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Interstate and Foreign Commerce—Power of the States to Regulate Traffic in Intoxicating Liquor.—Department of Revenue v. James B. Beam Distillery; Hostetter v. Idlewild Bon Voyage

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to such seeming injustices, and to inform courts of their actual intent, parties associating themselves for the purpose of obtaining government contracts should be careful to characterize their undertaking in writing and to further stipulate their rights and duties. Care should be taken that their agreement cannot be construed as contravening the spirit or the letter of federal procurement law. In the event the parties enter into some form of joint undertaking, they should expressly determine, as definitely as possible, the subject matter of their agreement, how long their association will last, and at what point their association will cease. Even after the undertakings have been spelled out, a party should take care to acquire sufficient documentation to prove that he (usually the prime contractor) is justified in terminating some aspect of the association and embarking upon a course of action inconsistent with the prior, and now terminated, relationship.

This long and expensive litigation could have been avoided had GE and AT more definitely specified the character and terms of their relationship. Since this was not done, the court was called upon to construe the parties' undertakings from their actions. The court could have clarified developing "joint venture" law by more thoroughly examining the parties' conduct under present law governing such associations, rather than elaborating its theory of "joint undertaking."

JOHN F. O'LEARY

Interstate and Foreign Commerce—Power of the States to Regulate Traffic in Intoxicating Liquor.—*Department of Revenue v. James B. Beam Distillery*;¹ *Hostetter v. Idlewild Bon Voyage Liquor Corp.*²—

The United States Supreme Court recently handed down two decisions defining the right of the states, under the twenty-first amendment, to regulate commerce in intoxicating liquors within their boundaries. The amendment provides in its second section: "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors in violation of the laws thereof, is hereby prohibited."³ Although both cases deal with a reduction of state powers under the amendment, they involve interpretation of two separate constitutional provisions in relation to the amendment. *Beam* involves the effect of the amendment on the import-export clause,⁴ while *Hostetter* concerns the impact of the amendment

¹ 377 U.S. 341 (1964).

² 377 U.S. 324 (1964).

³ U.S. Const. amend. XXI, § 2.

⁴ U.S. Const. art. I, § 10, cl. 2:

No State shall, without the Consent of Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of Congress.

on the commerce clause.⁵ For this reason, the cases will be considered separately.

In the *Beam* case, the state of Kentucky imposed, by statute,⁶ a tax of ten cents per proof gallon on Scotch whisky which the plaintiff imported from Scotland for purposes of resale. On the date of assessment, the liquor was in its original packages in the hands of the importer, not yet consigned for sale. The plaintiff paid the tax under protest and then brought an action for refund of the money thus paid. The Kentucky Circuit Court affirmed a state tax commission order dismissing the claim, and on appeal, the Kentucky Court of Appeals reversed the circuit court decision.⁷ The United States Supreme Court granted certiorari. HELD: The payment required is a tax on imports, prohibited to the states by the import-export clause of the United States Constitution, the effect of which remains unaltered by passage of the twenty-first amendment. States may prohibit or regulate foreign liquor coming within their borders, but may not levy an import tax on it.

In reaching its decision, the Court places primary emphasis on the effect of the twenty-first amendment on the import-export clause, commenting that "to sustain the tax . . . would require nothing short of squarely holding that the Twenty-first Amendment has completely repealed the Export-Import Clause so far as intoxicants are concerned."⁸ The Court expressly rejects a contention to this effect and goes on to distinguish the cases cited by the defendant-appellant on grounds that none deal with the import-export clause.⁹ The majority finds that because of its absolute terms, the import-export clause has not been modified by the twenty-first amendment. Since the liquor here involved was still an import under the "Original Package Doctrine,"¹⁰ and since the tax levied contravened the "explicit and precise words of the Export-Import Clause,"¹¹ the money paid must be refunded to the plaintiff. The Court takes pains to point out that this decision does not prevent Kentucky from prohibiting or otherwise regulating the flow of foreign liquor into its territory, as long as that regulation does not take the form of an import tax.

In examining the history behind the Court's theory in the principal case,

⁵ U.S. Const. art. I, § 8, cl. 3:

The Congress shall have the power

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

⁶ Ky. Rev. Stats. 243.680(2)(a):

No person shall ship or transport or cause to be shipped or transported into the state any distilled spirits from points without the state without first obtaining a permit from the department and paying a tax of ten cents on each proof gallon contained in the shipment.

