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The Constitutionality of Prohibitory Liquor Legislation in the United States

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In the year 1855 a prohibitory liquor law was Enacted by the legislature of the state of New York. Its provisions were in many respects broad and sweeping. The court of appeals of that state in the celebrated case of Wynehamer v. People, 13 N.Y. 378, declared certain provisions of this act to be unconstitutional. This case has since stood to the public generally, and perhaps with a majority of the legal profession as authority for the general proposition that a prohibitory liquor law is unconstitutional unless specially authorized by a state constitution. During the past few years similar laws have been enacted in several of the western states, and the state courts thereof and the United States Supreme Court have almost uniformly held such acts to be constitutional. Whereupon the public and the profession have correspondingly reversed their judgment and are now declaring that prohibitory liquor laws are constitutional under the general provisions of our state constitutions, and that, therefore, the

foundation plank of the Prohibition party demanding such an amendment to the several state constitutions is needless.

It is safe to assume, at the outset, that neither of the two popular judgments, above referred to, is absolutely correct. The fair presumption with any lawyer, who has given special study to these apparently conflicting decisions, is that a close analysis and investigation thereof will disclose a substantial harmony in the cases with the result that they substantially agree in declaring that certain provisions in prohibitory liquor laws will be constitutional, and that other provisions will be unconstitutional. It is proposed in this thesis to pursue such an investigation. The subject involves a reconsideration of some of the most fundamental and important principles of constitutional law as reconsidered and done over by the Courts not only in the prohibitory liquor cases referred to, but, also, in a considerable number of other

late and important cases, determining the constitutionality of sumptuary legislation, particularly the more celebrated oleomargarine cases, decided by the courts of last resort in several of our states, and, also, in the United States Supreme Court. These cases mark a new era in the development of constitutional law in this country, and are equally interesting, whether they merely restate well established propositions, or make a new departure, especially in view of the additional fact that they involve an interpretation of the latest amendments of the United States Constitution. The interest is increased by the fact that there is a clear divergence between the New York Court of appeals and the United States Supreme Court in certain important respects.

It is necessary to begin the investigation proposed with a sharp analysis of the case of Wynehamer v. People. As the report of this case covers upwards of a hundred pages

and as a separate opinion was written by nearly every judge taking part in the decision, each giving a different reason for his conclusion, it is a difficult task to determine precisely what propositions were decided in this case. It is not straight, therefore that the real decision of this case has been sometimes misapprehended by the courts and the profession as well as by the lay public.

The following proposition of constitutional law appears in the various opinions in this case. That intoxicating liquor on hand at the time of the passage of an act providing for its destruction without compensation is property under the protection of the provision of the New York state constitution declaring that "no person shall be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation", and that this provision of the constitution can not be avoided

by the theory that the destruction thereof is an exercise of the "police power". This proposition is really the only proposition decided by the concurrence of a majority of the court in that case, apart from certain local and incidental propositions not effecting the general issue before us.

The New York Doctrine

At the time when the "Act for the prevention of intemperance, pauperism and crime" was passed, by the legislature of the state of New York, intoxicating liquors, to be used as a beverage, were property in the most absolute and unqualified sense of the term, and were as much entitled to the protection secured by the constitution as were lands, houses, or chattels. The right of property in them had never been for a moment questioned in this country.

All property is alike in one characteristic, that of inviolability. If the legislature cannot confiscate or destroy property in general,

it has no power to legislate regarding any particular species of property. All property, which is lawfully acquired by the citizen is equally sacred in the view of the constitution and speculations as to its properties or the injury which is liable to result from its abuse has little to do with the inquiry. Property is protected because it has been acquired innocently under the existing laws and not on account of any question as to its utility. In a word the property of a citizen that has a commercial value, "cannot be pronounced worthless or pernicious, and so destroyed or deprived of its essential attributes". The prohibitions and penalties of the act under consideration pass the boundery lines of mere regulation and police and work the essential loss of the property at which they are aimed. The principal use for which intoxicating liquors are produced is for sale as a beverage and in this use almost their entire value lies,

