

## PROHIBITION OF INTOXICATING LIQUORS

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### EIGHTEENTH AMENDMENT

SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SECTION 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

SECTION 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

#### **Validity of Adoption**

Cases relating to this question are presented and discussed under Article V.

#### **Enforcement**

Cases produced by enforcement and arising under the Fourth and Fifth Amendments are considered in the discussion appearing under the those Amendments.

#### **Repeal**

This Amendment was repealed by the Twenty-first Amendment, and titles I and II of the National Prohibition Act<sup>1</sup> were subsequently specifically repealed by the act of August 27, 1935,<sup>2</sup> federal prohibition laws effective in various Districts and Territories were repealed as follows: District of Columbia—April 5, 1933, and

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<sup>1</sup> Ch. 85, 41 Stat. 305.

<sup>2</sup> Ch. 740, 49 Stat. 872.

January 24, 1934;<sup>3</sup> Puerto Rico and Virgin Islands—March 2, 1934;<sup>4</sup> Hawaii—March 26, 1934;<sup>5</sup> and Panama Canal Zone—June 19, 1934.<sup>6</sup>

Taking judicial notice of the fact that ratification of the Twenty-first Amendment was consummated on December 5, 1933, the Supreme Court held that the National Prohibition Act, insofar as it rested upon a grant of authority to Congress by the Eighteenth Amendment, thereupon become inoperative, with the result that prosecutions for violations of the National Prohibition Act, including proceedings on appeal, pending on, or begun after, the date of repeal, had to be dismissed for want of jurisdiction. Only final judgments of conviction rendered while the National Prohibition Act was in force remained unaffected.<sup>7</sup> Likewise a heavy "special excise tax," insofar as it could be construed as part of the machinery for enforcing the Eighteenth Amendment, was deemed to have become inapplicable automatically upon the latter's repeal.<sup>8</sup> However, liability on a bond conditioned upon the return on the day of trial of a vessel seized for illegal transportation of liquor was held not to have been extinguished by repeal when the facts disclosed that the trial took place in 1931 and had resulted in conviction of the

<sup>3</sup> Ch. 19, 48 Stat. 25; ch. 4, 48 Stat. 319.

<sup>4</sup> Ch. 37, 48 Stat. 361.

<sup>5</sup> Ch. 88, 48 Stat. 467.

<sup>6</sup> Ch. 657, 48 Stat. 1116.

<sup>7</sup> *United States v. Chambers*, 291 U.S. 217, 222–26 (1934). *See also* *Ellerbee v. Aderhold*, 5 F. Supp. 1022 (N.D. Ga. 1934); *United States ex rel. Randall v. United States Marshal for Eastern Dist. of New York*, 143 F.2d 830 (2d Cir. 1944). The Twenty-first Amendment containing "no saving clause as to prosecutions for offenses therefore committed," these holdings were rendered unavoidable by virtue of the well-established principle that after "the expiration or repeal of a law, no penalty can be enforced, nor punishment inflicted, for violations of the law committed while it was in force. . . ." *The General Pinkney*, 9 U.S. (5 Cr.) 281, 283 (1809), *quoted in* *United States v. Chambers*, *supra*, 291 U.S. at 223.

<sup>8</sup> *United States v. Constantine*, 296 U.S. 287 (1935). The Court also took the position that even if the statute embodying this "tax" had not been "adopted to penalize violations of the Amendment," but merely to obtain a penalty for violations of State liquor laws, "it ceased to be enforceable at the date of repeal," for with the lapse of the unusual enforcement powers contained in the Eighteenth Amendment, Congress could not, without infringing upon powers reserved to the States by the Tenth Amendment, "impose cumulative penalties above and beyond those specified by State law for infractions of . . . [a] State's criminal code by its own citizens." Justice Cardozo, with whom Justices Brandeis and Stone were associated, dissented on the ground that, on its face, the statute levying this "tax" was "an appropriate instrument of . . . fiscal policy. . . . Classification by Congress according to the nature of the calling affected by a tax . . . does not cease to be permissible because the line of division between callings to be favored and those to be reprovved corresponds with a division between innocence and criminality under the statutes of a state." *Id.* 294, 296, 297–98. In earlier cases it was nevertheless recognized that Congress also may tax what it forbids and that the basic tax on distilled spirits remained valid and enforceable during as well as after the life of the Amendment. *See United States v. Yuginovich*, 256 U.S. 450, 462 (1921); *United States v. Stafoff*, 260 U.S. 477 (1923); *United States v. Rizzo*, 297 U.S. 530 (1936).

crew. The liability became complete upon occurrence of the breach of the express contractual condition and a civil action for recovery was viewed as unaffected by the loss of penal sanctions.<sup>9</sup>

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<sup>9</sup>United States v. Mack, 295 U.S. 480 (1935).