⁷ 367 S.W.2d 267 (Ky. 1963).

⁸ *Supra* note 1, at 345.

⁹ *Gordon v. Texas*, 355 U.S. 369 (1958), affirming 166 Tex. Crim. 24, 310 S.W.2d 328 (1956); *Finch & Co. v. McKittrick*, 305 U.S. 395 (1939); *Indianapolis Brewing Co. v. Liquor Control Comm'n*, 305 U.S. 391 (1939); *State Board of Equalization v. Young's Market Co.*, 299 U.S. 59 (1936).

¹⁰ *Hooven & Allison Co. v. Evatt*, 324 U.S. 652 (1945); *Low v. Austin*, 80 U.S. (13 Wall.) 29 (1871); *Brown v. Maryland*, 25 U.S. (12 Wheat.) 419 (1827).

¹¹ *Supra* note 1, at 346.

there is scarcely any direct authority on the relation of the twenty-first amendment to the import-export clause. An examination, however, of the development of powers in the state under the amendment in connection with other clauses of the Constitution, notably the commerce clause, sheds valuable light on the status of state power at the time of this decision.

Throughout the nineteenth century, the question of states' rights to regulate liquor traffic was never decided firmly. Although Chief Justice Taney, in the *License Cases*,¹² extended wide powers to the states in this area, the subsequent cases of *Bowman v. Chicago & Northwestern Ry.*¹³ and *Leisy v. Hardin*¹⁴ restricted them severely. In answer to the latter decisions, Congress passed the Wilson Act¹⁵ and the Webb-Kenyon Act¹⁶ which gave the states authority to regulate the flow of liquor in their territories to a much greater degree than was permissible in the case of other commodities. In interpreting these statutes, the Supreme Court in numerous cases indicated that the commerce clause had been relaxed with regard to liquor, and the states were allowed to exercise wide prohibitory and regulatory powers.¹⁷ It was due to uncertainty as to the validity of these statutes that the second section of the twenty-first amendment was passed. This raised the terms of these acts to constitutional dignity.¹⁸

During the first years following passage of the amendment, the Court rendered several decisions which have prevailed to this day, but which demonstrably fail to accord with the spirit of the decision in the instant case.¹⁹

¹² 46 U.S. (5 How.) 504 (1847).

¹³ 125 U.S. 465 (1888).

¹⁴ 135 U.S. 100 (1890).

¹⁵ 26 Stat. 313 (1890), 27 U.S.C. § 121 (1958):

All fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale, or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

¹⁶ 49 Stat. 877 (1935), 27 U.S.C. § 122 (1958):

The shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, . . . which said . . . liquor is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is prohibited.

¹⁷ *United States v. Hill*, 248 U.S. 420 (1919); *Seaboard Air Line Ry. v. North Carolina*, 245 U.S. 298 (1917); *Clark Distilling Co. v. Western Md. Ry.*, 242 U.S. 311 (1917).

¹⁸ *Dugan v. Bridges*, 16 F. Supp. 694 (D.C.N.H. 1936), appeal dismissed, 300 U.S. 684 (1936).

¹⁹ *Gordon v. Texas*, supra note 9; *Finch & Co. v. McKittrick*, supra note 9; *Indianapolis Brewing Co. v. Liquor Control Comm'n*, supra note 9; *State Board of Equalization v. Young's Market Co.*, supra note 9.

The leading case for the older interpretation of the amendment is *State Board of Equalization v. Young's Market*.²⁰ In that case the state of California levied an import tax on beer imported by the plaintiff from Missouri and Wisconsin. The plaintiff contended that such a tax violated its rights under the commerce and equal protection clauses. The Supreme Court rejected this view, announcing, with respect to the commerce clause, that "the amendment which 'prohibited' the 'transportation or importation' of intoxicating liquors into any state 'in violation of the laws thereof' abrogated the right to import free, so far as concerns intoxicating liquors."²¹ The Court stated its position on the equal protection clause equally succinctly when it said: "A classification recognized by the Twenty-first Amendment cannot be deemed forbidden by the Fourteenth."²² By this statement the Court acknowledged that the state's action was discriminatory and would be prohibited as violative of the equal protection clause, except for the fact that the twenty-first amendment allows state action even of a discriminatory nature. This is the theory of "plenary power" which this case, and those following it, extended to the states.²³