and it follows, therefore, that any legislative act which renders them liable to seizure and destruction ~~and also~~ depriving the owner of a legal remedy if they are taken by force or robbery, deprives the owner of the Enjoyment of his property. Such is precisely the character of the act under consideration. It is one of "fierce and intolerant proscription". It is unlawful to sell intoxicating liquors and with one exception, of but little importance, to keep them at all, (§1.) they are declared to be a public nuisance. (§25) All legal protection is withdrawn from them. (§16) The owner can maintain no action for the price and if they are taken from his possession by force or fraud he is without a remedy. (§16) the act "pronounces the sentence of condemnation and the judicial machinery provided merely insures the execution of the legislative sentence". It was criminal to be in possession of intoxicating liquors on the day that the law took effect no matter how

innocently they may have been acquired on the day before. It was criminal to sell them and the owner had no alternative but to destroy them. Agencies were provided for their destruction and they were condemned as property in a series of provisions which were free from the slightest ambiguity as to their intent. From the very moment that the act went into Effect intoxicating liquors could not be kept for Exportation or for any other purpose Except for mechanical, medicinal, chemical, and sacramental uses.

By the clause of the constitution of the State of New York, previously referred to, "no person shall be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation", which when interpreted means that after rights have been acquired by the citizen under the Existing law, no branch of the government has any power to take them

away, and when they are held in contravention of the Existing law they may be taken away not by any act of the legislature but by the judicial tribunals of the state. The law for the deprivation of the citizens rights cannot be created by a legislative act which aims at their destruction. Where property rights are admitted to Exist the Legislature has no authority to say that they shall Exist no longer, Even when it appoints a tribunal to carry the sentence into Execution. It is apparent, therefore, from the foregoing, that the Constitutional safeguards above mentioned require a judicial investigation as to whether under the rule of conduct previously Existing the right under discussion was lawfully acquired and is lawfully possessed. I have already shown that intoxicating liquors are property and are just as inviolable as any other species of property. That by the operation of this law, its commercial value is annihilated; that it cannot be sold; that it is unlawful

to keep it; that all legal protection is withdrawn from it; and that it becomes a public nuisance." Is, therefore, the owner of it "deprived of his property without due process of law." When a law destroys the value of property and strips it of its attributes by which alone it is distinguished as property, the owner, most certainly, is deprived of it according to the plainest interpretation of the Constitutional provision.

Regulation on the one hand is sharply seperated from prohibition on the other. The statute under consideration is clearly prohibitory in its features and in its general policy. There is a "line of seperation, which, though difficult to define nevertheless lies between the regulation of property on the one hand and its annihilation on the other". A careful study of the opinions delivered in the case of Wynehamer v. People leads to but one conclusion which is that in the opinion of the Court the act in question passes beyond the line of

simple regulation and destroys an admitted species of property.

It is absolutely necessary to the validity of legislation of the character of the act we are considering that the essential rights of a citizen to his own property be preserved; "a right which includes the power of disposition and sale, to be exercised under such restraints as a just regard both to the public good and private rights may suggest."

If the law in question merely placed a prohibition upon sales, operating upon all alike it would be very difficult to say that it deprived any one of his liberty or property within the meaning of the Constitutional provision. While such a law would materially diminish the value of the property, and perhaps almost entirely destroy its value, yet it would not touch the thing nor destroy the property.

The term "due process of law" imports a judicial trial and not a mere declaration of its will

by the legislature in some particular law. An act of the legislature cannot deprive a man of his property and "in civil cases an act of the legislature alone is wholly inoperative to take from a man his property" except upon judicial investigation. On the third day of July 1855 the legislature in question in the case of Wynehamer v. People was property under the protection of the Constitution and while the legislature may perhaps take away so much of the right of sale as was contemplated by that act, yet by prohibiting its sale, without regard to quantity, purpose, or person, taken in connection with its other provisions, breaks up its legal Existence, which the constitution designates as property and the private injury is as effectual as if the thing itself was taken away. The act taken together seems to me, and here I am supported by the judges in their opinions in the Wynehamer case, to aim not at the regulation but at the legal destruction of property which was under the protection

of the Constitution. The Court said in the Wynehamer Case "while the act cannot be upheld in respect to property acquired prior to the prohibition yet if it was prospective in its operation I should Entertain no doubt as to the right of the Legislature to prohibit the sale of liquor Entirely within the State". But the Legislature failed to make such a discrimination, it included and was clearly meant to include all liquors.

