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TUESDAY, JULY 6, 1886.

So far, it seems, the British elections have gone against Mr. Gladstone.

An immense labor demonstration in favor of home rule for Ireland was held in New York yesterday afternoon. Some 75,000 people took part in it.

It is understood that the civil service commission has agreed to strike out of the list some of the appointments to the United States consular offices.

Congressman Hewitt of New York says that under no circumstances will he ever return to Congress; that he is tired of public life and with this session proposes to end his political career.

Representative Reid has been made one of the committee which the democratic tariff reform conference of a week ago authorized Gen. Briggs to appoint to consider the advisability of preparing an address to the country on the subject of tariff reform.

In the case of the Lake Shore strikers at Chicago, Judge Graham rules that a railroad, not in the hands of a receiver, is entitled to the protection of the Federal court, and as the Federal court is backed by the Federal government, strikers who beset railroad property are liable to be confronted not only by local authority but by the full power of the United States, which is of course practically irresistible.

The democratic House goes right on curtailing the elegant extravagance that grew up under republican auspices. The committee having in charge the general deficiency bill seeks now to bring about reform in the practice indulged in by the board appointed to visit the naval academy at Annapolis.

As the time approaches for the meeting of our primaries, that is to say, our township and ward conventions, every democrat should make up his mind to do his whole duty with regard thereto. He should realize the importance of his single voice and lend that voice with a will to the cause of getting the fittest and most capable men in the party into the places of trust and honor to be filled.

The President's vetoing gray goose quill took a little twist out of the ordinary course on Saturday. In the case of a private relief bill he said that the claimant, who was a quartermaster, after the settlement of his accounts, was found to be indebted to the government.

It will not be difficult to remember that all sorts of disaster to the finances of the country under our democratic President, Cleveland, were predicted by the politicians of a certain party. Strongly to say, though, the figures of the first fiscal year of the present treasury administration which ended with June do not confirm the prediction. The receipts and expenditures for the year as compared with those of the year preceding were as follows:

Table comparing 1885-86 and 1884-85 financial data: Receipts, 1885-86 \$197,782,128 vs 1884-85 \$171,422,254; Expenditures, 1885-86 \$197,782,128 vs 1884-85 \$171,422,254.

Does this table look like general economy on the part of the present administration or the contrary? Cannot he who runs read the answer in favor of the democracy? The large reduction of ordinary expenditures will be noted by the people and in connection with this will be taken the fact that the public debt has been reduced \$16,000,000 during the year, or more than one-third more than the year previous, and the fact that even more pension claims were paid than in any year previous, except 1883.

Vinous and Malt Liquors.

THE OPINION OF THEIR SALE UNDER THE LAW—OPINION OF GEO. H. SNOW, ESQ., ATTORNEY AT LAW FOR THE BOARD OF COUNTY COMMISSIONERS.

Sec. 3113 of the Code, vol. 2, provides: "It shall be the duty of the board of commissioners of any county, upon petition of one-fourth of the qualified voters of any county, town or township, in their respective counties, to order an election to be held on the 1st Monday in May (now June) in any year, to ascertain whether or not 'spirituous liquors' may be sold in said county, town or township."

Sec. 3116 of the Code, provides: "If a majority of the votes cast at any such election in any county, town or township shall have written on them the word 'Prohibition,' then and in that case it shall not be lawful for the board of commissioners to license the sale of 'spirituous liquors' or for any person to sell any 'spirituous liquors' within such county, town or township. Such person offending shall be guilty of a misdemeanor, &c."

A petition was filed before the board of commissioners of Wake county under sec. 3113 and an election by it ordered in Raleigh township, on the 7th day of June, 1886, which resulted in favor of prohibition.

Application is now made to the board of commissioners for license to sell in said township vinous and malt liquors. The question presented is, do the words "spirituous liquors," as used in sec. 3113 and 3116 of the Code, being the local option chapter, embrace vinous and malt liquors?

Before I examine the legislation on the subject of the sale of liquors in this State, before and since the adoption of the Code, which contain the sections sought to be construed, let me see to what extent the subject has received judicial construction in the other States of the Union where the evil to be remedied, to wit: intemperance, was the cause as in our State.