General language in these cases led some observers to foresee the possibility that the Supreme Court would hold that the amendment softens the import-export clause, as well as the commerce and equal protection clauses, and would allow the individual states to impose an import tax on liquor from other nations.²⁴ Indeed, in his dissenting opinion in *Beam*, Justice Black argues strongly that the twenty-first amendment should be construed so as to give the states as much authority over foreign imports as they have previously been granted over domestic imports. He states, "I cannot take it upon myself to say that a State can tax liquors made in this country but not those made in Scotland—a distinction not suggested by the Amendment's language or its history."²⁵

It should be noted, however, that in failing to follow the pattern of the earlier cases the Court was not charting a completely new course. In the first place, even those decisions which had granted plenary power to the states under the amendment spoke of certain undefined authority reserved in the federal government.²⁶ For example, in *Young's Market*,²⁷ the Court said, in commenting on the argument that the amendment freed the states from *all* constitutional checks on their police power with respect to liquor, that "the question for decision requires no such generalization."²⁸ The majority could also refer to those state courts which had adjudicated this issue and point to decisions prohibiting a tax by any name on imported liquor

²⁰ *State Board of Equalization v. Young's Market Co.*, supra note 9.

²¹ *Id.* at 62.

²² *Id.* at 64.

²³ *Finch & Co. v. McKittrick*, supra note 9; *Indianapolis Brewing Co. v. Liquor Control Comm'n*, supra note 9.

²⁴ See 14 *Stan. L. Rev.* 876, 882 (1962), 55 *Yale L.J.* 815, 816 (1946).

²⁵ *Supra* note 1, at 348.

²⁶ *Jameson & Co. v. Morgenthau*, 307 U.S. 171 (1939); *State Board of Equalization v. Young's Market Co.*, supra note 9.

²⁷ *State Board of Equalization v. Young's Market Co.*, supra note 9.

²⁸ *Id.* at 64.

on the grounds that such a levy is an import tax and is not within the jurisdiction of the state.²⁹ In deciding a case with a fact situation similar to *Beam*, the California District Court of Appeals said:

Foreign imported intoxicating liquor, while still in the hands of the importer and in its original packages, is an import which, under the import-export clause, has been made immune to state taxation. In other words, the Twenty-first Amendment did not repeal the import-export clause insofar as intoxicating liquors are concerned.³⁰

The Supreme Court of Wisconsin recently adopted the same position in the case of *State ex rel. H. A. Morton Co. v. Board of Review*.³¹

The effect of the *Beam* decision is to allow the states a wide latitude in the exercise of their police power to prohibit or regulate a harmful traffic in liquor, but to recognize as well a limit beyond which the state police power may not validly be extended. The line is carefully drawn at the level of state interference with the exclusively federal right to levy import duties.

This result is reasonable because the position of the federal government as the supreme authority in dealings between the United States and foreign governments must be held superior to the asserted rights of the individual states to regulate imported intoxicating liquors by taxation. From the earliest days of our national existence it has been held that "all the powers which relate to our foreign intercourse are confided to the general government."³² Clearly, state laws and policies must not hamper the federal government in its conduct of international affairs. It will be conceded that one of the most essential aspects of international commercial dealings is the power to form agreements setting the level of import duties.³³ To insure that this power would remain firmly in the hands of the federal government, the import-export clause was included in the Constitution.³⁴ Only a constitutional amendment expressed in the most specific language should be construed to give the power to the individual states to subordinate the authority of the federal government in this field by interposition of their own laws over foreign commerce.

The framers intended the twenty-first amendment for a specific purpose—to allow the states to protect their citizens against any abuses which might arise from their citizens' use of liquor. It was to be a "saving clause to avoid conflict with those states which at the time had their own state prohibition laws or might thereafter adopt prohibition as a matter of state policy."³⁵

²⁹ *State ex rel. H. A. Morton Co. v. Board of Review*, 15 Wis. 2d 330, 112 N.W.2d 914 (1962); *Parrott & Co. v. City and County of San Francisco*, 131 Cal. App. 2d 332, 280 P.2d 881 (1955).