The mere fact of a legislative act impairing the value of property does not deprive one of his right to property, but leaves him free to keep or dispose of the article. The act to come within the inhibition of the Constitution "must virtually take away and destroy those rights in which property consists and the destruction must be substantially total". To uphold such an act its provisions must be such as indicate an intention to regulate and not to destroy the property, a substantial

right in which must be saved.

The chief objection to the act of 1855 of the New York legislature lies in the fact that it fails to discriminate between Existing property and property hereafter to be acquired.

In regard to the right of a state to regulate the liquor traffic I quote the following brief Extract from the Licence Cases in which Chief Justice Taney says: " if any state deems the retail and internal traffic in ardent spirits injurious to its citizens and calculated to produce idleness, vice, or debauchery, I see nothing in the Constitution of the United States to prevent it from regulating and restraining the traffic, or from prohibiting it altogether if it thinks proper."

A brief summary of the New York doctrine as set forth in the case of Wynehamer v. People.

I. "That the prohibitory act, in its operation upon

property in intoxicating liquors existing in the hands of any person within this state (New York) when the act took effect, is a violation of the provision in the constitution of this state which declares that no person shall be "deprived of life, liberty or property, without due process of law." That the various provisions, prohibitions and penalties contained in the act do substantially destroy the property in such liquors in violation of the terms and spirit of the constitutional provision."

II. "That inasmuch as the act does not discriminate between such liquors existing when it took effect as a law, and such as might thereafter be acquired by importation or manufacture, and does not countenance or warrant any defense based upon the distinction referred to, it cannot be sustained in respect to any such liquor, whether existing at the time the act took effect or acquired subsequently; although all the judges were of opinion that it would be competent for

the legislature to pass such an act as the one under consideration (Except as to some of the forms of proceeding to enforce it), provided such act should be plainly and distinctly prospective as to the property on which it should operate."

The doctrine in the United States Supreme Court.

I. As to the right of a state to prohibit the manufacture and sale of liquor within its own territories.

II. Herein as to the right of a state in the carrying out of its policy to regulate the liquor traffic by imposing restraints upon commerce and thus bringing itself into open conflict with the United States Constitution.

I.

The most important decision in the Supreme Court of the United States as to the right of a state to prohibit the manufacture and sale of intoxicating liquors within its own territory, is found in the Case of Mugler v. Kansas, 123, U.S. 623, decided

in December 1887. In order to form a clear idea of the points decided in this case a brief review of the provisions of the Kansas statute, under which the case arose, will prove of value.

The act of Kansas, passed February 19, 1881, prohibits the manufacture and sale of intoxicating liquors within that state, except for medical, scientific, and mechanical purposes, and punishes the manufacture and sale thereof, except for the excepted purposes, as a misdemeanor, and declares all places where such liquors are manufactured, sold, bartered, or given away in violation of this law to be common nuisances, and provides for their abatement.

The act of Kansas, passed March 7, 1885, amendatory of the act of February 19, 1881, prohibits the manufacture or sale of intoxicating liquors within the state, except for medical, scientific, and mechanical purposes, section 13 of which provides that all places where liquors are manufactured, sold, or given away, or kept for such purposes, are thereby declared to be common nuisances, and, upon

the judgment of any court having jurisdiction finding such place to be a nuisance, the proper officer shall abate the same by taking possession and destroying the liquors and property used in maintaining such nuisance; that the keeper thereof shall, upon conviction, be punished by fine and imprisonment; that the attorney general, county attorney, or any citizen of the county where such nuisance is maintained, may maintain an action in the name of the state to abate the same; that an injunction shall be granted at the commencement of the action, and no bond shall be required; that violation of the injunction shall be punished as for contempt by fine or imprisonment, or both; and, section 14 provides that, in prosecutions under this act, it shall not be necessary for the state, in the first instance, to prove that the sale was without a permit.

The general question in the mugler case was whether the foregoing statutes of the state of Kansas were in conflict with the clause in the 14th amend-

ment, which provides that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law".

That legislation by a state prohibiting the manufacture within her limits of intoxicating liquors, to be there sold or bartered for general use as a beverage, does not necessarily infringe any right, privilege, or immunity, secured by the constitution of the United States, is made clear by the decisions of the United States Supreme Court, rendered before and since the adoption of the fourteenth amendment.

