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CRIMINAL LAW AND PROCEDURE — REPEAL OF STATUTE — EIGHTEENTH AMENDMENT — Defendants Chambers and Gibson were indicted on June 5, 1933, for conspiracy to violate the National Prohibition Act, and for possessing and transporting liquor in violation of the Act. Chambers pleaded guilty, and the case was continued to the December term. The case was called for trial as to Gibson on December 6, 1933. Chambers filed a plea in abatement, and Gibson demurred to the indictment. *Held*, the repeal of the Eighteenth Amendment, by the adoption of the Twenty-first, proclaimed December 5, 1933, barred further prosecution. *United States v. Chambers and Gibson*, (U. S. Sup. Ct. 1934) 1 U. S. LAW WEEK, Feb. 6, 1934, p. 29 (index p. 485).

The National Prohibition Act depended for its validity on the Eighteenth Amendment;¹ the repeal of that Amendment carried the statute with it.² The Twenty-first Amendment contained no saving clause, and the statute³ which saves pending prosecutions in the case of an ordinary repeal of a statute by Congress was inoperative, since Congress has no power to qualify the effect of a constitutional amendment. The well-recognized rule was consequently applicable, that the repeal of a law, without more, bars further prosecution, since the power of a court to punish an act requires not only the existence of a law forbidding the act when it was committed, but also the continued existence of that law at every stage in the proceedings; even affirmance on appeal is beyond the court's power after repeal.⁴ This principle has unfortunate consequences in some cases,⁵ but the result in the instant case, foreshadowed by several lower court decisions,⁶ seems desirable in the present situation.

R. J. S.

¹ *Druggan v. Anderson*, 269 U. S. 36, 46 Sup. Ct. 14, 70 L. ed. 151 (1925).

² *City of Sonora v. Curtin*, 137 Cal. 583, 70 Pac. 674 (1902); *Flanigan v. Sierra County*, 196 U. S. 553, 25 Sup. Ct. 314, 49 L. ed. 597 (1905); *Commonwealth ex rel. Zernholt v. Brennan*, 258 Pa. 1, 101 Atl. 947 (1917); *Hawley v. Anderson*, 99 Ore. 191, 190 Pac. 1097, 195 Pac. 358 (1921).

³ "The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability." Rev. Stat., sec. 13, U. S. C. tit. 1, sec. 29 (1926). Similar statutes are in effect in many of the States.

⁴ COOLEY, CONSTITUTIONAL LIMITATIONS, 4th ed., 476-477 (1878); 1 LEWIS' SUTHERLAND, STATUTORY CONSTRUCTION, 2d ed., sec. 286 (1904); *Yeaton v. United States*, 5 Cranch 281, 3 L. ed. 101 (1809); *United States v. Schooner Peggy*, 1 Cranch 103, 2 L. ed. 49 (1801); *United States v. Passmore*, 4 Dall. 372, 1 L. ed. 871 (1804); *United States v. Tynen*, 11 Wall. 88, 20 L. ed. 153 (1870); *Hollingsworth v. Virginia*, 3 Dall. 378, 1 L. ed. 644 (1798); *Maryland v. B. and O. R. R.*, 3 How. 535, 11 L. ed. 714 (1845); *Commonwealth v. Marshall*, 11 Pick. (Mass.) 350, 22 Am. Dec. 377 (1831); 36 Cyc. 1230.

⁵ *Commonwealth v. Marshall*, 11 Pick. (Mass.) 350, 22 Am. Dec. 377 (1831).

⁶ *United States v. Gibson*, (D. C. M. D. N. C. 1933) 5 F. Supp. 153; *Green v. United States*, (C. C. A. 9th, 1933) 67 F. (2d) 846; *Smallwood v. United States*, (C. C. A. 5th, 1933) 1 U. S. LAW WEEK, Dec. 26, 1933, p. 8 (index p. 320). See especially discussion in 1 U. S. LAW WEEK, Dec. 19, 1933, p. 3 (index p. 299).