³⁰ *Parrot & Co. v. City and County of San Francisco*, supra note 29, at 336, 280 P.2d at 883.

³¹ *State ex rel. H. A. Morton Co. v. Board of Review*, supra note 29.

³² *Holmes v. Jennison*, 39 U.S. (14 Pet.) 540, 570 (1840).

³³ *United States v. Belmont*, 301 U.S. 324, 331 (1937); *Board of Trustees v. United States*, 289 U.S. 48, 56 (1933).

³⁴ *Brown v. Maryland*, supra note 10, at 439.

³⁵ *United States v. Colorado Wholesale Wine & Liquor Dealers' Ass'n*, 47 F. Supp. 160, 162 (D. Colo. 1942), aff'd, 324 U.S. 293 (1944). See 76 Cong. Rec. 4170-71 (1933) (remarks of Senator Borah).

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The intent of the framers is persuasive in the case of the twenty-first amendment because of the relatively short time and insignificant change in the social life of the country since its passage.

Looking to the future, the Court has decided that the import-export clause must remain entirely intact, leaving the full *complement* of power in the states to regulate importation of liquor. This leaves no room for any trend of either encroachment on the federal government's powers or expansion of them at the states' expense. The line drawn by the Court will in all probability remain static.

Another indication of the Court's new and stricter interpretation of the twenty-first amendment is found in the second principal case, *Hostetter v. Idlewild Bon Voyage Liquor Corp.*⁸⁶ The plaintiff in this case bought liquor from wholesalers in other states and brought it into New York. It was then sold tax-free at retail to outgoing international travellers. When a traveller purchased liquor from the plaintiff, he paid for it and received a receipt. No liquor was delivered to him in this country, but it was put aboard his flight and delivered to him at his foreign destination. The defendants, as chairman and members of the New York State Liquor Authority, ordered the plaintiff to cease doing business, since it was unlicensed and unlicensable under New York law. This opinion was based on the lack of provision for a business such as that of the plaintiff in the New York Alcoholic Beverage Control Law.⁸⁷ The plaintiff brought an action to enjoin the defendants from interfering with its conduct of business. The district court, sitting as a three-judge panel, granted the injunction.⁸⁸ The United States Supreme Court noted probable jurisdiction and granted certiorari. HELD: The twenty-first amendment does not supersede the commerce clause to the extent of allowing a state to prohibit traffic in intoxicating liquor across its territory when there is no use or distribution of the liquor within that state.

In its opinion, the Court first considers the relationship between the disputed sections of the Constitution and comments that it has remained unquestioned that the amendment abrogates the commerce clause with regard to liquor "destined for use, distribution, or consumption within its borders."⁸⁹ But to conclude from this that the twenty-first amendment has completely repealed the effect of the commerce clause on the federal government's control over intoxicants would be an "absurd oversimplification."⁹⁰ The Court cites a series of cases for the proposition that the state may properly regulate, but may not prohibit, the traffic in liquor across its territory with an ultimate destination in another jurisdiction.⁴¹ Concluding that New York's conduct in the instant case does not amount to approved regulation but rather to a complete prohibition of liquor which is not being

⁸⁶ Supra note 2.

⁸⁷ N.Y. Alcoholic Beverage Control Law, §§ 3(28), 100(1), 105(2) (1955).

⁸⁸ *Idlewild Bon-Voyage Liquor Corp. v. Epstein*, 212 F. Supp. 376 (S.D.N.Y. 1962).

⁸⁹ Supra note 2, at 330.

⁹⁰ Supra note 2, at 332.

⁴¹ *Johnson v. Yellow Cab Transit Co.*, 321 U.S. 383 (1944); *Carter v. Virginia*, 321 U.S. 131 (1944); *Collins v. Yosemite Park & Curry Co.*, 304 U.S. 518 (1938).

diverted into the state for use therein, the Court declares the defendants' conduct to be repugnant to the commerce clause of the Constitution.