The question naturally arises by whom, or by what authority, is it to be determined whether the manufacture of particular articles of drink, either for general use or for the personal use of the maker, will injuriously affect the public? Power to determine such questions must exist somewhere and under our system of government

that power is lodged with the legislative branch of the government. It belongs to that department to exert what are known as the police powers of the state, and to determine, primarily, what measures are appropriate or needful for the protection of the public morals, the public health, or the public safety. "There is no justification for holding that the state under the guise merely of police regulations was here aiming to deprive the citizen of his constitutional rights; for we cannot shut out of view the fact, within the knowledge of all, that the public health, the public morals, and the public safety, may be endangered by the general use of intoxicating drinks". If, therefore, a state deems the absolute prohibition of the manufacture and sale within her limits, of intoxicating liquors, for other than medical, scientific, and mechanical purposes, to be necessary to the peace and security of society, "the courts cannot, without usurping legislative functions, override the will of the people as thus expressed by their chosen representatives".

It was contended, by the counsel for the defendants in the Mugler case, that as the primary and principal use of beer was as a beverage; as their respective breweries were erected when it was lawful to engage in the manufacture of beer for every purpose; as such Establishments would become of no value as property, or at least would be materially diminished in value, if not employed in the manufacture of beer for every purpose, — the prohibition upon their being so employed was, in effect, a taking of property for public use without compensation, and depriving the citizen of his property without due process of law. This interpretation of the Fourteenth amendment is clearly inadmissible. It cannot be supposed, for a moment, that the states intended, by adopting that amendment, to impose restraints upon the exercise of their powers for the protection of the safety, health, or morals of the community. In respect to contracts, the obligations of which are protected against hostile state legislation, the Supreme Court

said" that a state could not by any contract, limit the Exercise of her power to the prejudice of the public health and the public morals. The people themselves cannot do it much less their servants. Government is organized with a view to their preservation, and cannot divest itself of the power to provide for them." Rights and privileges arising from contracts with a state are subject to regulations for the promotion of the public health, the public morals, and the public safety, in the same sense and to the same Extent, as are all contracts and all property, whether owned by natural persons or Corporations. The Supreme Court of the United States has with marked distinctness and uniformity recognized the necessity, growing out of the fundamental Conditions of civil society, of upholding state police regulations which were Enacted in good faith and had appropriate and direct connection with that protection to life, health, and property which Each state owes to her citizens. A prohibition simply upon the use of property

for purposes that are declared, by valid legislation, to be injurious to the health, morals, or safety of the community, cannot in any just sense, be deemed a taking or an appropriation of property for the public benefit. Such legislation does not disturb the owner in the control or use of his property for lawful purposes, nor restrict his right to dispose of it, but is only a declaration by the state that its use by any one, for certain forbidden purposes, is prejudicial to the public interests. Nor can legislation of that character come within the Fourteenth amendment, in any case, unless it is apparent that its real object is not to protect the community, or to promote the general well-being, but, under the guise of police regulation, to deprive the owner of his liberty and property, without due process of law. "The power which the states have of prohibiting such use by individuals of their property as will be prejudicial to the health, the morals, or the safety of the public, is not, and, consistently with the existence and safety of organized society, cannot be, burdened with the condition that the state must com-

pensate such individual owners for pecuniary losses they may sustain, by reason of their not being permitted, by a noxious use of their property, to inflict injury upon the community". The exercise of the police power by the destruction of property which is itself a public nuisance, or the prohibition of its use in a particular way, whereby its value becomes depreciated, is very different from taking property for public use, or from depriving a person of his property without due process of law. In the one case a nuisance only is abated; in the other, inoffending property is taken away from an innocent owner. It is true, when the defendants in the Mugler case purchased and erected their breweries, the laws of the state of Kansas did not forbid the manufacture of intoxicating liquors. But the State did not thereby give any assurance, or come under any obligation, that its legislation upon that subject would remain unchanged. Indeed it was said in Stone v. Mississippi, 101 U.S. 814, the supervision of the public health and the public morals is

a governmental power, "continuing in its nature", and "to be dealt with as the special exigencies of the moment may require"; and that, "for this purpose, the largest legislative discretion is allowed, and the discretion cannot be parted with any more than the power itself". So in Beer Co. v. Massachusetts, 97 U.S. 32: "if the public safety or the public morals require the discontinuance of any manufacture or traffic, the hands of the legislature cannot be stayed from providing for its discontinuance by any incidental inconvenience which individuals or corporations may suffer".