I find, in Indiana, State vs. Moore 6th Blackf. p. 118 the Court says: "This was an indictment for retailing port wine by small measure without license. We are not at liberty to extend its meaning beyond its exact literal sense. Spirit is the name of an inflammable liquid produced by distillation. Wine is the fermented juice of the grape or a preparation of other vegetables by fermentation. We cannot so far countenance the significance of these general terms as to call wine a spirituous liquor. We think port wine is not within this provision of the Statute. If its omission is an evil, the Courts have no power to remedy it."

as were produced by distillation only." In this State the distinction is clearly drawn in all the revenue acts between the terms spirituous, vinous and malt liquors. Vide sec. 3701, vol. 2 of the Code, beginning "Every person desiring to sell spirituous or malt liquors, wines, cordials or bitters in quantities less than a quart shall..."

"Nothing in this section contained shall prevent any person selling the liquors and wines of their own manufacture, or any person from selling spirits or wine, the product of his own farm," &c. * * * In Missouri, State vs. Lump, 16 Missouri, Bennett, which "was an indictment for selling liquor without a license; beer is defined to be a fermented liquor."

In Massachusetts, Commonwealth vs. Grey and wife, 2nd Gray, p. 501. "A complaint or indictment which alleges an unlawful sale of 'spirituous' or 'intoxicating liquor' is bad for uncertainty. Judge Metcalf delivering the opinion says: 'The two words are not synonymous. All spirituous liquor is intoxicating, yet all intoxicating liquor is not spirituous. In common parlance spirituous liquor means distilled liquor, and such we believe is its meaning in the statute. Fermented liquor though intoxicating, is not spirituous.'"

Again in Massachusetts, Commonwealth vs. Herriek, 6th Chasing pp. 465, 468. Chief Justice Shaw says: "The word 'intoxicating' includes a larger class of cases than spirituous. They bear the relation to each other of genus and species; all spirituous liquors are intoxicating, but all intoxicating liquors are not spirituous."

In Connecticut, Smith vs. The State, 19 Conn. 493. "This was a complaint preferred for selling, as it charged, wine, spirituous liquor or other intoxicating beverage to R, he being a common drunkard, in violation of the statute. 'The defence was that there was a misjoinder of offenses, and that the offence was stated in the alternative. The State contended that wines, spirituous liquors and other intoxicating beverage were synonymous terms. This was held not to be so, and the complaint was adjudged insufficient.'"

In New Hampshire, Walker vs. Prescott, 44th New Hampshire, p. 511. Judge Hartlett says: "Ale being produced by fermentation and not by distillation, is not spirituous liquor within the meaning of the act, but what is sold as ale may be so mixed with spirituous liquor as to fall within the meaning of the statute which prohibits the sale of any wine or spirituous liquor, mixed or unmixed, and where that is a fact it may be shown by evidence."

Again in New Hampshire, State vs. Adams, 51st New Hampshire, p. 568. Smith, Judge, says: "The indictment charges sales of spirituous liquors only. Fermented liquors are not in common parlance spirituous liquors. The latter term is popularly used to designate distilled liquors as distinguished from fermented liquors. 'It implies that the beverage is composed in part or wholly of alcohol extracted by distillation; it does not apply to a liquid whose alcoholic proportions are latent and exist substantially in the same form as in the original material from which the liquid was made. The fact that ale contains from 4 to 10 per cent of alcohol, which can be separated from it by distillation, does not bring ale within the class of liquors called 'spirituous.' If that were the test fermented milk would be 'spirituous,' for alcohol can be obtained from it by distillation. The respondents had a right to suppose that the words 'spirituous liquors' were used in the indictment in their ordinary signification and not in any possible meaning which an ingenious lawyer could plausibly contend they would bear."

State vs. Thompson, 20th West Virginia, p. 674—1882. This was an indictment for selling lager beer under a statute which prohibited the sale of "spirituous liquors or wine," except for medicinal purposes.

Judge Snyder in delivering the opinion says: "The phrase 'spirituous liquors,' in its ordinary sense, means liquors composed in part or fully of alcohol produced by distillation, as distinguished from fermented and malt liquors, and in this sense it never includes porter, ale, beer or wine. So also if we take the statute and the precise language used therein, it becomes apparent that the legislature did not intend that the terms 'spirituous liquors' or wines should include porter, ale or beer. The first section uses all of these terms, while the 4th section uses the first only. For the distilled liquors it uses the general term, spirituous liquors, and because this term would exclude wine, which is intended to be included, wine is specifically mentioned, but the words porter, ale or beer are carefully omitted."

