

manufacture, taxation and traffic in intoxicating liquors and all penalties for their violation in force when the National Prohibition Act was adopted, were continued in force except such provisions as are "directly in conflict with the provisions of the National Prohibition Act." See *United States v. Stafoff*, 260 U. S. 477. The advocates of an implied repeal insist that there is a direct conflict between a statute whereby immunity for innocent lienors or owners is given as of right and a statute whereby immunity is on the footing of an act of grace. To this the retort is made by the opponents of repeal that the spheres of the two immunities are diverse and that the apparent conflict is unreal. Transportation within the United States is the sphere of the one, and importation from without the sphere of the other.

Of the four questions certified, those numbered two and three are adequately answered when we answer question number one.

The answer to question four may depend upon circumstances imperfectly disclosed in the certificate, and is not shown to be necessary. *White v. Johnson*, 282 U. S. 367.

The second, third and fourth questions are not answered, and the first question is answered "No."

MR. JUSTICE STONE took no part in the consideration and decision of this case.

UNITED STATES v. COMMERCIAL CREDIT CO.,
INC.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
FIFTH CIRCUIT.

No. 734. Argued April 15, 1932.—Decided May 2, 1932.

1. Vehicles employed in the unlawful importation of intoxicating liquors may be seized and forfeited under the Tariff Act and the provisions of the Revised Statutes ancillary thereto. *General Motors Acceptance Corp. v. United States*, ante, p. 49. P. 66.

2. This extends to vehicles that take up the contraband after it has crossed the border and act as implements or links in a continuous process of carriage from the foreign country into this one. P. 67.
3. When the two federal courts below are in agreement as to the inferences fairly to be gathered from the facts, their findings are not to be disturbed unless clearly erroneous. *Id.*

53 F. (2d) 977, reversed.

46 F. (2d) 171, affirmed.

CERTIORARI, 285 U. S. 534, to review the reversal of a judgment of the District Court forfeiting automobiles which had been seized and libeled by the United States for breach of the customs laws. The above-named respondent, claiming as *bona fide* lienor, filed an intervening petition, which was dismissed.

Assistant Attorney General Youngquist, with whom *Solicitor General Thacher*, and Messrs. *Arthur W. Henderson*, *Paul D. Miller*, and *Carroll P. Lynch* were on the brief, for the United States.

Mr. Duane R. Dills, with whom *Mr. Berthold Muecke, Jr.*, was on the brief, for respondent.

The respondent asks that this Court give effect to the express intention of Congress that the rights of innocent parties be protected where transportation of intoxicating liquor is involved. It is true that executive clemency may remit the forfeiture, but mitigation by grace is not the equivalent of statutory immunity. *United States v. The Sebastopol*, 56 F. (2d) 590, s. c., *post*, p. 70. This is so particularly since the decision of the executive is not subject to review. *U. S. ex rel. Walter E. Heller & Co. v. Mellon*, 40 F. (2d) 808, 810, cert. den., 281 U. S. 766.

The reason for holding that the mandatory features of § 26 of the Prohibition Act supplant R. S., § 3450, in taxation cases, apply equally to R. S. §§ 3061 and 3062, in these customs cases. *United States v. One Mack Truck*, 4 F. (2d) 923; *United States v. Almeida*, 9 F. (2d) 15, 16; *United States v. One Ford Coupe*, 43 F. (2d) 212, 214.

The Willis-Campbell Act did not re-enact R. S. §§ 3061 and 3062, because they are in direct conflict with the provisions of the National Prohibition Act relative to transportation in customs cases in that they provide for absolute forfeiture of the rights of the innocent, while the National Prohibition Act protects the innocent. *United States v. One Packard Truck*, 284 Fed. 394; *United States v. One Studebaker*, 45 F. (2d) 430; *United States v. One Ford Coupe*, 43 F. (2d) 212. Transportation is necessarily involved in importation, just as much as concealment was involved in the transportation in the *Richbourg* case. Cf. *Port Gardner Investment Co. v. United States*, 272 U. S. 564; *Commercial Credit Co. v. United States*, 276 U. S. 226; *Richbourg Motor Co. v. United States*, 281 U. S. 528; *United States v. One Ford Coupe*, 272 U. S. 321.

