

THE PRESENT STATUS OF THE WEBB-KENYON ACT.

The Webb-Kenyon law, which is the latest step by Congress in the struggle to subject interstate commerce in intoxicating liquors to the state prohibition laws, has been before the courts recently in a number of cases. Prior to the Webb-Kenyon Act the state of the law was as follows:

The United States Supreme Court had held, under the commerce clause¹ of the Federal Constitution giving Congress the power to regulate commerce among the several states to the exclusion of the states, that the states in the absence of Congressional permission had no power to prohibit the sale of intoxicating liquor in the original package in which it was shipped from another state.² This holding made it possible to evade the effect of the various state prohibitory liquor laws by the simple expedient of having the liquor shipped in from another state.

Thereupon, Congress passed the Wilson Act³ of 1890 which made intoxicating liquors, transported in interstate commerce, subject to the exercise of the police power of the state upon arrival therein in the same manner as though such liquors had been produced in the state or territory into which the same were shipped. Under this law, it was decided that the liquor did not become subject to the police power until it had been delivered to the consignee, and that the consignee acquired the right to use the liquor.⁴ Still, the evasion of the state liquor laws was readily accomplished.

On March 1, 1913, Congress passed the Webb-Kenyon Act over the veto of President Taft, who objected to it on constitutional grounds. The Act is as follows:

“An Act Divesting Intoxicating Liquors of Their Interstate Character in Certain Cases.”⁵

“Be it enacted, etc., that the shipment or transportation, in any manner, or by any means whatsoever, of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one state, territory or district of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other

¹U. S. Const., Art. I, § 8, Clause 3. *Adams Exp. Co. v. Kentucky*, 35 Sup. Ct. 824.

²*Leisy v. Hardin*, 135 U. S. 100, 10 Sup. Ct. 681.

³26 Stat. at L. 313, Chap. 728, Comp. Stat. 1913 § 8738.

⁴*Rhodes v. Iowa*, 170 U. S. 412, 42 L. Ed. 1088, 18 Sup. Ct. 664.

⁵37 Stat. at L. 699, Chap. 90. Comp. Stat. 1913, § 8738.

state, territory or district of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any state, territory or district of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such state, territory, or district of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is hereby prohibited."

CONSTITUTIONALITY.

At the present writing, the constitutionality of the Webb-Kenyon law has not been passed upon by the Supreme Court of the United States, which must be the final arbiter.

In *Adams Express Co. v. Kentucky*,⁶ digested on page 91 of this issue, the constitutionality of the law was attacked on the ground that it was in contravention of the interstate commerce clause of the Constitution of the United States and of the fifth and fourteenth amendments, but the Supreme Court held that the Webb-Kenyon Act was not applicable to the case and therefore the constitutionality was not passed upon.

The United States District Court, District of Oregon, in *United States ex rel. Zimmerman & Co. v. Oregon Washington R. and Nav. Co.*,⁷ while entertaining some doubt of the constitutionality of the Act, states: "In any event the law is not so clearly unconstitutional as to justify this court in compelling defendants to violate it."

The Supreme Court of Kentucky upholds the constitutionality of the Webb-Kenyon law in *Adams Express Co. v. Kentucky*,⁸ saying that the power of Congress to regulate interstate commerce includes the power to decide what is legitimate commerce and that Congress by declaring the shipment of intoxicating liquors to be unlawful in certain cases, thereby removes those cases from the pale of interstate commerce and subjects them to the regulation of the state.

Upholding the constitutionality of the Act, the Supreme Court of Iowa⁹ says: "The Act simply removes the bar theretofore existing to the enforcement of police regulations because of the interstate character of the transaction, and, if it be within the power of Con-

⁶35 Sup. Ct. 824, *supra*.

⁷210 Fed. 378.

⁸160 Ky. 66.

⁹*State v. U. S. Express Co.*, 145 N. W. 451.

gress to forbid shipment of all liquors in interstate traffic, why may it not do less, and forbid the shipment under certain conditions?"

