or otherwise, but prohibits the manufacture or sale, the Reed Amendment makes it a federal offense to import any liquor for any purposes save those condoned by the amendment: scientific,

<sup>28</sup> *United States v. Gudger*, 249 U. S. 373, 39 Sup. Ct. 323, 63 L. ed. 653 (1919); *Martin v. Commonwealth*, 126 Va. 715, 100 S. E. 836 (1919).

<sup>29</sup> *Durst v. U. S.*, 266 Fed. 65 (C. C. A. 4th, 1920); *Moragne v. State*, 201 Ala. 388, 78 So. 450 (1918).

<sup>30</sup> *Durst v. U. S.* 266 Fed. 65 (C. C. A. 4th, 1920).

<sup>31</sup> *Theatrical Club v. State*, 199 Ala. 562, 74 So. 696 (1917); *Moragne v. State*, 201 Ala. 388, 78 So. 450 (1918); *Marler v. Vandiviere*, 178 Ga. 115, 172 S. E. 33 (1933).

<sup>32</sup> *Theatrical Club v. State*, 199 Ala. 562, 74 So. 969 (1917).

<sup>33</sup> *Haumschilt v. State*, 142 Tenn. 520, 221 S. W. 196 (1920).

<sup>34</sup> 248 U. S. 420, 39 Sup. Ct. 143, 63 L. ed. 337 (1919) (Defendant bought whiskey, intending to take it to W. Va. for his personal use as a beverage, and for that purpose carried it on his person on a trip by common carrier into the latter state, the laws of which specifically permitted such importation but forbade manufacture or sale for beverage purposes; defendant was convicted for violating the Reed Amendment irrespective of the state law). (McReynolds, J., dissented as follows: "The Reed Amendment as now construed is a congressional fiat imposing more complete prohibition wherever the state has assumed to prevent manufacture or sale. . . If Congress may deny liquor to those who live in a state simply because its manufacture is prohibited there, why may not this be done for any suggested reason—*e. g.* because the roads are bad, or men are hanged for murder, or coals are dug? Where is the limit?")

medicinal, etc. Thus the state law is superseded. Upon a further strict construction of this act,<sup>35</sup> it might be held that if North Carolina, for instance, should so modify its prohibition laws as to permit the importation and sale of beverages which might qualify in law as intoxicating liquors (*e.g.*, beer of greater than 3.2 per centum alcohol), the importation of same would be prohibited by the Reed Amendment unless the manufacture as well as sale thereof were made lawful. It is noteworthy that the Twenty-first Amendment in contrast merely prohibits the transportation or importation into the state for use or delivery therein of intoxicating liquors "in violation of the laws thereof." Since there is now a strong constitutional guarantee of protection against the transportation into dry states contrary to the laws of those states, the Reed Amendment might well be repealed. In the event of such repeal, the dry states would again be able to have a modified form of prohibition (*e.g.*, permitting the bringing in, and possession of, small quantities for personal use) without subjecting their citizens to punishment for a federal offense contrary to the spirit of the Twenty-first Amendment.

THOMAS H. LEATH.

#### Constitutional Law—Validity of Municipal Ordinance Excluding Personal Sureties in Requirement of Bond for Operation of Taxicabs.

As a condition precedent to the operation of public service automobiles on the streets of Charlotte, North Carolina, an ordinance required the deposit with the treasurer of the city of either liability insurance with a responsible company authorized to do business in the state, or cash or securities in lieu thereof.<sup>1</sup> In a recent case the jury found that the defendant had met all state and municipal requirements for the operation of taxicabs, except compliance with the ordinance.<sup>2</sup> The trial court's verdict of not guilty of any offense was affirmed by the supreme court on the ground that since the ordinance made no provision for bonds with personal sureties, it was unconstitutional, in that

<sup>35</sup> *United States v. Collins*, 254 Fed. 869 (W. D. La. 1919).

<sup>1</sup> An ordinance to regulate the operation of cabs, taxicabs, and for-hire cars, adopted by the city of Charlotte, October 27, 1933:—"Section one: No. person, firm, or corporation shall operate. . . cabs, taxicabs, or for-hire cars. . . upon the streets of Charlotte. . . unless (A) said operators shall have filed with the treasurer of the city of Charlotte. . . policies of liability insurance with a responsible company authorized to do business in North Carolina, indemnifying licensees. . . (in stated sums). . . in any action wherein said driver may be held liable. (B) In lieu of such insurance, . . . operators may deposit like amounts. . . in cash or securities." Section two prescribes penalties.

<sup>2</sup> *State v. Sasseen*, 206 N. C. 644, 175 S. E. 142 (1934).