This construction is made still more plain by that provision of said section which declares that it shall not be construed to require any person having a license to sell spirituous liquors or wine at retail to obtain another license to sell porter, ale or beer, &c. Here the liquors are put in two distinct classes, the one consisting of spirituous liquors and wine and the other of porter, ale and beer. If it was intended that license to sell spirituous liquors or wine should include the right to sell porter, ale and beer, then this provision is useless and has no effect whatever. By using the words porter, ale or beer in the general prohibition in the 1st section and then carefully omitting them from the exceptions in the 4th section necessarily a clear legislative intent and purpose is shown not to embrace these liquors or beverages among those excepted by the

said 4th section." The most eminent writers on criminal law say that the term "spirituous liquors" does not include wine and other fermented liquors; see Bishop on Criminal Law, vol. 2, sec. 1145, title Spirituous Liquors. "These words do not include wine and other fermented liquors, for they imply that the beverage is composed in part or fully of alcohol extracted by distillation."

Wharton on American Criminal Law is to the same effect. Thus it will be seen that there is an apparent uniformity in the decision of our sister States upon this subject, and were it not for the respect I entertain for the legal opinion of our attorney general, so recently published in the newspapers, I would not have used the word "apparent."

Eminent text-writers, as above quoted, agree that spirituous liquors do not embrace vinous or malt liquors. Let us now examine and see what distinguished lexicographers define the word "spirit" to be. Mr. Webster says it is "a liquid produced by distillation, especially alcohol, the spirit of spirits of wine from which it was first distilled."

"Hence rum, whiskey, brandy and other distilled liquors, having much alcohol in distinction from wine and malt liquors." "Spirituous: containing spirit, consisting of refined spirit, ardent, as spirituous liquors."

Mr. Worcester defines "spirits" the same as Mr. Webster. In common parlance the words spirituous liquors do not include wine or malt liquor. Is there a man in this prohibition territory who would go into a bar-room and call for a drink of spirituous liquor and mean wine or beer? And is there a man dealing in the trade who would give a man a glass of beer if he called for spirituous liquor?

So I think I have abundantly shown by the highest courts in the States which have considered the matter, by the most eminent and reliable law-writers, by standard lexicographers and the ordinary signification and meaning given to it among people in general, that the phrase "spirituous liquors" does not include vinous and malt liquors.

I shall now proceed to consider the question in the light of judicial and legislative construction in our own State. First I will take the case upon which the Attorney-General predicated his advice, to-wit, State vs. Lowrey, 74th N. C. Reports, page 121, January term, 1876. This was an indictment for retailing spirituous liquors in quantity less than a quart without license. There was a special verdict as follows: That defendant was not a regular dealer in spirituous liquors, but made wine from blackberries, in the usual way, without adding brandy or whiskey; that defendant was a shoemaker, and kept a bar on the side of the public road, and kept a barrel of wine in his shop, from which he retailed to one Charles Fisher, being of opinion that blackberry wine is not spirituous liquor. The jury then returned whether blackberry wine made in this way was spirituous liquor or not, submitted that question to the court. Upon this special verdict the court rendered judgment not guilty and thereupon the State appealed.

Rodman, Judge. "If the question presented by the case was the general one whether what is called blackberry wine always or usually contains alcohol, and so would come under the head of spirituous liquors, it would be a question of fact on which I could give no decision. We may be allowed to assume, as matter of common knowledge, that when first passed from the berries, it contains no alcohol. After it has remained a certain time, the longest of which depends on the temperature and perhaps on other causes, it will, especially if the berries were fully ripe, or if sugar has been added, undergo a fermentation by which alcohol is generated, and after a certain longer time it may undergo another fermentation, in which the alcohol will be converted into vinegar. So that when at any given time alcohol is present is a question of fact to be determined by some of the tests known to scientific men or by evidence of its effects in producing intoxication and the like. But the question which the jury had to decide and which they referred to the judge and which he decided as one of law was not the general one, but whether the particular liquid which the defendant retailed contained a sufficient amount of alcohol to be perceptible to the taste or smell or to manifest itself by its effects."

Again as showing the legislative construction of the phrase "spirituous liquors" in the acts of 1881, chap. 234, the sale of "spirituous liquors" in so many miles of the different churches mentioned is prohibited. By the act of 1885, chap. 273, sec. 5 of the acts of 1881, chap. 234, just quoted, is amended by inserting after the words "spirituous liquors" the words "wine or cider," thus showing that the legislature understood that the words "spirituous liquors" did not embrace "wine or cider."