None of the vehicles in the cases at bar was used in the "importation" of liquor. They were all used in the transportation of liquor within the boundaries of the United States after the importation had been completed. To this extent, the vehicles in this case are distinguished from the vehicles involved in *General Motors Accept. Corp. v. United States*, ante, p. 49. See also *National Bond & Inv. Co. v. United States*, 8 F. (2d) 942.

If the substantive offense is importation and the customs laws are available to the Government, then forfeiture might be had under those laws; if the substantive offense is concealment with intent to defraud the Government of a tax, then forfeiture might be had under § 3450. *United States v. One Ford Coupe*, supra. But if the dominating enterprise is transportation, then forfeiture must be under § 26 of the National Prohibition Act. *Commercial Credit Co. v. United States*, supra; *Richbourg Motor Co. v. United States*, supra; *United States v. One Reo Coupe*, 46 F. (2d) 815; *United States v. One Buick Coupe*, 54 F. (2d) 800, 802.

MR. JUSTICE CARDOZO delivered the opinion of the Court.

Three motor cars were seized by a customs officer of the United States in Texas near the Mexican border on a charge that they were employed in the unlawful importation of intoxicating liquors.

Following the seizure, the Government filed a libel of information against the automobiles so employed under §§ 3061 and 3062 of the Revised Statutes (19 U. S. Code, §§ 482 and 483) and prayed for a decree of forfeiture.

Thereupon, the Commercial Credit Company, Inc., the holder of a chattel mortgage, filed an intervening petition alleging that its lien had been created in good faith; that it was innocent of any participation in the wrongful use of the cars; and that by force of § 26 of the National Prohibition Act it should have an award of the possession. The District Court dismissed the intervening claim and adjudged a forfeiture, holding that §§ 3061 and 3062 of the Revised Statutes were unrepealed by § 26 of the National Prohibition Act and permitted the forfeiture of articles illegally employed in the importation of intoxicating liquors, 46 F. (2d) 171. The Circuit Court of Appeals reversed the decree and dismissed the libels, holding that § 26 of the National Prohibition Act had superseded other remedies, 53 F. (2d) 977. A writ of certiorari has brought the case here.

Our judgment handed down herewith in *General Motors Acceptance Corp. v. United States*, ante, p. 49, sustains the position of the Government that vehicles employed in the unlawful importation of intoxicating liquors may be seized under the Tariff Act and the provisions of the Revised Statutes ancillary thereto. All that remains is to determine whether these vehicles were so employed. The cars subjected to forfeiture in No. 574 were the same that had brought the contraband merchandise from beyond

the Mexican border. The cars libeled in this proceeding were laden with the liquors, for all that the evidence shows, on this side of the border line.

The difference is not one that exacts differing relief. The circumstantial evidence justifies a finding that the cars, wherever laden, were implements or links in a continuous process of carriage from Mexico into Texas. This was unlawful importation as well as unlawful transportation. The two courts below are in agreement as to the inferences fairly to be gathered from the facts, and their findings are not to be disturbed unless clearly erroneous. *Washington Securities Co. v. United States*, 234 U. S. 76, 78; *Texas & N. O. R. Co. v. Brotherhood of Railway Clerks*, 281 U. S. 548, 558.

The decree of the Circuit Court of Appeals should be reversed and that of the District Court affirmed.

Reversed.

MR. JUSTICE STONE took no part in the consideration and decision of this case.

UNITED STATES v. THE RUTH MILDRED.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT.

No. 795. Argued April 15, 1932.—Decided May 2, 1932.

1. Revised Statutes, § 4377, which provides that any licensed vessel employed in any other trade than that for which she is licensed shall be forfeited, applies to a vessel licensed only for the fishing trade which carries a cargo of intoxicating liquors. P. 68.
 2. Forfeiture under Rev. Stats., § 4377, is strictly *in rem* and (unlike forfeiture under § 26 of the National Prohibition Act) is not dependent upon a preliminary adjudication of personal guilt. P. 69.
- 56 F. (2d) 590, reversed.

CERTIORARI, 285 U. S. 534, to review the affirmance of a judgment of the District Court dismissing a libel brought