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Proposed Changes in the Rash-Gullion Act

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PROPOSED CHANGES IN THE RASH-GULLION ACT

I am writing this article for publication in the hope of reaching the legal talent of the state and thereby creating sentiment in favor of what I conceive to be needed changes in the Rash-Gullion act.

For more than three years I have been trying to enforce this act in the 28th judicial district, composed of Clinton, Wayne, Pulaski and Rockcastle counties, and from actual observation and experience have had occasion to discover its weak points and its strong points. What I say here may cause some people to conclude that I am not as dry as I ought to be. But this charge will not be brought against me by those who know me well and therefore know that both in theory and practice I am a "chief among the drys."

Much good has been accomplished in the 28th district by the strict enforcement of this act. It is very seldom that one sees a drunken man. Many men who used to be down-and-out drunkards are now "clothed and in their right minds," and earning a decent living for themselves and their families.

I would not therefore change the act in so far as it makes it unlawful to make or sell intoxicating liquors or to have a moonshine still outfit or parts of such outfit in one's possession, and imposes both a fine *and* jail sentence for a violation. The men who do these things are criminals; they are outlaws, and they ought both to pay a fine and go to jail upon conviction. But I would change the law in regard to possessing, giving, or transporting liquors, so as to give the trial jury or the court some discretion. Under the present law neither court nor jury has any discretion in such matters. The conviction for either of these offenses must carry with it a fine of not less than $100.00 *and* a jail sentence of not less than thirty days. It is not so in the federal courts, and recently when it was proposed that the Volstead Act be so amended as to carry both a fine *and* a jail sentence upon conviction, and thus rob the federal courts of all discretion, the President of the United States frankly stated that such a law would be too drastic, and that such punishment would be cruel and unreasonable.

Under the Rash-Gullian Act one may give his neighbor a drink of whisky or he may be caught with a gill of whisky in

his possession, or he may transport a gill of whisky for a few steps and in each case he has incurred a penalty of not less than $100.00 *and* a jail sentence of not less than thirty days. These things are, of course, violations of the act and therefore wrong, but in my judgment the penalty is out of all proportion to the offense committed. A man may be guilty of either of these three offenses and yet not be in the liquor business and therefore not a very bad man or a very bad criminal.

The enforcement of this law has compelled me to send some men to jail who had been convicted of these latter offenses when my conscience almost rebelled, and my very soul cried out against it. Such convictions and penalties do not help the cause of law enforcement. The criminal element is already too large, and that element is being made larger out of men who are not criminals. Our jails are thereby crowded, and in many counties numerous jail sentences have become a burden to taxpayers.

Let us suppose a case, say, of an eighteen year old boy who is caught with a bottle of moonshine whisky in his possession. He has never been in court before. He has made a misstep—he has patronized a bootlegger; he is not in the liquor business himself and has never before been accused of violating any law. He is hailed into court on a charge of unlawfully possessing whisky, is tried, convicted and given $100.00 fine and thirty days in jail. He goes to jail a fairly good boy and thirty days of association with criminals turns him out a hardened criminal. His self-respect is gone. He is in line for further violations of the law and for further expense to the county or state. Surely no one will say that the cause of law enforcement has been helped in such a case.

There is no statute that gives a state judge any right to suspend a judgment, or any part of a judgment, in a criminal or penal action. In the case of the eighteen year old boy, supposed above, a circuit court judge has not the power to suspend the jail sentence of the boy conditioned upon his good behavior. To jail he must go, unless the Governor interferes. Our Court of Appeals has decided that trial judges have no power to suspend judgments in such cases. *Brabant* v. *Commonwealth*,* The fact is that a Kentucky circuit judge under

*157 Ky. 13, 162 S. W. 786.

the present state of our laws has neither power nor discretion. He is about as helpless an individual as one ever sees. If an amendment is introduced in our next legislature to cure these defects in the Rash-Gullion Act I will be glad to go before the committee having it in charge and give them the benefit of my actual experience and observation. And I will not hesitate to recommend that in case of transporting, giving or possessing liquors, the act should be so amended as to give the court or jury the discretion of saying whether the defendant should be fined or imprisoned, or both. I would not reduce the amount of the fine nor the length of the jail sentence in such cases, but would simply recommend that the law be so amended as that the court or jury should be permitted to have the discretion of saying whether a defendant charged with these violations should have both the fine and jail sentence, or only one.

These changes in the act would not be a step backward; they would be an advance step. They would not cripple the act; they would greatly strengthen it. Then unlawful expedients now practiced by some of our courts would not be resorted to. For instance, the Commonwealth's attorney in one district in Kentucky has stated that it is his custom to have his grand juries return an indictment for drunkenness against each person indicted for transporting, possessing or giving liquors, so that he can take a judgment for $100.00 and costs on the drunkenness charge and file or dismiss the other charge. Of course, he would only accept such a compromise where the facts would indicate that the defendant was not in the liquor business. In other courts in such cases an order is sometimes made reducing the offense to drunkenness or breach of the peace and a fine of say $100.00 and costs entered against the defendant, in order that the defendant may not have to serve a jail sentence. And still other expedients are resorted to. Courts of conscience cannot in every case rigidly enforce the Rash-Gullion Act and juries of conscience can hardly be goaded to the point of giving a young man of good family, of say, eighteen years of age, a jail sentence for having been found with a gill of whisky in his possession.

With these changes made in our state prohibitory laws, the courts and juries can and will enforce them, and at the same time a wholesome respect for these laws will be encour-

aged. Then we will make real headway, and violations of these laws will be reduced to the minimum.

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Somerset, Kentucky.
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