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Intoxicating Liquors—Transportation—Sufficiency of Evidence

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JOUR. CRIM. LAW AND CRIMINOLOGY 551; John A. Larson, "Modification of the Marston Deception Tests" 12 *ibid* 390; 13 *ibid* 121; John A. Larson, "The Berkeley Lie Detector and other Deception Tests," 47 AM. BAR ASSOC. REPTS. 619; and Herman M. Adler, "The Interests of Psychiatry in Criminal Procedure," 47 *ibid* 629. The "systolic blood-pressure" test, the theory of which is that truth is spontaneous and comes without conscious effort while the utterance of a falsehood requires a conscious effort was rejected in the case of *Frye v. United States*, 293 F. 1013. So long as experimenting psychologists admit the imperfection of their deception tests it seems proper to exclude such tests from evidence in criminal prosecutions. In view of the fact that in the instant case the test was not conducted by the prosecution the decision may be supported on the further ground of its operation as a self-serving declaration. T. S. '27.

INTOXICATING LIQUORS—TRANSPORTATION—SUFFICIENCY OF EVIDENCE—This was a prosecution for the illegal transportation of intoxicating liquor. The defendant was riding as a guest in the automobile of a third person. When approached by the sheriff the defendant threw a one gallon jug of intoxicating liquor from the car. *Held*, that this fact was insufficient to support a conviction. *State v. Duskin*, (Iowa 1926) 210 N. W. 421.

Statutes enacted by a number of states in the past few years have given rise to a great mass of litigation on the subject of transportation of intoxicating liquor. Many of these statutes are similar to the one in Missouri which provides: "The words 'transport' and 'transportation' . . . shall be held to mean and include every mode, method, or means of carrying or conveying, intoxicating liquor from place to place in any container or receptacle, of whatsoever kind or character, and by whatsoever means used, except carrying intoxicating liquor on person." Laws of Missouri, 1923, p. 242, Sec. 19. A question almost constantly arising under these statutes has been whether or not the evidence was sufficient to support a conviction. Upon none of the phases of the question is there unanimity of opinion. It has been held that to sustain a conviction it is not necessary that the defendant be owner of the liquor, *Green v. Commonwealth*, 195 Ky. 698, 243 S. W. 917; *Maynard v. State*, 93 Tex. Cr. 580, 249 S. W. 473; that he have any pecuniary interest in it or custody thereof, *Szymanski v. State*, 93 Tex. Cr. 631, 249 S. W. 380; or have the lawful possession of the vehicle used in the transportation, *Melcher v. State*, 109 Neb. 865, 192 N. W. 502. Convictions have also been sustained where the evidence showed that the defendant, while driving away from officers threw a jug of liquor from the car, *State v. Roten*, (Mo.), 266 S. W. 994; that two defendants when approached by officers got out of the car and ran and as they did so one of the defendants removed a gallon jug of whisky from under his clothing and broke it on a large stone, *Simpson et al v. State*, 195 Ind. 633, 149 N. E. 50; that defendants while fleeing from officers poured liquor from vessels containing it and threw a demijohn from the car, *State v. Habel, et al*, 134 S. C. 386, 132 S. E. 838; that defendant destroyed two jars, one containing water and the other whisky which belonged to the driver of the automobile, *Brooks v. State*, 93 Tex. Cr. 206, 247 S. W. 517; and that officers met a car on the highway and a few hours later found liquor in the same car which had parked in front of a house, *State v. Bennett et al*, (Mo.) 270 S. W. 295. The evidence has been held insufficient to sustain a conviction where it appeared that the defendant claimed no interest in whisky found in his son's car in which he was riding, or knew it was in the car or that he was driving the car at the time, *Panton v. State*, 99 Tex. Cr. 93, 268 S. W. 155; that defendant was seen with a suitcase to leave an automobile and a short time afterwards the suitcase containing whisky was found in an old house, *State v. Ridge*, (Mo.), 275 S. W. 59; that the occupant of an automobile took a drink from a bottle of whisky handed

him by the driver and handed it back, *Hitt v. Commonwealth*, 131 Va. 752, 109 S. E. 597; that one who, while riding with a friend, puts the latter's liquor in his pocket, *Locke v. Ft. Smith*, 155 Ark. 158, 244 S. W. 11; that defendant who was a guest in an automobile neither had possession of the liquor nor encouraged its transportation, *Richardson v. State*, 89 Tex. Cr. 17, 228 S. W. 1094; and that the defendant who was a guest in the car drank some of the liquor and after arrest attempted to strike the bottle of liquor seized from the officer's hands, *Walling v. State*, 94 Tex. Cr. 147, 250 S. W. 167. Perhaps the only conclusion to be drawn from the cases is that, due to the recent origin of the problem, the courts have failed to settle upon any of the essential elements necessary to constitute the offense of transportation and that each case is adjudged according to its particular facts. See also Vol. XII No. 1. SAINT LOUIS LAW REVIEW, p. 72.

INTERNAL REVENUE—GIFT TAX HELD NOT UNCONSTITUTIONAL.—Plaintiff made gifts to his wife and children in 1924 prior to the passage of the statute creating the "gift tax." Defendant collected the tax, and the plaintiff sues to recover the amount paid. *Held*, that the tax is constitutional as an excise tax, and that it is not in contravention to the provision of the United States Constitution prohibiting the laying of direct taxes except as in proportion to the population. And Congress may pass retroactive legislation where that intention is clearly expressed. *Anderson v. McNeir*, 16 F. (2d) 970 (1927).

The constitutionality of the gift tax has not so far been decided by the United States Supreme Court, and there are but few cases on this proposition. When the principal case came up in the district court, it was decided that the tax was unconstitutional. *McNeir v. Anderson*, 10 F. (2d) 813. It was there held first, that there was no historical precedent for a levy on gifts made *inter vivos*; secondly, that it was a tax on property solely on the basis of general ownership, hence direct and void for want of apportionment. It follows the test laid down in *Pollock v. Farmers' Loan and Trust Co.*, 157 U. S. 429, 601, that any tax upon the general ownership of property is direct. It was then argued that the right to give is an incident of ownership which gives value to property, and to tax that which gives value to property is a tax on the property itself, and direct.

On the other side of the question are *Anderson v. McNeir*, *supra*, and *Blodgett v. Holden*, 11 F. (2d) 180, which hold that the tax is constitutional. The reasons for such decisions are logical as well as expedient. It is argued that historically, a tax on an incident of ownership, is not direct except as to that part of the *Pollock* case rendered ineffective by the Sixteenth Amendment; and that it should be good on the same ground as the inheritance tax is, as there should be no difference in this respect between gifts *inter vivos*, and those *causa mortis*. See 74 Pa. Law Rev. 836. This tax was held not to be a tax on an incident of ownership, but on the act of transfer itself; *i. e.*, not on the right to give. The owner of the property must take active steps before he is taxed. The burden is borne by the donor, as the donee is divested of no part of the gift.

While it has not been finally decided as yet, it is believed that the gift tax will be upheld. If for no other reason, the fact that it is ancillary to the system of federal estate taxation is a strong argument in its favor. And it may be that the words of Mr. Justice Holmes will be remembered, "a page of history is worth more than a volume of logic."
C. H. L. '28.

JUDGES—REQUIREMENT THAT COUNTY JUDGES SHALL BE LEARNED IN THE LAW.—Petitioner, incumbent, sought to restrain his successful opponent from assuming the duties of county judge because he was not a licensed attorney. The Tenn. Statute, acts 1893 C. 51, required that county judges should be learned in the law. *Held*, that the statutory requirement was intended as a direction