The Supreme Court of Kansas, also, has decided in favor of the constitutionality of the Webb-Kenyon law in *State v. John Doe (Columbia Brewery Co.)*.¹⁰ Against the objection that the law delegates power of Congress to the states, the court says that the states enact their liquor laws under the police power and that the effect of the Webb-Kenyon law is merely to remove the inhibition due to the fact that the regulation of interstate commerce is vested in Congress. To the objection that Congress does not prescribe a uniform rule for transportation of intoxicating liquors in interstate commerce, the answer of the court is twofold. First, that the rule operates precisely the same for all states belonging to the same class and therefore is uniform. Second, that the Constitution of the United States does not require uniform laws respecting interstate commerce as it does respecting the subjects of duties, imposts and excises, naturalization and bankruptcy, and that even where uniformity is expressly commanded, it is not essential that the practical results of the operation of an act of Congress shall be perfectly uniform. As an instance, the court calls attention to the fact that the bankruptcy act of 1898 was held to be uniform although it allowed exemptions to bankrupts according to the diverse provisions of the respective states, citing *Hanover National Bank v. Moyses*.¹¹

The Court of Criminal Appeals in Texas in *Ex Parte Peede*¹² says, *obiter*, that the Webb-Kenyon law is constitutional, but does not pass upon it because the facts of the case before the court make that unnecessary.¹³

On the question of constitutionality see also *Southern Express Co. v. State*¹⁴ and *State v. Grier*.¹⁵

SCOPE.

The Act by its terms applies only where the intoxicating liquors are intended to be "received, possessed, sold, or in any manner

¹⁰92 Kan. 212.

¹¹186 U. S. 181.

¹²(Tex. 1914) 170 S. W. 749.

¹³In the following cases the question of the constitutionality was raised, but not passed upon because the facts did not render that necessary: *Atkinson v. So. Exp. Co.*, 94 S. C. 444, 78 S. E. 516, 48 L. R. A. (N. S.) 349. *Adams Exp. Co. v. Kentucky*, 154 Ky. 462, 157 S. W. 908, 48 L. R. A. (N. S.) 342. *Palmer v. So. Exp. Co. (Tenn.)*, 165 S. W. 236. *Ex Parte Peede (Texas 1914)*, 170 S. W. 749, *supra*.

¹⁴(Ala.) 66 So. 115.

¹⁵(Del.) 88 A. 579.

used" in violation of any law of the state into which they are transported. In such cases, the shipment is declared to be unlawful and the bar against state regulation of such commerce is removed.

But in all cases where the intoxicating liquor is not intended to be "used, etc.," in violation of the state law, the protection afforded by interstate commerce remains.

So, where liquor was purchased for the personal use of a consignee and his family, which use was permitted by the laws of Tennessee, it was held that the Webb-Kenyon law did not apply and that any attempt by the state to regulate the quantity to be shipped in interstate commerce was void.¹⁶

Likewise in the case of Adams Express Co. v. Commonwealth of Kentucky,¹⁷ digested on page 91 of this issue, the court held that the Webb-Kenyon law did not apply to the case of intoxicating liquors intended by the consignees for personal use, such use being lawful in Kentucky, and that therefore a statute of Kentucky forbidding carriers to bring intoxicating liquors into or deliver them in "dry" territory, was invalid as applied to interstate commerce.

It should be here noticed that the Webb-Kenyon law does not prohibit *transportation* of liquors in violation of the law of the state.¹⁸ So, a state law prohibiting the transportation of intoxicating liquor by any common carrier, unless the person to whom it is consigned has a permit, is not valid as applied to interstate shipments.¹⁹

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¹⁶Palmer v. So. Exp. Co. (Tenn.), 165 S. W. 236, supra. See also Ex Parte Peede, 170 S. W. 749, supra.

¹⁷U. S. (1915), 35 Sup. Ct. 824.

¹⁸Adams Exp. Co. v. Ky., 154 Ky. 462, 157 S. W. 908, supra.

¹⁹Hamm Brewery Co. v. Chi. R. I. & P. Ry. Co., 215 Fed. 672 (District Court D, Minnesota 1913).