I deem it to be of advantage to consider next certain questions relating particularly to the thirteenth section of the act of Kansas of 1885. That section which takes the place of section 13 of the act of 1881, is as follows:

"§ 13. All places where intoxicating liquors are manufactured, sold, bartered, or given away in violation of any of the provisions of this act, or where intoxicating liquors are kept for sale, barter, or delivery

in violation of this act, are hereby declared to be common nuisances, and upon the judgment of any Court having jurisdiction finding such place to be a nuisance under this section, the sheriff, his deputy, or under-sheriff, or any constable of the proper county, or marshal of any city where the same is located, shall be directed to shut up and abate such place by taking possession thereof and destroying all intoxicating liquors found therein, together with all signs, screens, bars bottles, glasses and other property used in keeping and maintaining said nuisance, and the owner or keeper thereof shall, upon conviction, be adjudged guilty of maintaining a common nuisance, and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and by imprisonment in the county jail not less than thirty days nor more than ninety days. The Attorney-General, County attorney, or any citizen of the County where such nuisance Exists, or is kept, or is maintained, may maintain an action in the name of the state to abate and per-

petually Enjoin the same. The injunction shall be granted at the commencement of the action, and no bond shall be required. Any person violating the terms of any injunction granted in such proceeding shall be punished as for contempt, by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months, or by both such fine and imprisonment, in the discretion of the Court." The Court in the Mugler Case said "we are unable to perceive anything in these regulations inconsistent with the constitutional guaranties of liberty and property. The State having authority to prohibit the manufacture and sale of intoxicating liquors for other than medical, scientific and mechanical purposes, we do not doubt her power to declare that any place, kept and maintained for the illegal manufacture and sale of such liquors, shall be deemed a common nuisance, and be abated, and at the same time, to provide for the indictment and trial of

the offendor. One is a proceeding against the propert, used for forbidden purposes, while the other is for the punishment of the offendor." Furthermore," the statute is prospective in its operation; that is, it does not put the brand of a common nuisance upon any place, unless after its passage, that place is kept and maintained for purposes declared by the legislature to be injurious to the Community. Nor is the Court required to adjudge any place to be a common nuisance simply because it is charged by the state to be such. It must first finds it to be of that character; that is, must ascertain, in some legal mode, whether, since the statute was passed, the place in question has been, or is being, so used as to make it a common nuisance. The fact to be ascertained is not whether a place, kept and maintained for purposes forbidden by the statute, was per se a nuisance, that fact being conclusively determined by the statute itself, but whether the place in question was so kept and maintained."

It will be seen that prohibitory liquor legislation of a similar character with the Kansas acts will be upheld, and, also, that such legislation does not deprive a citizen of any right privileges, or immunity of a citizen of the United States, or deprive him of life, liberty, or property without due process of law, within the meaning of the fourteenth amendment of the United States Constitution and is, therefore, Constitutional.

II.

The leading decision as to the right of a state to place restrictions upon interstate commerce, in order to more effectually Enforce its prohibitory liquor laws, is that of Bowman et al. v. Chicago and North Western Railway Company, decided in March 1888 and reported in 125 U.S. 465.

The Code of Iowa, S 1553, as amended by the Laws of Iowa, 1886, c. 66, S 10, forbids any common carrier to bring within the state of Iowa, for any person or persons or corporations, any intoxicating liquors from any other state or territory of the United States,

without having been furnished with a certificate under the seal of the county auditor of the county to which such liquor is to be transported, or is consigned for transportation, certifying that the consignee or person to whom said liquor is to be transported, conveyed, or delivered is authorized to sell intoxicating liquor in said county.

