

The Supremes and Whiskey By Mail: Then and Now

Special to Bottles and Extras by Jack Sullivan

No law has stood the test of time like the Webb-Kenyon Act, passed by Congress in 1913 to prevent alcoholic products from being sent by mail into states that had enacted “dry” laws. It stood unchallenged until May 2005 when the U.S. Supreme Court struck down statutes enacted by Michigan and New York to prevent mail or online out-of-state wine sales to their residents, laws largely based on Webb-Kenyon.

In their recent decision, the majority of justices cited a 1917 case called Clark Distilling Co. vs. Western Maryland R.R. This is the story of that Cumberland, Maryland operation and Ohio and North Carolina whiskey merchants who also relied on mail order sales - and what Webb-Kenyon did to all of them.

Impact of the National Pike

When James Clark opened the distillery in Cumberland in 1883, he knew that the National Pike and railroads that traversed his town would take his whiskey to the Western reaches of the United States. He could not have known that they also would take him to the U.S. Supreme Court and into American legal history.

The National Pike, sometimes called the National Road, was of historical importance. Early Americans, including Washington and Jefferson, had seen the economic impact of connecting the Potomac and Ohio River water routes by a road through the Cumberland Gap in the Alleghenies. Urged on by Henry Clay, the U.S. Congress in 1803 approved the first Federal highway to connect the town of Cumberland on the Potomac with Wheeling, West Virginia, on the Ohio.

Work began in 1811. Snaking its way across the mountains, the road was the best that had ever been in North America. The right-of-way was 66 feet wide and the roadway was 20 feet. [Figure 1] The surface was covered with 18 inches of crushed stone, engineered to drain water from the surface. The road took seven years to reach Wheeling. Subsequently, it was pushed eastward from Cumberland to Baltimore and westward by 1841 to

Vandalia, Illinois, where it stopped - 800 miles long.

The National Pike made possible a thriving commerce both east and west of the mountains. The toll rates shown here in an old postcard [Figure 2] clearly favored commercial wagons over personal transport. A passenger buggy with four wheels and two horses cost 12-cents. A cart or wagon was charged by the breadth of its wheels. The biggest wheels - over eight inches - went free, thus encouraging trade along the route.

Although the coming of the railroads eventually brought a decline in the need for the National Pike, for decades the road engendered a lively atmosphere along its route, including in Cumberland. According to one witness, “never had there been such landlords, such taverns, such dinners, such whiskey, such bustle or such endless cavalcades of coaches and wagons...” Supplying those travelers with whiskey spawned a distilling industry in the town. An immigrant named James Clark was among the principal beneficiaries.

The Story of James Clark

Clark was born in 1846, reputedly aboard a ship en route to America from Ireland. When he arrived in Cumberland is unclear. However, we know he early showed a strong business acumen and probably was engaged for a number of years in whiskey sales and

TOLL RATES	
For every score of Sheep or Hogs.	6 Cents
For every score of Cattle.	12 Cents
For every Horse and Rider.	4 Cents
For every led or driven Horse, Mule, or Ass.	5 Cents
For every Sleigh or Sled drawn by one horse or pair of Oxen.	5 Cents
For every Horse or pair of Oxen in addition.	5 Cents
For every Bear, Deer, Squirrel, Charr, or Moose with one horse.	6 Cents
For every Horse in addition.	5 Cents
For every Chariot, Coach, Coach, Stage, Phased or Chaise with two Horses and four wheels.	12 Cents
For every Carriage of pleasure by whatever be it called, the same according to the number of wheels and horses drawing the same.	
For every Cart or wagon whose wheels do not exceed three inches in breadth, drawn by one horse or pair of oxen.	4 Cents
For every Cart or wagon whose wheels exceed three inches and does not exceed four inches in breadth for every horse or pair of oxen drawing the same.	4 Cents
Wheels exceeding four and not exceeding six inches.	5 Cents
Wheels exceeding six and not exceeding eight inches.	2 Cents
All Carts or Wagons whose wheels exceed eight inches in breadth, free.	

DAVID T. SHRIVER, Supl.

Old toll gate built in 1811. Look west of Cumberland Md. National Pike U.S. 20

Figure 2: Postcard of an early schedule of tolls from the National Pike.

distribution as the James Clark Company. In 1879 he was joined in the firm by his half-brother, John Keating, some 17 years his junior. Four years later, James Clark bought a distillery that had been erected in 1836 by partners Clabaugh and James. That business had failed and the plant



Figure 1: A postcard view of the National Pike west of Cumberland in the early 1900s.

subsequently had been turned into a chemical factory.

Clark restored the facility as a distillery, and in 1895 reorganized the business, changing its name to the James Clark Distilling Company. John Keating became its vice-president and treasurer. A line drawing of the distillery [Figure 3] shows it as an impressively large installation. The drawing also emphasized the ready availability of the plant to both overland and rail transport. The picture was part of an advertisement that the company ran in the April 1909 issue of the *North American Wine and Spirits Journal*.

Braddock Rye

The ad also trumpeted Braddock Maryland Rye as “American’s Finest Whiskey.” Clark had registered this brand name with the U.S. Government at least three times - in 1886, 1905 and 1916. Braddock Maryland Rye sold in three formats, four-year-old, four quarts for \$4.50; eight-year-old, four quarts for \$5.50; and “black label” \$1.50 per quart. Clark also sold Braddock Old Export Whiskey, Braddock Barley Malt and Braddock “Blend of Whiskeys.” Clark often called his facility, Braddock Distillery, and the plant prominently displayed that name.

