

Warehouses vs. Dispensary.

Commissioner Miller Writes to Secretary Carlisle.

WASHINGTON, Oct. 18.—Secretary Carlisle has forwarded to Attorney General Olney, for his decision, the letter of Revenue Commissioner Miller, which presents in detail the question raised between Governor Tillman of South Carolina and the United States authorities as to the jurisdiction of each in the enforcement of the South Carolina dispensary law.

The letter is as follows: WASHINGTON, D. C., Oct. 16, 1894.

Hon. John G. Carlisle, Secretary of the Treasury:

Sir: I enclose herewith a letter from Governor Tillman of South Carolina, and a printed copy forwarded by him of the State dispensary law, and I have the honor to request that the same may be submitted to the honorable Attorney General for his opinion as to the course which should be taken by this office in the event of seizures by State officers for confiscation, under the dispensary law, of distilled spirits deposited in distillery bonded warehouses under the internal revenue laws.

It is proper to state that the natural effect of acquiescence by this office in the course proposed to be taken would be the probable complete destruction of the bonded warehouse system within the State; and the consequent cessation of the business of manufacturing distilled spirits under the internal revenue laws, and the loss to the United States of further income from that source.

The dispensary law, it appears has been construed by the State Supreme Court as not absolutely prohibiting the manufacture and sale of distilled spirits. But it appears also that under the law a distiller in the State cannot sell his product to private persons within the State, nor, if I rightly apprehend the provisions of the third section, to private persons to be shipped out of the State, but only to the State commissioner or to persons outside of the State and under regulations which would seriously inconvenience the shipper. Under such restrictions there would hardly be any further lawful production of distilled spirits within the State. No distiller would be willing to produce an article to be sold only on compulsion to a single purchaser and at the price fixed by him.

The question is broadly presented whether a State can so legislate as incidentally to deprive the United States of one of its declared sources of revenue, and it appears to me a proper matter for the consideration of the highest law officer of the government. The Supreme Court in McCullough vs. Maryland, 4, Wheat, 316, declared that "the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the Constitutional laws enacted by Congress to carry into effect the powers vested to the national government."

In Hannibal and St. J. R. R. Co., vs. Husen, 95, U. S., 965, it was held that "neither the unlimited powers of a State to tax, nor any of its large police powers, can be exercised so as to work a practical assumption of the powers conferred by the Constitution upon Congress."

And in numerous other cases it has been held to the same effect.

On the other hand, in such cases as the Boston Beer Co., vs. Massachusetts, 97, U. S., 25, the right of the State to absolutely prohibit the manufacture and sale of intoxicating liquors was upheld.

Applying what appears to be the established law to the present case, it would seem that while the State of South Carolina has the right, in the exercise of its police power to prohibit the manufacture of and traffic in distilled spirits within the State, it is doubtful if it has a right, without prohibiting the manufacture or traffic, to practically take possession of the business in all its details and carry it on, and through its own agencies, for its own profits, thus perhaps forcing the United States to surrender the income deprived by the source heretofore relied upon. It follows, of course, that if one State may do this, all may, and the police power of the States will have been "so exercised as to work a practical assumption of the powers of Congress, and, to 'impede, burden and control the operation of its laws.'"

You will note that the Governor proposes to recognize the lien of the United States upon the spirits in the warehouses for the taxes due thereon, and to pay the same. The law (section 48 and 50 of the act of Congress, August 28, 1894,) limits the right of withdrawal of spirits from the warehouse to the distiller himself. The State now proposes to personate the distiller. Such authority has been denied by United States courts to State officers. See McCullough, jr., vs. Henry Large, U. S. Circuit Court, Western District of Pennsylvania, at the May term, 1894—Justice Bradley of the Supreme Court concurring.

It is to be observed also that it frequently happens that a distiller is indebted to the government in a sum greater than the tax upon the spirits themselves then in warehouses. Such indebtedness is, by section 3,251 of the Revised Statutes, declared to be a lien upon the property and rights to property of the distiller. Taking spirits by the State in the manner proposed might easily impair, if not

destroy, the ability of the government to collect its debt.

For my own guidance I wish to be particularly advised whether or not I may lawfully consent to permit the withdrawal of spirits in bonded warehouses in the State of South Carolina upon seizure therein by the State and tender of tax to the collector, or upon judgment of forfeiture by the State court.

Governor Tillman personally requested yesterday an early reply to his inquiry. He was told, however, that the matter is under consideration and will be disposed of as soon as possible.

Respectfully yours, Jos S. MILLER, Commissioner.

