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cases prior to the principal case. In the *Southern Mills* case, the plaintiff company brought an action for mandamus, mandatory injunction or other appropriate relief, naming the corporation and the three directors as defendants. Service on the two non-resident directors was by publication which was held to be insufficient, and the action was dismissed.

It seems the court could have held that the directors were not necessary parties to the action and that a mandatory injunction could have been granted against the corporation for the declaration of the dividends.²⁷

The result of the principal case is commercially sound and conducive of wholesome conduct of corporate affairs. It is unconscionable that the majority stockholders of the voting stock could so choose their directors that a minority stockholder could not bring suit to enforce his rights due to his inability to get personal service of a majority of the widely scattered board of directors. By such a process, the majority stockholders could control the corporation through the directors almost without restriction. This the courts should not allow.²⁸

EDWIN B. ROBBINS.

Criminal Law—Transportation of Alcoholic Beverages

The Turlington Act¹ of 1923 made it unlawful in North Carolina to transport intoxicating liquor in any quantity for beverage purposes.² While this act has not been repealed, the Alcoholic Beverage Control Act³ of 1937 has modified some of its provisions.⁴ The basic trans-

²⁷ *Clark v. The Henrietta Mills*, 219 N. C. 1, 3, 12 S. E. 2d 682, 683 (1941). The action was, "to have corporate reorganization together with amendments to the charter of defendant, declared invalid as to plaintiff; to protect plaintiff's rights to accrued dividends on preferred stock claimed to be unlawfully invalid or defeated by the reorganization; to compel the payment of such dividends prior to the payment of dividends on reorganization stock; and to restrain defendant from the prior payment of dividends on any stock until dividends on plaintiff's preferred stock are first paid." Injunction was granted to preserve and enforce plaintiff's rights without requiring directors to be joined as defendants, although the question was not raised by the corporation.

²⁸ *Lebold v. Inland Steel Co.*, 125 F. 2d 369 (7th Cir. 1941), *cert. denied*, 316 U. S. 675 (1942).

¹ The Turlington Act is now N. C. GEN. STAT. §§18-1—18-30 (1943). It was intended to make the North Carolina prohibition law conform substantially with the National Prohibition Act, and in some respects it is more stringent. See *State v. Hickey*, 198 N. C. 45, 150 S. E. 615 (1929).

² N. C. GEN. STAT. §18-2 (1943). "No person shall manufacture, sell, barter, transport, import, export, deliver, furnish, purchase, or possess any intoxicating liquor except as authorized in this article. . . ."

³ N. C. GEN. STAT. §§18-36—18-62 (1943). The A.B.C. Act was intended to establish a uniform system of administration and control of the sale of certain alcoholic beverages in North Carolina. It provides that in counties where an election has been held and a majority of those voting in the election have expressed themselves in favor of the operation of liquor stores, county A.B.C. stores may be established and operated under the supervision of the county A.B.C. Board. For a thorough discussion of the Act see *State v. Davis*, 214 N. C. 787, 1 S. E. 2d 104 (1939).

⁴ See *State v. Barnhardt*, 230 N. C. 223, 52 S. E. 2d 904 (1949); *State v. Wilson*, 227 N. C. 43, 40 S. E. 2d 449 (1946).

portation provision of the 1937 Act permits transportation of not more than one gallon of tax-paid liquor from a "wet" county into or through a "dry" county, provided it is not transported for the purpose of sale and the seal or cap of the container has not been broken or opened.⁵

The language of the statute made it uncertain whether the limit of one gallon applied to the sum total which could be conveyed in a vehicle or to the amount of liquor which each person in such a vehicle might convey.⁶ This question was before the North Carolina Supreme Court in *State v. Welch*.⁷ Defendant and his wife were riding together in defendant's automobile en route from Charlotte to Monroe, North Carolina, with two packages, each containing one gallon of liquor purchased in Charlotte at a county Alcoholic Beverage Control store. While traveling through "dry" Union County they were stopped by two patrolmen who wished to examine defendant's driver's license. One of the patrolmen discovered the two gallons of liquor and arrested defendant for unlawfully transporting intoxicating liquor. Although defendant declared that one package of whisky belonged to his wife and that he had no knowledge that the package contained liquor until it was opened by the patrolman, the jury found him guilty of intentionally transporting intoxicating liquor in excess of one gallon.

