BAD NEWS FOR HIP-FLASK TOTERS

HOTELS, NIGHT CLUBS, ROAD-HOUSES, and cabarets must watch their step—and their wet customers' pocket-flasks—in future, if they do not wish to be padlocked under the nuisance section of the Prohibition Law. For, say Washington dispatches, that is what happened to two Chicago resorts when patrons brought liquor into the places and mixed it with ginger ale and cracked ice furnished by the management. Furthermore, a Federal Judge sitting in Chicago held that habitual drinking in these places, under the circumstances, was sufficient justification for affixing the padlocks. The Circuit Court of Appeals upheld this ruling, and the case went on its way to the Supreme Court of the United States. Here, much to the consternation of night club proprietors, who wished to know where they stood in the matter,

THE RESULT OF HANGING OUT WITH BAD COMPANY

the highest tribunal refused to review the decision of the lower court. Moreover, says a Chicago dispatch, the Circuit Court ruling is interpreted to mean that sleeping-cars, day coaches, and club cars on any railroad can be padlocked and taken out of service for a year on the same grounds. Said Federal Judge Cliffe, in a decision on one of the Chicago cases:

"No one would deny that these circumstances disclose clearly culpable aiding and abetting in violation of the law respecting both transportation and possession—clear conspiracy—and in my judgment it is idle to say that the place is not a nuisance within the law."

According to a New York *Evening Post* editorial:

"The suits were brought by the United States against Mike Fritzel, William R. Rothstein, and 'Al' Tearney to enjoin and abate liquor nuisances. The suits are based on Section 22 of Title II of the National Prohibition Act to enjoin and abate a common nuisance as defined in Section 21 of Title II of the Act. The definition in Section 21 reads as follows:

"'Any room, house, building, boat, vehicle, structure, or place where intoxicating liquor is manufactured, sold, kept, or bartered in violation of this title, and all intoxicating liquor and property kept and used in maintaining the same is hereby declared to be a common nuisance.'

"Affidavits contended that the patrons of the Town Club and the other restaurants customarily brought intoxicating liquor into the restaurants and there openly consumed it with the knowledge of the proprietors. Eventually decrees were entered in favor of the Government in the District Court and an appeal was taken by the defendants to the Circuit Court of Appeals. Careful examination of the decision in these cases and of the action of the Supreme Court in denying the certiorari petitions demonstrates clearly that the popular conception of what these cases involved and what the Supreme Court did is almost wholly erroneous.

"These cases lay down a new and far-reaching principle which

seems to have escaped general notice. The real effect of the decisions, instead of prohibiting the serving of cracked ice and ginger ale, is to compel a restaurant keeper to see that his guests do not bring liquor into his restaurant and there consume it, under penalty of having the restaurant closed as a common nuisance. Judge Anderson, writing the majority opinion, said:

"'The proofs show that liquor was brought to these places by their patrons and there consumed on repeated occasions, so often as to amount to a practise or custom. This would seem to be sufficient to uphold a finding that it was kept there, even if there be included in the definition of the word "kept" the element of duration or continuance.'

"It is thus evidently wrong to assert that these Chicago restaurants were padlocked because ginger ale and cracked ice were served to the guests. The reason given by the Circuit Court for affirming the padlock decrees was the fact that it had become a general practise for the patrons of those restaurants to bring quantities of liquor into the restaurants and there openly consume it with the knowledge of the proprietors.

"The great importance of the decision, therefore, is that it obligates restaurant keepers to see that the patrons do not bring liquor and consume it on the premises under penalty of having their restaurants closed as 'common nuisances.'

"The decision does not say that it is unlawful for restaurant keepers to serve any cracked ice and ginger ale that guests may order. What it does say is that habitual bringing and consuming of liquor in a restaurant makes the restaurant a common nuisance.

"Following the decision of the Circuit Court, both Fritzel and Rothstein sought to have their cases reviewed by the Supreme Court of the United States and filed petitions for writs of certiorari. All that the Supreme Court did in denying the petitions was to refuse to review the cases. This action does not have the effect of approving either the result or any of the findings of the Circuit Court of Appeals. The truth of the matter is that the Supreme Court has not decided anything whatsoever with respect to these cases or the principles involved."

Meanwhile, we read, until there comes a ruling from the higher court, Prohibition administrators consider the decision of the Court of Appeals the strongest weapon they have ever had to enforce the Volstead Law.

On the other hand, a survey of our newspapers reveals a number of editorial criticisms of the decisions, and of the Supreme Court's refusal to review them. "Unfortunately, this method of making a decision leaves the public without the careful discussion of the law that is found in Supreme Court opinions," observes the Milwaukee *Journal*. "It comes as a shock to those who hold to traditional philosophy of American democracy," declares the New Haven *Journal-Courier*.

In the opinion of the New York *World*, the refusal of the Supreme Court to hand down a ruling in these cases "is another blow, in the name of Prohibition, at sound law." Continues *The World:*

"The padlock itself, it should be remembered, even as it has been used until now, is still held in suspicion by many sober citizens, for in effect it does away with the right of trial by jury. But at least this much could be said for it: it was applied only upon proper evidence, and it usually punished the guilty person. But no such argument can be made for this new way of using it. For there is this significant paragraph in the dispatch which tells of the original proceedings in court:

"'In obtaining the original injunction closing the resorts, the Government offered no evidence that liquor was sold or even on the premises. It was contended that in serving guests with glasses, ice, and ginger ale, into which the guests poured a nameless liquid which caused intoxication, the clubs had violated the Dry Law. Their action was sufficient, the Government held, to show that they "kept and allowed to be kept" booze on the premises.'

"What this means, of course, is the abandonment of any effort to produce exact evidence at all. It means that from now on the proprietor of an expensive property can be padlocked simply on the hunch of a Prohibition agent that somebody at the next table is drinking whisky. It means that a defendant has absolutely no means of establishing his innocence. For what restaurateur can produce an unidentified patron to swear that what was being drunk was not whisky?"