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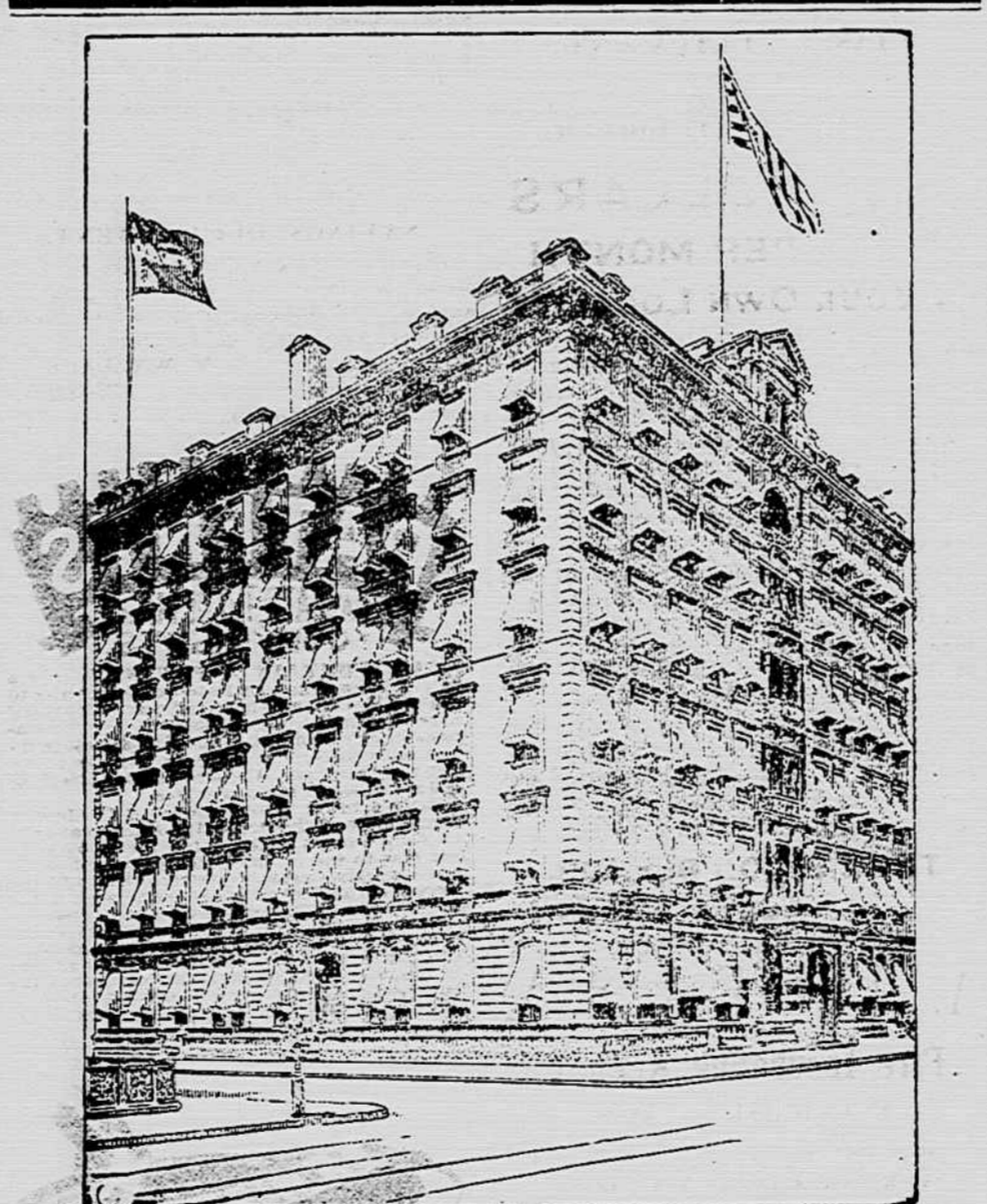
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Advertisement for 'Atlantic Coast Line' featuring an illustration of a train. Text: 'Atlantic Coast Line. WILMINGTON, COLUMBIA AND AUGUSTA R. R. CONDENSED SCHEDULE. TRAINS GOING SOUTH. Dated Sept. 3, 1894. [Table with columns for No. 55, No. 58]. TRAINS GOING NORTH. [Table with columns for No. 56, No. 53]. *Daily. †Daily except Sunday. No. 53 runs through to Charleston, S. C., via Central R. R., arriving Manning 6:22 P. M., Laney 7:00 P. M., Charleston 8:40 P. M. Trains on South and North Carolina R. R. leave Atkins 9:40 a. m. and 6:30 p. m., arriving Lucknow 11:10 a. m. and 8:00 p. m. Returning leave Lucknow 6:45 a. m. and 4:20 p. m., arriving g Atkins 8:15 a. m. and 5:50 p. m. Daily except Sunday. Trains on Hartsville R. R. leave Hartsville daily except Sunday at 4:30 a. m., arriving Flyds 5:00 a. m. Returning leave Flyds 8:40 p. m., arriving Hartsville 9:10 p. m. Trains on Wilmington Chadbourn and Conway railroad, leave Chadbourn 10:10 a. m. arrive at Conway 12:30 p. m., returning leave Conway at 2:00 p. m., arrive Chadbourn 4:50 p. m. Leave Chadbourn 5:35 p. m., arrive at Hub 6:20 p. m. Returning leave Hub at 8:15 a. m. arrive at Chadbourn 9:00 a. m. Daily except Sunday. JOHN F. DIVINE, General Supt. J. R. KENLY, Gen'l Manager. T. M. EMERSON, Traffic Manager. "OLD RELIABLE" LINE. South Carolina Railway. PASSENGER DEPARTMENT. In effect July 15, 1894. SCHEDULE. (Daily.) [Table with columns for stations and times]. DAILY EXCEPT SUNDAY. [Table with columns for stations and times]. "The Hamlet Special" leaves Charleston 4:00 p. m. with Pullman connection for Richmond, Wilmington, Charlotte, Raleigh and all points north via Washington, South bound arrives Charleston 2:30 p. m. Connections: with Clyde S. S. Line, N. E. R. R., C & S. Ry., at Charleston. Southern Railway, C & G., C & A. at Columbia. Through trains between Asheville and Charleston, Through sleepers between Charleston and Atlanta, leaving Charleston at 5:30 p. m. and arriving 11:30 a. m. Through trains between Charleston and Hamlet, via Purgalls and C. S. & N. R. R. E. P. WARING, Gen'l Pass. Agent, Charleston, S. C. W. S. JONES, Gen. Supt. L. A. EMERSON, Act. Gen. Manager and Traffic Manager.'