An examination of the precedent cited by the Court in *Hostetter* shows clearly that this case is not easily reconciled with previous Supreme Court decisions determining the relationship between the commerce clause and the twenty-first amendment. It is a familiar rule that, while a state may take reasonable precautions to guard against the violation of its laws by one who is transporting liquor through its territory to another jurisdiction, it may not prohibit the traffic altogether. Application of that rule to the facts of this case is surprising, however, since all of the cases cited by the Court as precedent are distinguishable on the facts. In *Collins v. Yosemite Park and Curry Co.*,⁴² the transportation in question was across the state of California to a national park, sovereignty over which the state had ceded to the federal government. In *Johnson v. Yellow Cab Transit Co.*,⁴³ the intoxicants involved were being moved through Oklahoma to Fort Sill, a military reservation under federal jurisdiction. The Court also cites with approval a New York case, *During v. Valente*,⁴⁴ which held that businesses located in the Free Trade Zone of the Port of New York are not governed by New York law. In the principal case, however, passage of title to the purchaser and consignment of the goods for delivery to the owner occurred in "New York territory subject to New York, not federal jurisdiction."⁴⁵

The holding in this case is also a surprising departure from precedent in that the sale of liquor within a state's boundaries, regardless of subsequent consumption, has always been considered to be one type of transaction peculiarly within the states' control under the amendment.⁴⁶ In the cases cited by the Court and discussed above, there was no such transaction involved within the jurisdiction of the state.⁴⁷ In *Ziffrin, Inc. v. Reeves*⁴⁸ the Court said: "Without a doubt a state may absolutely prohibit the manufacture of intoxicants, [and] their . . . sale . . . irrespective of the use to which they are to be put."⁴⁹ Subsequently, Justice Frankfurter stated the rule with which he was familiar in a concurring opinion in *Carter v. Virginia*:⁵⁰ "In other words, liquor need not be intended for consumption in a State to be deemed to be imported into the State and therefore subject to control by that State."⁵¹

The result of this decision is to alter the extent of state regulatory power to control the use, distribution, or consumption of liquor in that state. The state may now regulate distribution only if there is concurrent use or consumption in its territory. The federal government is guaranteed the right, under the commerce clause, to be supreme in governing traffic in liquor not intended for actual consumption by persons in the state.

⁴² *Collins v. Yosemite Park & Curry Co.*, supra note 41.

⁴³ *Johnson v. Yellow Cab Transit Co.*, supra note 41.

⁴⁴ 267 App. Div. 383, 46 N.Y.S.2d 385 (1944).

⁴⁵ Supra note 2, at 335.

⁴⁶ *Carter v. Virginia*, supra note 41; *Ziffrin, Inc. v. Reeves*, 308 U.S. 132 (1939).

⁴⁷ *Johnson v. Yellow Cab Transit Co.*, supra note 41; *Collins v. Yosemite Park & Curry Co.*, supra note 41; *During v. Valente*, supra note 44.

⁴⁸ *Ziffrin, Inc. v. Reeves*, supra note 46.

⁴⁹ *Id.* at 138.

⁵⁰ *Carter v. Virginia*, supra note 41.

⁵¹ *Id.* at 141.

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This result is consonant with the purposes of the twenty-first amendment of allowing each state to protect its citizens from what its legislature may consider to be the evils of drinking intoxicating liquor.⁵² The amendment should not be interpreted to give domestic producers a competitive advantage over out-of-state rivals. The interest protected is not the economy, but rather the health, welfare, and morals of the people, which could be impaired by the unrestricted use of intoxicating liquor.⁵³ The *Hostetter* majority feels that it can be no concern of the state if a sales transaction, unaccompanied by any use of liquor, takes place within its jurisdiction. Authority to govern such a transaction would be more power than the state requires to protect its citizens, and more than the twenty-first amendment was intended to give. Here again, as in *Beam*, we see a withdrawal of a measure of the plenary power granted to the states by the decisions handed down soon after the amendment's ratification. For, at that time, the Court approved actions by the states even though they were not intended for protection from consumption of liquor. Justice Brandeis, speaking for the Court in *Indianapolis Brewing Co. v. Liquor Control Comm'n* said: "Whether the Michigan law should not more properly be described as a protective measure [for local industry], we have no occasion to consider. For whatever its character, the law is valid."⁵⁴ The Court restated this position in *Finch & Co. v. McKittrick* in saying, again through Justice Brandeis, that a Missouri law would be valid even if it "does not relate to the protection of the health, safety, and morality, or the promotion of social welfare, but is merely an economic method of retaliation."⁵⁵ It is not the province of the police power to extend this far, however, for this is a "power which is limited of its own inherent nature to certain necessary objectives."⁵⁶ Certainly the ability to discriminate economically against sister states was not one of the "necessary objectives" of the grant of power to the states under the twenty-first amendment. For these reasons, it is submitted that this retreat from plenary power is correct, and the decision effecting it is reasonable.

