

Judd, 1 F. (2nd) 513, loc. cit. 524; Fry Bros. v. Theobald (Ky.) 265 S. W. 498; Cable Co. v. McElhoe (Ind.) 108 N. E. 790.

On the question of conflict of laws when the property has been removed to another state, see 35 Cyc. 669; 24 R. C. L. 453; Harrison v. Broadway Motor Co., 128 Miss. 766, 91 So. 453, 25 A. L. R. 1148; Turnbull v. Cole, 70 Colo. 364, 201 Pac. 887, 25 A. L. R. 1149; Parker-Harris Co. v. Stephens, 205 Mo. App. 373, 224 S. W. 1036; Tenn. Auto Corp. v. American Nat. Bank, 205 Ky. 541, 266 S. W. 54; Fry v. Theobald, 265 S. W. 498; In re Meyer & Judd, 1 F. (2nd) 513.

C. S. N., '27.

SEARCH AND SEIZURE—INTOXICATING LIQUORS— ODOR FROM FERMENTING MASH.—State v. Pigg (Missouri), 278 S. W. 1030.

A police officer in the city of Columbia on smelling the odor of fermenting liquors coming from an unoccupied automobile parked at the side of the street, searched the car, finding liquor, seized it, and subsequently, the owner claiming his car was arrested. *Held*, such search and seizure was not unreasonable nor the arrest illegal being based on such probable cause as not to be in conflict with Secs. 11 and 23 of Art. II of Missouri constitution pertaining to illegal search and seizure.

The question of what are reasonable grounds to believe that a misdemeanor is being committed so as to justify search and arrest without a warrant has aroused much conflicting judicial opinion. Freedom from illegal search and seizure has been a privilege zealously guarded throughout English history. At ancient common law, the right of search and seizure was never recognized, and as late as Lord Coke, the right of issuing search warrants before indictment was denied. The Fourth Amendment to our Federal Constitution prohibits unreasonable searches and seizures, but there is no prohibition against searches which are reasonable, and an unreasonable search and seizure is said to be one for which there is in law a want of probable cause. *United States v. Snyder*, 278 Fed. 650. Such is the case when a legal warrant has been issued or in instances where public security demands an arrest without warrant as in the case when a breach of the peace is committed in the presence of an officer. *Stittgen v. Rundle*, 99 Wis. 78. The guaranty of the Fourth and Fifth Amendments to the Federal

Constitution against illegal searches and seizures applies only to Federal officers and their agents. *State v. Owens*, 302 Mo. 348. However, most state constitutions have similar provisions included in them.

The doctrine of the principal case that knowledge of commission of a crime obtained through the sense of smell is sufficient probable cause to justify search and subsequent arrest has been applied in several cases. Federal officers entering on unoccupied premises and smelling fumes of still, were held authorized to search and arrest those operating the still in *McBride v. United States*, 284 Fed. 416, and the same rule was applied in *Tritico v. United States*, 4 Fed. (2d) 664. In two instances, where officers smelled the odor of intoxicating liquor coming from saddlebags, the subsequent search and arrest of the owner was held not unreasonable. *Commonwealth v. Johnson*, 206 Ky. 701; *Ingle v. Commonwealth*, 162 S. W. 1088. In *Brown v. Commonwealth*, 208 Ky. 345, the court said: "We are strongly of the opinion that the evidence obtained from the unmistakable odors from the automobile was sufficient to authorize the taking possession of the whisky, and do all the acts necessary therefor, as well as arrest the defendant." In three Kentucky cases, the court holds that in an affidavit for a search warrant the affiant's statement that "he smelled fumes and odors of intoxicating liquors" is sufficient to authorize the issuance of a warrant. *Commonwealth v. Diebold*, 202 Ky. 315; *Abraham v. Commonwealth*, 202 Ky. 491; *Dolan v. Commonwealth*, 203 Ky. 400. Contra ruling in *United States v. Goodwin*, 1 Fed. (2d) 36. Search and arrest following the detection of the odor of liquors was held unreasonable search in *Temperance v. United States*, 299 Fed. 365. Also, in *State v. Smith*, 94 So. 344, where the officer claimed he smelled liquor as a justification for his entrance and search of defendant's property, but in this case the facts did not substantiate his claim that he had smelled liquor. It seems to be the weight of authority that the sense of smell may furnish sufficient probable cause to justify search and arrest. As is said in *State ex rel. Merrill v. District Court (Mont.)*, 231 Pac. 1107, "while the detection of one crime may require the exercise of the sense of sight, the sense of smell may be equally reliable in discovering the commission of another." M. L. S., '27.