The case put directly in issue the meaning of the controversial statutory provision, "It shall not be unlawful for any person to transport a quantity of alcoholic beverages not in excess of one gallon. . . ."⁸ Unanimously affirming the lower court's action, the Supreme Court held that the driver or other person in control of an automobile who knowingly conveys liquor in excess of one gallon, even though it belongs to and is in possession of a passenger, transports such liquor and thereby becomes guilty of illegal transportation. In reaching this conclusion the

⁵ "It shall not be unlawful for any person to transport a quantity of alcoholic beverages not in excess of one gallon from a county in North Carolina coming under the provisions of this article to or through another county in North Carolina not coming under the provisions of this article. . . ." N. C. GEN. STAT. §18-49 (1943). See *State v. Davis*, 214 N. C. 787, 1 S. E. 2d 104 (1939).

⁶ Prior to the decision in the instant case the meaning of the statute had been in doubt, some superior court judges adhering to a ruling by the attorney general that the limit was one gallon per car, and others holding that each passenger might own and possess one gallon of liquor without making the driver guilty of illegal transportation. The latter view apparently has been adopted by Virginia, whose transportation laws likewise forbid transportation by any person in excess of one gallon. VA. CODE tit. 4, §72 (1950). No test case seems to have arisen in a court of record in Virginia, but Section 46 of the Virginia Alcoholic Beverage Control Board Regulations provides that intoxicating liquor ". . . may be transported in amounts in excess of one gallon in a vehicle occupied by more than one person, provided that such alcoholic beverages shall have been lawfully acquired and are in the possession of the bona fide owner thereof, and that no person in such vehicle shall have more than one gallon of such alcoholic beverages without a permit from the Virginia Alcoholic Beverage Control Board."

⁷ 232 N. C. 77, 59 S. E. 2d 199 (1950).

⁸ N. C. GEN. STAT. §18-49 (1943).

court reasoned that since "transport" means to carry about or from one place to another,⁹ a person transports liquor not only when he conveys it on his person, but also when he conveys it in a vehicle under his control.¹⁰ Questions of ownership or possession have no bearing on the transportation issue.¹¹ This argument is based on firm precedent and appears to be legalistically sound.

The decision is of great practical importance if only for the reason that it tends to clarify the confused situation which had existed in connection with the North Carolina transportation law.¹² The extent to which the court's ruling will tend to break up the illegal liquor traffic is a matter of conjecture.¹³ The decision is also worthy of attention since our court declared that, although not required by the express terms of the statute, knowledge of the nature of the goods transported is necessary for conviction.

The court amplified its view with respect to the guilty knowledge aspect in the very recent decision of *State v. Elliott*.¹⁴ Defendants, charged with transportation of nontax-paid liquor, pleaded lack of knowledge of the presence of the liquor in their car and offered evidence in support of the plea.¹⁵ Under an instruction that the jury should return a verdict of guilty if they were satisfied that defendants had transported the liquor, defendants were found guilty. In line with its conclusion in *State v. Welch*, the Supreme Court remanded on the

⁹ *Cunard Steamship Co. v. Mellon*, 262 U. S. 100 (1923).

¹⁰ *Fitts v. State*, 24 Ala. App. 405, 135 So. 654 (1931); *Berry v. State*, 196 Ind. 258, 148 N. E. 143 (1925); *Currie v. State*, 102 Tex. Crim. App. 653, 279 S. W. 834 (1925). See *West v. State*, 93 Tex. Crim. App. 370, 371, 248 S. W. 371 (1923).

¹¹ *Green v. Commonwealth*, 195 Ky. 698, 243 S. W. 917 (1922) (owner of car permitting whisky therein guilty of transportation, though he did not own whisky or know where it came from); *People v. Ninehouse*, 227 Mich. 480, 198 N. W. 973 (1924) (taxidriver accepting drink from passenger's bottle held guilty of transportation); *Cassius v. State*, 110 Tex. Crim. App. 456, 7 S. W. 2d 530 (1928) (owner operating vehicle, knowing it contained liquor, guilty of transportation though he had no pecuniary interest in liquor); *Szymanski v. State*, 93 Tex. Crim. App. 631, 248 S. W. 380 (1923) (owner operating vehicle, knowing passenger had liquor, guilty of transportation).

