

# Intoxicating Liquors: Searches and Seizures

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representatives of a deceased, his heirs or estate." The policy in suit was not so made; it being made payable to "Cohen and Kirsner, a partnership, its successors or assigns."

Thus the only logical conclusion for the court to come to was that the avails of the insurance policy were held by the administratrix as part of the general assets of the estate of Charles W. Cohen, deceased, subject to claims of creditors, and not distributable to his heirs at law.

AL H. HURLEY

### Intoxicating Liquors: Searches and Seizures.

In the case of *Fabri v. United States* (24 Fed. (2d) 185), a prohibition agent searched the residence of Fabri under authority of a search warrant, which he assumed to be valid, and seized and took away quantities of various liquors. Upon his arrest Fabri appeared and filed a verified petition, assailing the validity of the warrant, praying that it be quashed and the evidence so obtained suppressed and that the seized property be ordered returned to him at his home. In the petition he alleges only that he was in possession, and not that he was in the lawful possession of the property. Upon a hearing the court below ordered the warrant quashed and the evidence suppressed, but denied the prayer for a return of the property. Defendant sued out a writ of error, which is directed to the part of the order denying him a return of the seized property.

The court held that "where upon an unlawful search of a dwelling house, government agents seize property, the possession of which may or may not have been unlawful, the person from whose possession it is wrongfully taken is prima facie entitled to its restoration, and that the government can make successful resistance to an appropriate petition for its return only by showing affirmatively, by proofs other than those obtained as a result of the unlawful search, that the property was, at the time of seizure, being used in the commission of crime."

Upon the general question of the duty of the courts to order the return of liquor wrongfully seized by government agents in the course of an unlawful search, there is hopeless conflict in the federal courts.

In arriving at its conclusion this court said, "Possession of liquor in a dwelling house may be lawful or unlawful, depending upon the mode of acquisition or the intended use," and "Unless we resort to the facts disclosed by the search there is no ground at all on which to invoke the presumption of section 33 of the National Prohibition Act (41 Stat. 317; U.S.C.A. No. 50)."

EUGENE M. HAERTLE

### Larceny, Bailment, Misappropriation of Funds by a Broker.

Section 343.17, Statutes, among other things provides that "Whoever being a bailee of any chattel, money or valuable security shall fraudulently take or fraudulently convert the same to his own use or to the use of any person other than the owner thereof . . . shall be guilty of larceny."

A bailment "is a delivery of goods in trust, upon an agreement expressed or implied, that the trust shall be duly exercised, and the goods returned or delivered over when the purpose of the bailment