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Constitutional Law -- Indians -- Intoxicating Liquors

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of the writ by saying there was too much possibility of escape;[20] or the inconvenience was too great;[21] or the expense was prohibitive.[22] It has been suggested that in view of these considerations, depositions be taken at the place of confinement;[23] or that the sworn affidavits made by the prisoner-witness be filed with the court for use in the proceedings.[24] Quite obviously, a mere piece of paper precludes the benefit of personal testimony both as to the petitioning party and as to the judge and jury.[25] Beale states, "It is a general rule of law that where one has become subject to the jurisdiction of a court, the jurisdiction continues in all proceedings arising out of the litigation such as appeals and writs of error."[26] However, the argument that a district court which puts the prisoner in question beyond its territorial limits retains the power to bring the same person again therein has been refuted.[27]

The decision in this case can perhaps be attributed in part to the social stigma attaching to prisons and prisoners, and the consequent reticence of judges to allow the release of convicted criminals for a few days even under the most desirous of circumstances. It appears that it would have afforded a more equitable and reasonable solution to deny the petition on the basis of the court's discretion rather than to so soundly seal the door by applying the "no-jurisdiction, no-writ" rule; for it is conceivable that a similar situation in the future might demand a more equitable treatment than was allowed in this case.

PAUL L. DEMPSEY

CONSTITUTIONAL LAW—INDIANS—INTOXICATING LIQUORS

The defendant was indicted for selling intoxicants to Indians.[1] A general demurrer was sustained by the lower courts[2] and the state appealed. *Held*: A statute prohibiting sale of intoxicants to Indians is not violative

20. Ahrens v. Clark, 335 U.S. 188, 191 (1948); Price v. Johnston, 159 F.2d 234 236, 237 (9th Cir. 1947); *Ex parte* Bagwell, 79 P.2d 395, 397 (Calif. 1938).

21. United States v. Hayman, 342 U.S. 205, 210-219 (1952); Ahrens v. Clark, *supra* note 22; Price v. Johnston, *supra* note 22; *Contra*, United States v. Quinn, 69 F. Supp. 488, 492 (N.D. Ill. 1946) (. . . if jurisdiction depends upon the matter of convenience, the convenience of the petitioner far outweighs that of the Goverment or the court).

22. Ahrens v. Clark, 335 U.S. 188, 191 (1948); Price v. Johnston, 159 F.2d 234, 236, 237 (9th Cir. 1937); Brewer v. United States, 150 F.2d 314, 315 (9th Cir. 1945); Neufield v. United States, 118 F.2d 375, 385 (D.C. Cir. 1941); *Ex parte* Bagwell, 79 P.2d 395, 396 (Calif. 1938).

23. State v. Brown, 89 So. 862 (Ala. 1921); *Ex parte* Bagwell, 79 P.2d 395, 396 (Calif. 1938); FED. R. CIV. P. 26(a).

24. Murrey v. United States, 138 F.2d 94, 97 (8th Cir. 1943); United States v. Chinn, 74 F. Supp. 189, 190 (S.D. W.Va. 1947).

25. Price v. Johnston, 334 U.S. 266, 280 (1948).

26. 1 BEALE, THE CONFLICT OF LAWS § 76.1 (1st ed. 1935).

27. Hauck v. Hiatt, 50 F. Supp. 534, 535 (W.D. S.C. 1943).

1. IDAHO CODE, § 18-4201 (1879).

2. Justice of the Peace Court and District Court of Bingham County.

of the provision in the state constitution declaring equality, nor of the Fourteenth Amendment to the Federal Constitution. *State v. Rorvick*, 277 P.2d 566 (Idaho 1954).

State legislation prohibiting the sale of intoxicating beverages to certain classes of persons has been generally upheld as a proper exercise of the police power.[3] The arguments against such legislation have centered around the reasoning that the statutes abridge the privileges of citizens of the United States and of the state, as conferred upon them by the Federal Constitution[4] and many state constitutions.[5] More specifically it is argued that class legislation is discriminatory and arbitrary, denying the class equal protection of the laws.[6] The courts have answered this charge by saying,

> Generally a statute is not discriminatory in the constitutional sense when it creates a class of persons against or in favor of whom it discriminates if the discrimination is not arbitrary or unjust but is reasonable and founded on public policy.[7]