¹² This decision clearly limits to one gallon per car the amount which may be transported into or through a "dry" county, but it is not settled whether this ruling applies to transportation into or through a "wet" county.

¹³ Interviews with various A.B.C. enforcement officers reveal a wide divergence in opinion as to the effect of the decision on illegal transportation. Most thought the effect would be negligible, in view of the habitual disregard manifested toward the law by liquor peddlers. Nevertheless it seems definite that, given proper law enforcement, the decision at least prevents the bootlegger from raising his transportation "quota" by the simple device of carrying a passenger to claim ownership of each gallon.

¹⁴ 232 N. C. 377, 61 S. E. 2d 93 (1950).

¹⁵ Defendants were in the front seat of the car belonging to one of the defendants, one Riddick being in the back seat, when the sheriff approached and found four gallons of nontax-paid liquor in a bag in the back seat. Defendants testified that they had stopped and picked up Riddick, who was walking along the road with a box under his arm and a bag on his back, and that they knew nothing about the contents of the bag until the sheriff discovered it.

ground that, if the issue of lack of knowledge is raised by the pleadings or evidence, it is error for the court to fail to instruct the jury that defendants would not be guilty unless they had knowledge of the presence of the liquor in the automobile. It should be noted, however, that the court qualified the statements it had made in *State v. Welch* on the guilty knowledge issue by declaring that the state made out a prima facie case of guilty knowledge when it proved that there was more than one gallon of liquor in an automobile in the possession of and operated by the defendant. Thus, if the defendant wishes to avail himself of lack of guilty knowledge as a defense, he incurs the burden of procuring and offering evidence to establish that fact.¹⁶

TENCH C. COXE, III.

Deeds—Conveyance to the Heirs of a Living Person

By the common law, if an owner of land in fee simple attempted to convey a life estate or an estate in tail, with a remainder to the grantor's heirs, the remainder was void and a reversion was created by operation of law.¹ If, however, the grantor sufficiently indicated that "heirs" meant a class of remaindermen different from his heirs general, the rule had no application.² The application of this rule meant that the grantor might subsequently defeat his heirs by conveying the property in question to other persons. The reasons given for the rule were: (1) the maxim that there can be no heirs of a living person,³ and (2) the reluctance to deprive the grantor's overlord of certain feudal rights which attached only if the property passed by descent.⁴ At common law the rule was applied as a strict rule of property,⁵ as e.g., the Rule

¹⁶ For a discussion of the wisdom of submitting a case to the jury on the strength of a presumption, see McCormick, *Charges on Presumptions and Burdens of Proof*, 5 N. C. L. REV. 291, 302 (1927). For a recent general discussion of presumptions, see Morgan, *Further Observations on Presumptions*, 16 So. CALIF. L. REV. 245 (1943).

¹ *Godolphin v. Abington*, 2 Atk. 57, 26 Eng. Reprint 432 (1740); *Doctor v. Hughes*, 225 N. Y. 305, 122 N. E. 221 (1919); *Therrell v. Clanton*, 210 N. C. 391, 186 S. E. 483 (1936).

² See *Thompson v. Batts*, 168 N. C. 333, 335, 84 S. E. 347, 348 (1915). In *Campbell v. Everhart*, 139 N. C. 503, 510, 52 S. E. 201, 203 (1905), the court stated, ". . . but it was likewise the rule in regard to a deed that, if anything appeared on its face to indicate that the grantor used the word 'heirs' as *designatio personarum*, or if a preceding estate was created so as to make the limitation to the heirs of the living person a contingent remainder depending for its vesting upon the event of the death of the ancestor before the life estate terminated, the word 'heirs' was construed to mean 'children.'"

³ *Whitley v. Arenson*, 219 N. C. 121, 124, 12 S. E. 2d 906, 909 (1941). "'Heir' and 'ancestor' are correlative terms. There can be no heir without an ancestor. Hence, there can be no heirs of the living, *nemo est haeres viventis*. One may be heir apparent or heir presumptive, yet he is not an heir, during the life of the ancestor. Consequently, under the strictness of the old law, a limitation to the heirs of a living person was void for want of a grantee."

⁴ I SIMES, *FUTURE INTERESTS* §145 (1936).

⁵ See *Doctor v. Hughes*, 225 N. Y. 305, 306, 122 N. E. 221 (1919).