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Search and Seizure of Contraband Liquor in Automobile

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Should a distinction be made in the case of recovery by a drawee of the amount of a forged check or bill, in the limited class of cases where any recovery is allowed at all? In general, as above stated, no recovery back is allowed to a drawee who has paid a forged bill or check. In general, the drawee must at his peril ascertain the genuineness of the drawer's signature before paying, and is estopped to dispute the genuineness of that signature after payment. But, as above stated, where the party receiving payment was not a holder in due course, i. e., did not receive payment in good faith and without suspicion of the forgery, or did not pay value for the instrument, the drawee is allowed to recover back. In such cases is the law different from what it is with respect to recovery of payments made under forged indorsements, and does it require diligence in the matter of discovery of the forgery as a prerequisite to recovery? It must be admitted that there are some dicta to the effect that there is a difference in the two classes of cases, and that diligence in discovery of the forgery is required in the case of recovery on a forged check or bill.¹¹

The court cites the case of *Union National Bank v. Farmers' National Bank*¹² in support of its views. In that case, however, it seems to have been conceded that there was undue delay both in the discovery of the forgery (of checks) and in giving notice. In any event the Pennsylvania law, based largely on an early statute, permitting recovery back of money paid on forged checks or bills (as well as in case of forged indorsements), appears to be exceptional, and to follow English, as opposed to American, precedent in requiring diligence in discovering the forgery as well as in giving notice of it.¹³

It is submitted that the dicta in the instant case are unfortunate. On principle, and, it is submitted, the greater weight of authority, the right of a drawee to recover money paid by him on a forged check should depend solely on the question whether or not the party receiving the money received it in good faith, and paid value for the paper—the care or want of care of that party in taking the paper being immaterial. Nor should mere delay in discovering the forgery defeat the right of recovering back money paid on a forged check or under a forged indorsement.

LOUIS M. GREELEY.

CONSTITUTIONAL LAW—SEARCH AND SEIZURE—CONTRABAND LIQUOR IN AUTOMOBILE.—[United States] The literature of the Fourth Amendment, much augmented in recent years, is still further enriched by the recent case of *Carroll v. United States*,¹ dealing with the conditions under which an automobile in transit may be searched

11. *Canal Bank v. Bank of Albany* (1841) 1 Hill. 287; *Schroeder v. Harvey* (1874) 75 Ill. 638.

12. (1921) 271 Pa. St. 107.

13. *Iron City National Bank v. Fort Pitt National Bank* (1893) 159 Pa. St. 46; 7 C. J. p. 690 note.

1. (1925) 45 S. Ct. Rep. 280.

for contraband liquor by federal officers without a warrant. Certain federal prohibition agents had reason to suspect from their contact with defendants in September, 1921, that the latter were engaged in illicit liquor traffic by automobile between Detroit and Grand Rapids, Mich. About eleven weeks later they saw defendants driving in an automobile over the road between those places. The officers stopped defendants, searched their car, and found sixty-eight bottles of whisky and gin concealed behind the upholstery of the seats. Defendants were arrested and the liquor seized. At the trial of the defendants for violation of the Volstead Act two of the seized bottles were admitted in evidence against them over their objection, after their unsuccessful motion that all of the seized liquor be returned to the defendant Carroll, who owned the automobile. From a conviction in the federal court for the western district of Michigan defendants took a writ of error to the United States Supreme Court, where the case was twice argued and finally submitted in March, 1924.

The decision, rendered March 2, 1925, upheld the conviction. It pointed out that "the Fourth Amendment does not denounce all searches and seizures, but only such as are unreasonable,"² and that an amendment to the national Prohibition Act, which made it a misdemeanor for any federal agent in enforcing the Act to search any private dwelling without a warrant, or to search any other building or property maliciously or without reasonable cause,³ was adopted after a conference between committees of the House and Senate which explicitly rejected a proposal that no property or premises should be searched without a warrant, on the ground that this would make it impossible to stop rum-running automobiles. The distinction between the necessity for a warrant to search buildings and to search vehicles was declared consistent with the Fourth Amendment, and borne out by revenue legislation of 1789, 1790, 1793, 1799, and 1815 (the latter authorizing informal searches of beasts and persons as well as vehicles, and finally embodied in section 3061 of the United States Revised Statutes). The court continued:

"We have made a somewhat extended reference to these statutes to show that the guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of the government, as recognizing a necessary difference between a search of a store, dwelling house, or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor-boat, wagon, or automobile for contraband goods, where it is not practicable to secure a warrant, because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.

"Having thus established that contraband goods concealed and illegally transported in an automobile or other vehicle may be searched without a warrant, we come now to consider under what circumstances such search may be made. It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the

2. 45 S. Ct. Rep. at 283.

3. 42 St. L. 223 c. 134 sec. 6.

chance of finding liquor, and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search. Travelers may be so stopped in crossing an international boundary because of national self-protection reasonably requiring one entering the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in. But those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official, authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise . . .

"If an officer seizes an automobile or the liquor in it without a warrant, and the facts as subsequently developed do not justify a judgment of condemnation and forfeiture, the officer may escape costs or a suit for damages by showing that he had reasonable or probable cause for the seizure. . . . We here find the line of distinction between legal and illegal seizures of liquor in transport in vehicles. It is certainly a reasonable distinction. It gives the owner of an automobile or other vehicle seized under section 26, in absence of probable cause, a right to have restored to him the automobile, it protects him under the *Weeks* and *Amos* cases⁴ from the use of the liquor as evidence against him, and it subjects the officer making the seizures to damages. On the other hand, in a case showing probable cause, the government and its officials are given the opportunity which they should have to make the investigation necessary to trace reasonably suspected contraband goods and to seize them. Such a rule fulfills the guaranty of the Fourth Amendment."⁵

It was also held that section 26, title 2, of the national Prohibition Act, which purports to authorize seizure when any officer shall "discover" any person in the act of illegally transporting liquor in any vehicle, did not confine the means of discovery to the senses of the officer, but included information from any source; nor did it limit the occasions of seizure to those where there would have been a common-law right to arrest without a warrant; and that the prior dealings the prohibition officers had had with the defendants gave them reasonable cause to believe that they were illegally carrying liquor when stopped in the present case.

Mr. Justice McReynolds gave a dissenting opinion (in which Mr. Justice Sutherland concurred) on the ground that Congress had not authorized an arrest without warrant upon only such suspicion as existed in this case; that the liquor offered in evidence was obtained by a search in connection with such an illegal arrest and so was inadmissible; and that the facts known to the officers were not sufficient to create a reasonable belief that defendants were illegally transporting liquor, and hence to authorize a seizure without a warrant.

"The negotiation concerning three cases of whiskey on September 29th was the only circumstance which could have subjected plaintiffs in error to any reasonable suspicion. The arrest came two and a half months after the negotiation. Every act in the meantime is consistent

4. *Weeks v. United States* (1914) 232 U. S. 383; *Amos v. United States* (1921) 255 U. S. 313.

5. 45 S. Ct. Rep. at 285, 286.

with complete innocence. Has it come about that merely because a man once agreed to deliver whiskey, but did not, he may be arrested whenever thereafter he ventures to drive an automobile on the road to Detroit?"⁶

The decision and reasoning in the *Carroll* case represent a sensible interpretation of the Fourth Amendment, and should enable federal prohibition officers to do their duty without undue risk and hindrance. In view of the rather liberal scope given to the requirement of "reasonable or probable cause" by the court, it seems likely that a common reputation in the community of being a 'bootlegger' would justify prohibition agents in stopping and searching automobiles driven by persons thus suspected by their neighbors.

Some of the more recent state decisions, generally in accord with the principal case, are given in the note below.⁷

JAMES PARKER HALL.

CONSTITUTIONAL LAW—SEPARATION OF POWERS—POWER OF PRESIDENT TO PARDON CRIMINAL CONTEMPT.—[United States] The federal district court case of *United States v. Grossman*,¹ holding the President without power to pardon a sentence of imprisonment imposed by a federal district judge for a criminal contempt in disobeying a Volstead Act injunction against the illegal sale of liquor, was reversed by the United States Supreme Court in *Ex parte Grossman*.² In the comment³ in this REVIEW on the case in the district court, it was suggested that, whatever might be the rule as regards contempts committed in the presence of the court and actually interfering with the process of adjudication, contempts arising out of the administration of public law ought to be pardonable by the executive. The reasoning of the opinion of the court by Mr. Chief Justice Taft in the *Grossman* case goes beyond this, and would apparently hold all criminal contempts against the authority of the federal courts pardonable by the President, regardless of their nature. The opinion justifies this both upon grounds of history and policy. It was the English practice from an early period, and has been followed in the federal practice of this country from 1841 to the present time, the diligence of the Attorney-General's office disclosing at least twenty-seven cases of its exercise by the President under the most diverse circumstances, supported by sev-

6. 45 S. Ct. Rep. at 292.

7. Holding search of automobile and seizure of liquor therein valid without a warrant where officer had reasonable suspicion of illegality: *Patrick v. Comm.* (Ky. 1923) 250 S. W. 507; *People v. Chyc* (1922) 219 Mich. 273; *People v. De Cesare* (1922) 220 Mich. 417; *Houck v. State* (Ohio 1922) 140 N. E. 112; *Hughes v. State* (1922) 145 Tenn. 540; *Brown v. State* (1922) 92 Tex. Cr. 147. In *People v. Case* (1922) 220 Mich. 379 a search was upheld where no definite suspicion existed, but illegal liquor was actually found. On the other hand searches and seizures based upon suspicion only were held illegal in *Butler v. State* (1922) 129 Miss. 778; *State v. Gibbons* (1922) 118 Wash. 171; and *Hoyer v. State* (Wis. 1923) 193 N. W. 89.

1. (N. D. Ill. E. Div. 1924) 1 F. (2d) 941.

2. (1925) 45 S. Ct. Rep. 332.

3. (1924) ILL. L. REV. XIX 176.