To clarify the meaning of "reasonable" class legislation the courts have inquired as to whether the legislation protects the morals, health, and general welfare of the people,[8] or whether there is some substantial difference of situation or circumstance, that would naturally suggest the justice or expediency of discriminatory legislation with respect to the objects classified.[9]

It has been universally agreed that intoxicating beverages have destroyed persons' morals and are therefore fit subjects for control by the state.[10] Hence it is within the police power of the state to prohibit sale of intoxicants to classes of persons peculiarly liable to be injured morally or physically by their use. The great weight of authority agrees that Indians fall within this class.[11]

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3. State v. Nichols, 61 Wash. 142, 112 Pac. 269 (1910); State v. Mamlock, 58 Wash. 631, 109 Pac. 47 (1910).
4. U.S. CONST. AMEND. XIV, § 1.
5. For a typical provision see FLA. CONST. D.R. § 1.
6. People v. Bray, 105 Cal. 344, 38 Pac. 731 (1894).
7. State v. Pehrson, 205 Minn. 573, 287 N.W. 313; People v. Bray, 105 Cal. 344, 38 Pac. 731, 733 (1894) ("The right to pursue and obtain happiness is not unlimited, but subject, nevertheless to such restraints as the government may justly prescribe for the good of the whole.").
8. Giozza v. Tiernan, 148 U.S. 657 (1893); Barbier v. Connelly, 113 U.S. 27 (1885).
9. Peet Stock Remedy Co. v. McMullen, 32 F.2d 669 (8th Cir. 1929); State v. Farmers and Merchants Irrigation Co., 59 Neb. 1, 80 N.W. 52 (1899).
10. State *ex rel* Wilkinson v. Murphy, 237 Ala. 332, 186 So. 487, 492 (1939) ("The power of a state with respect to intoxicating liquors is said to exist as a correlative of its duty to support paupers, to protect the community from crime, and to confine and maintain the criminal, since the liquor traffic is one source of pauperism and crime."); State v. Nichols, 61 Wash. 142, 112 Pac. 269 (1910); State v. Mamlock, 58 Wash. 631, 109 Pac. 47 (1910).
11. See notes 3 and 6 *supra*.

The instant case agrees with the views expressed by the majority of cases on point. They feel Indians are within a class of persons liable to be particularly injured by intoxicating liquors. The dissenters base their argument on the fact that this statute[12] was passed many years ago when Indians were lawless. The courts have never attempted, in recent years, to justify the conclusion that Indians are a class of people *peculiarly* liable to be injured by intoxicants.

It is obvious that the court, in the principal case, has not attempted to use any aggressiveness in pioneering a change in a law that is definitely outdated, but has been content to sustain this archaic legislation—on grounds which factually may no longer exist. The original reason for such Indian legislation was to protect the Indians, since they were considered savages, with no education, not used to living in the midst of modern civilization.[13] The status of Indians over one hundred years ago brought about prohibitive liquor legislation for their benefit; but there is perhaps, no reason for a court, at the *present* time, to rely on cases passed forty to one hundred years ago,[14] since Indians of today, remote from the tribal state, are as capable as any other race of coping with the vices of our modern civilization.

The trend today is toward a stricter interpretation of the word "reasonable," when a racial, or other irrational basis is involved, as has been evidenced by decisions against class legislation affecting negroes.[15] Judging by this trend and keeping in mind the transition Indians have made from a veritable savage state, to respected members of a civilized society, it seems likely that statutes denying Indians the privilege to buy liquor will come under direct challenge and be declared invalid in the near future, at least with reference to the sanction of the Federal Constitution.

MORRIS WATSKY

COURTS—APPEALS OF ORDERS—STAY OF ACTION

In an action for an accounting, the defendant moved for a stay of the action pursuant to Section 3 of the United States Arbitration Act.[1] The district court found that the agreement under which arbiration was sought did not constitute an agreement to arbitrate and entered an order

12. See note 1 *supra*.
13. 39 YALE L.J. 307 (1930).
14. See notes 3 and 6 *supra*.
15. Brown v. Board of Education of Topeka, 347 U.S. 686 (1954)(Denying negroes the right to attend the same schools as whites was "unreasonable" class legislation.); Shelly v. Kraemer, 334 U.S. 1 (1948); Buchanan v. Warley, 245 U.S. 60 (1917).

1. 9 U.S.C. § 3 (1947): "If any suit or proceedings be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement. . . ."