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TURLINGTON ACT ARGUED BEFORE SUPREME COURT

Questions Involve Effect of New Law On Old Cases and Its Interpretation

Rules That Defeated Amendment Proposed To Clarify Meaning of Measure Not Proper Subject For Court's Consideration; Will Take Law As It Is Written.

Questions involving both the effect of the old law on old cases and inter-pretation of section 10 of the Turifing-ton Act enacted by the last General Assembly were presented to the Su-preme Court yesterday, just twelve days after the ratification of the States latest prohibition law. Heriot Clark son, of Charlotte, who was chairman of the legislative committee of the Anti-Saloon League which drafted the Turlington Act, assisted Assistant Attorney Gener ing the law. General Frank Nash in defend

The questions were raised by coun-sel for Eugene G. Foster, a Franklin county negro who was convicted in January and sentenced to 18 months on the roads for possesing whiskey for the purpose of sale and for receiv-ing more than a qt. of whiskey. Fosters appeal was pending when the Turling-ton Act was ratified on March 1, and counsel filed a supplementary brief, holding that judgment should be ar-rested because of the alleged repeal

of the old prohibition laws.

The two gallons of whiskey, for pos session of which Foster was convicted, were found in the negroe's home and Thomas W. Rufin, who argued the care for the defendant, made much of this point. Mr. Ruffin contended that there is no evidence in the record to show that Foster had sold any whiskey at all and that the appellate court should confine itself to the record and should find that under the new law the negro on the record, be innocent. Section ten of the Turlington Act, Mr. Ruffin contended, provides that whis-key may be possessed in the home for use of the owner and his bona fide

Another contention of Mr. Ruffin was nipped in the bud when Chief Justice Walter Clark announced that Justice Walter Clark announced that the court would not take judical notice of the bill passed by the Senate and rejected by the House which sought to ament the Turlington Act by providing that it should not be construed so as to affect pending litigation. Assistant Attorney General Frank Nash read to the court a decision of the Supreme Court of the United States where admission of recision of the Supreme Court of the United States where admission of reports of committees and debates in Congress was refused on the ground that such evidence is admissable only to solve doubt, not to create it. Judge Clark ruled that the court would be goided solely by what the General Asembly had enacted into law.

Question of Repugnancy

Practically the entire argument hinged around the question of whether

ged around the question of whether or not the Turlington law is repugor not the Turington law is repug-nant to the old laws making posses-sion of more than a gallon of whiskey prima facie evidence of purpose to sell and prohibiting the receipt of more than a quart of whiskey, under which Foster was convicted. Mr. Ruf-fin held that where a man could be

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guilty under one law and innocent under the other the laws were necessarily clearly repugnant while Mr. Nash and Mr. Clarkson took the view that the Turlington law merely strengthens the old law and is amendatory rather than conflicting. Mr. Clarkson explained that sections 1-11, inclusive, of the Turlington Act are adaptations of the Volstead Act while the remainder of the statue is a restatement of previous State laws as found in the consolidated statues. All of the attorneys cited a long line of decisions of the court tending to uphold their respective positions and Mr. Clarkson read at length from decisions written by Chief Justice Clark and Associate Justices Walker and Stacy of the present court. Members of the court term of the court.—News-Observer.

with questions.

Mr. Ruffin and W. M. Person, attorneys for Mab Journegan, another Franklin county man also filed and argued a motion for an arrest of judg-

closely and interrupted frequently

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