Again sec. 3440, vol. 2 of the Code, forbids the sale of spirituous liquors, "not used by physicians for the use of the hospital within its penitentiary. Acts of 1885, chap. 386, makes it unlawful to sell or give except for medical purposes, any intoxicating drink to any inmate of any of the State." Thus using a broader and more comprehensive term, to-wit: the generic term intoxicating, as if the word spirituous liquors had been used in a restricted sense.

In the acts of 1885, chapter 127, it is enacted: "Sec. I. That no license for the sale of spirituous or malt liquors, wines, cordials or intoxicating bitters shall be granted in Buchanan county, outside of the corporate limits of the city of Asheville and the incorporated towns and villages of said county, and it shall be unlawful for any person or persons to sell such liquors, wines, cordials or intoxicating bitters, without a license so to do." "Sec. II. That in any election held under and by virtue of the provisions of

fermentation, it is in the face of the decisions herebefore quoted from other States, in the test of a decision of our own Court, and in utter disregard of an express act of the legislature of North Carolina. First in regard to the decisions of our own court. In the case of Kizer vs. Rappelman, 5th Jones' Reports, page 428, Judge Wm. H. Battle says: "The only question presented in this case, is whether champagne wine is 'liquor' within the meaning of the Revised Code, chap. 79, sec. 4." That section enacts that "no keeper of an inn, tavern or ordinary, or retailer of liquor by the small measure, shall sell to any person, on a credit, liquor to a greater amount than ten dollars, &c." The term liquors is certainly broad enough in its meaning to embrace champagne wine, and being thus embraced in the letter, we think it equally so in the spirit of the act. The object was to prevent tipping to an unreasonable extent, by preventing a credit for it to an amount greater than ten dollars. Extravagant quantities of wine may not be quite so injurious to health as the drinking of the same quantity of ardent spirits, but it may become equally as fatal to the morals of those who are tempted to indulge in it.

An additional argument that vinous as well as spirituous liquors were intended to be embraced in this section of the act, may be derived from the fact that in the 6th section "spirituous liquors" are particularly specified as those for the retailing of which a license must be obtained from the county court. Why use a more extensive term in the 4th section unless other than "spirituous liquors" were intended? Our opinion is that upon a proper construction of this section it embraces both in letter and spirit vinous as well as spirituous liquors, and that consequently his honor in the court below erred in holding that champagne wine was not embraced in it."

Is there not a clear distinction between vinous and spirituous liquors pointed out in this opinion? Now let me quote the act of the legislature to which reference has been made. The act was passed in 1874 and 1875. The State vs. Lowrey, decided at January term 1876. Acts of 1874 and 1875, chapter 208. "Sec. I. That all wines made from grapes, blackberries, currants, gooseberries, raspberries and strawberries manufactured in this State from fruit raised in the State may be sold in bottles corked or sealed up and not to be drunk on the premises where sold in any quantity, whether greater or less than one quart. Provided, that nothing herein contained shall authorize any person to sell any of the wines mentioned in this section to any person who is a minor under 21 years of age."

"Sec. II. That this act shall not apply to any wines which have or contain any foreign admixture of spirituous liquors, and shall only apply to such wines as derive their ardent spirit from vinous fermentation." This act is entitled "An act to encourage the manufacture of domestic wines in this State." And while this act was in force plainly evidencing the legislative policy, Judge Rodman holds or rather intimates that a man who makes wine from blackberries containing no foreign admixture of spirituous liquors, but made in the usual way, receiving its alcoholic properties from fermentation, and sells it, is guilty of selling spirituous liquors if the alcohol is perceptible to the taste, smell, or to manifest itself by its effects.

I feel confident that this distinguished jurist had not his attention called to the act. Again this act is brought forward in the second volume of the Code, chap. 32, known as the local option act, the two sections forming section I of the local option law, and being section 3,110 of the Code, thus emphasizing the policy of the legislature of 1883 in promoting and encouraging the manufacture and sale of domestic wines which contain no foreign admixture of spirituous liquors, but derive their ardent spirit from vinous fermentation.

Is it not perfectly plain that if "spirituous liquors" is defined to be a foreign admixture to alcohol derived from vinous fermentation, then when the phrase "spirituous liquors" is used in the same chapter it does not mean alcohol derived from fermentation; and if the manufacture of wine, whose alcoholic properties are derived solely from fermentation, is encouraged, the legislature did not intend to prohibit its sale by the use of the word "spirituous liquors?"

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