Looking to the future, it is likely that *Hostetter* will herald further refinements in the relation of the commerce clause to the twenty-first amendment. It would be a logical step from this decision to a holding that an import tax on domestic liquor passing in interstate commerce is unconstitutional if its primary purpose is to raise revenue rather than to protect the best interests of the residents of the state, or to a holding that laws passed for economic retaliation are not within the purview of the powers granted to the states by the twenty-first amendment. Today's Court would in all probability decide cases similar on the facts to *Young's Market*, *Finch & Co.*, and *Indianapolis Brewing Co.* differently; for, as we have suggested, the state laws in those cases could not withstand the test of *Hostetter*.

Taken together the *Beam* and *Hostetter* cases result in a better balance

⁵² 76 Cong. Rec. 4170-71 (1933) (remarks of Senator Borah).

⁵³ *Ibid.*

⁵⁴ *Indianapolis Brewing Co. v. Liquor Control Comm'n*, supra note 9, at 394.

⁵⁵ *Finch & Co. v. McKittrick*, supra note 9, at 397-8.

⁵⁶ *The Constitution of the United States of America, Analysis and Interpretation*, 216 (Corwin ed. 1953).

of power between the states and the federal government. The states retain the power to protect their citizens from the evils of alcohol while the federal government retains supremacy in international matters and control over the essential aspects of interstate commerce.

DENNIS J. ROBERTS II

Labor Law—Collective Bargaining Agreements.—*John Wiley & Sons, Inc. v. Livingston*.¹—This action was brought by District 65, Retail, Wholesale, and Department Store Union, AFL-CIO, against John Wiley & Sons, Inc., under Section 301(a) of the Labor Management Relations Act.² The Union sought to compel Wiley to arbitrate under a collective bargaining agreement between the Union and Interscience Publishing, Inc. Interscience had merged with Wiley four months before the agreement was to have expired and no longer existed as a corporate entity. The agreement did not expressly bind successors of Interscience. Wiley closed the Interscience plant and moved the 80 employees of Interscience to its own plant where they were mingled with the Wiley force of about 300. None of the latter were unionized.

The district court assumed that the agreement survived the merger and that it bound Wiley, but denied the Union's petition on other grounds.³ The court of appeals reversed and directed arbitration, holding that the merger did not *ipso facto* extinguish all rights of the Union and the employees arising out of the collective bargaining agreement.⁴ The Supreme Court granted certiorari.⁵ HELD: Wiley is compelled to arbitrate where (1) the merger did not change the nature of the business entity, (2) the transfer of employees was effected without difficulty, and (3) the Union made clear and maintained its position before and after the merger.

The Supreme Court reasoned that the preference for arbitration under the national labor policy is controlling. The shift from one corporate organization to another will in most cases be facilitated and industrial strife will be avoided if employees' claims continue to be resolved by arbitration rather than by tests of strength. This policy favoring arbitration would, in fact, be thwarted if employers could circumvent the duty to arbitrate by altering corporate structures. The Court concluded that these policy considerations are not overcome by the fact that Wiley did not sign the agreement since

¹ 376 U.S. 543 (1964).

² 61 Stat. 156 (1947), 29 U.S.C. § 185(a) (1958).

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

³ *Livingston v. John Wiley & Sons, Inc.*, 203 F. Supp. 171 (S.D.N.Y. 1962). The application was denied because the Union had failed to follow the grievance procedure established in the collective bargaining agreement.

⁴ *Livingston v. John Wiley & Sons, Inc.*, 313 F.2d 52 (2d Cir. 1963), noted 5 B.C. Ind. & Com. L. Rev. 193 (1963).

⁵ 373 U.S. 908 (1963).