In passing upon the constitutionality of the above statute the Court said," it cannot be doubted that this law of Iowa, regarded as a rule for the transportation of merchandise, operates as a regulation of commerce among the states". "Beyond all question, the transportation of freight, or of the subjects of commerce, for the purpose of exchange or sale, is a constituent of commerce itself" The rule has been asserted with great clearness that wherever the subjects over which a power to regulate commerce is asserted are in their nature national, or admitting of one uniform system or plan of regulation, they may justly be said to be of such a nature as to require Exclusive

legislation by congress. Cooley v. Boards of Wardens, 12 How. 299; Crandall v State, 6 Wall. 42. Surely transportation of passengers or merchandise through a state, or from one state to another, is of this nature. "It is of national importance that over that subject there should be but one regulating power." If the state has not power to tax freight and passengers passing through it, or to or from it, from or into another state, much less would it have the power directly to regulate such transportation, or to forbid it altogether. If, in the Bowman case, the law of Iowa had operated upon all merchandise sought to be brought from another state into its limits, there would then be no doubt that it would be a regulation of commerce among the states, and repugnant to the constitution of the United States. But there is a limit, as laid down by the Courts, between the sovereign power of the state and the federal power; that is to say, that which does not belong to commerce is

within the jurisdiction of the police power of the state, and that which does belong to commerce is within the jurisdiction of the United States. It is conceded, therefore, that for the purposes of its policy a state has legislative control, exclusive of Congress, within its territory of all persons, things, and transactions of strictly internal concern. For the purpose of protecting its people against the evils resulting from intemperance, it has, as we have already seen, the right to prohibit the manufacture within its limits of intoxicating liquors. It may also prohibit all domestic commerce in them between its own inhabitants, whether the articles are introduced from other states or from foreign countries. It may punish those who sell them in violation of its laws. It may adopt any measures tending, even indirectly and remotely, to make the policy effective, until it passes the line of power delegated to Congress under the constitution.

It cannot, without the consent of congress, expressed or implied, regulate commerce between its people and those of the other states of the Union, in order to effect its ends, however desirable such a regulation might be. The statute of Iowa, previously referred to, falls within this prohibition. It is not an inspection law; it is not a quarantine or sanitary law. It is essentially a regulation of commerce among the states, within any definition hitherto given to that term, or which can be given; and, although its motive and purpose are to perfect the policy of the state of Iowa in protecting its citizens against the evils of intemperance, it is none the less on that account a regulation of commerce. If it had extended its provisions so as to prohibit the introduction into the state from foreign countries of all importations of intoxicating liquors produced abroad, no one would doubt the nature of the provision

as a regulation of foreign commerce. "Its nature is not changed by its application to Commerce among the states.

The section of the statute of Iowa does not fall within the legitimate exertions of the police powers. It is not an Exercise of the jurisdiction of the state over persons and property within its limits; on the contrary it is an attempt to exert that jurisdiction over persons and property within the limits of other states. It seeks to prohibit and stop their passage and importation into its own limits, and is designed as a regulation for the conduct of commerce before the merchandise is brought to its borders. "It is a regulation directly affecting interstate Commerce in an Essential and vital point, and is an unauthorized interference with the powers given to Congress over the subject. If not in contravention of any positive legislation by Congress, it is nevertheless a breach and in-

terruption of that liberty of trade which Congress ordains as the national policy, by willing that it shall be free from restrictive regulations".

The right to prohibit sales so far as is conceded to the states, arises only after the act of transportation has terminated, because the sales which the state may forbid are of things within its jurisdiction. Its power over them does not begin to operate until they are brought within the territorial limits which circumscribe it. "The power to regulate or forbid the sale of a commodity, after it has been brought into the state, does not carry with it the right and power to prevent its introduction by transportation from another state".

The decision of the Bowman Case was placed upon the broad ground that intoxicating liquors are merchantable Commodities, or known articles of Commerce; and that Consequently the Constitution, by the mere

grant to Congress of the power to regulate Commerce, operates, in the absence of legislation, to establish unrestricted trade, among the states of the Union in such Commodities or articles.

Conclusion

The fact that the law as it now stands leaves New York alone, in the stand it has taken in Wynehamer v. People, taken in connection with the reasoning of the later decisions, both in the United States Supreme Court and in the various state Courts of last resort in the Union, and the position of the New York Court of appeals regarding sumptuary legislation, with particular reference to the oleomargarine cases, and giving due weight to the grounds on which the Wynehamer case was placed and considering the harshness of the legislative Enactment brings one to the logical conclusion that, if a statute, prohibitory in its nature and

conforming with similar statutes of other States, was enacted by the Legislature of the State of New York, the Court of Appeals, when a case arose under it would declare it to be Constitutional.

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