There were distinct ironies in Clark’s choice of that name. General Braddock was the ill-fated British general who marched out of Alexandria, Virginia 250 years ago to confront the French and Indians in the Ohio Valley [Figure 4]. His garrisons, said contemporaries, were for women and liquor.



Figure 4: General Braddock, courtesy of the Andrew Carnegie Library.

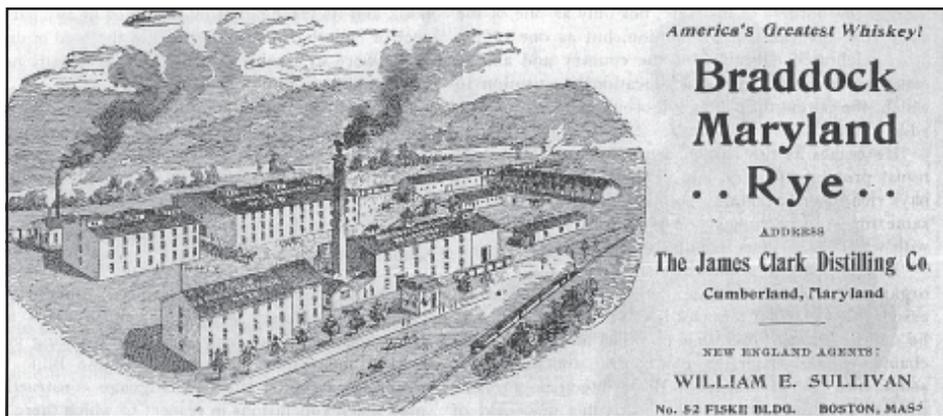


Figure 3: A 1909 Clark “institutional” ad.

Braddock camped for a time in Cumberland, then known as Fort Cumberland, before marching out to be killed on the battlefield in Pennsylvania.

Shown here in an early 1900s magazine ad are the Braddock whiskey labels and bottles [Figure 5]. James Clark also featured other brands, including Old National Pike Maryland Rye, Old Cumberland XXXX and Queen City Club. Cumberland called itself the “Queen City,” as did a number of American towns.

From the number of Clark Distilling bottles and jugs that have been dug and otherwise found, the firm did a strong business in the Shenandoah Valley and the Washington, D.C. area. Shown here [Figure 6] is a 9 and 1/2 inches high clear BIMAL bottle with a torn label that held Clark’s Monongahela Whiskey. It was distributed by one D. P. McCarthy, Manager, whose address was Pennsylvania Av. and 611 B. Street N.W. in Washington. The bottle is marked “JTF, Wash. D.C.”

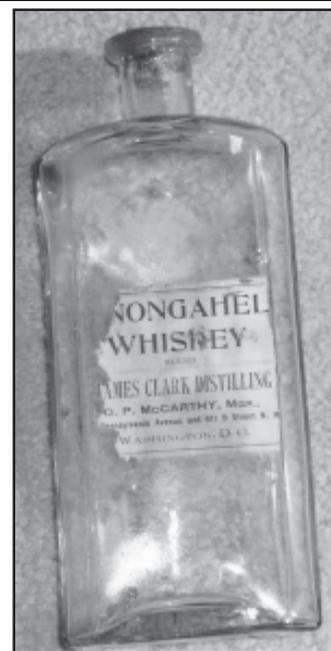


Figure 6: Monongahela Whiskey from a D.C. distributor (Photo by author).



Figure 5: Mail order ad by Clark Distilling.

Mail Order Whiskey

As town after town, state after state in America voted to go “Dry,” thirsty Wets in those areas had to obtain their supplies by ordering through the postal service. By the early 1900s, James Clark had developed a thriving mail order business for his whiskey, making use of the good transport by railroad, road and water out of Cumberland. His ads emphasized distance sales, urging customers to cut out pictures of the items they wanted and send them in with their money [as seen in Figure 5]. The 1903 U.S. Internal Revenue of distillery warehouses records considerable activity at the James Clark Distillery, including withdraw of whiskey for export.

Clark’s mail order business took an initial hit in 1913 when Congress, under pressure from “Dry” interests, passed the Webb-Kenyon Act over the veto of President Taft. The law prohibited the interstate transport - by mail or other means - of “any spirituous, vinous, malted, fermented or any other intoxicating liquor of any kind” into a state where laws forbid the sales of such products. Initially, the law was unenforced and the mail order sale of liquor continued relatively unabated. As a result, the state of West Virginia, which had enacted a statewide prohibition law, took the step of enjoining the Western Maryland Railroad and the American Express Company from carrying alcoholic products into their state.

To the U.S. Supreme Court

James Clark, whose business now was in serious jeopardy, fought back. Questioning both the constitutionality of the Webb-Kenyon Act and its application to West Virginia, he filed suit against the two

carriers and the state government. The case was argued before a U.S. District Court judge in 1915 how ruled in favor of Clark. The victory was short lived, however, as the U.S. District Court of Appeals quickly overturned the lower court and then in 1916 explicitly upheld West Virginia.

Undeterred, Clark took his case all the way to the United States Supreme Court.

On January 8, 1917, by a vote of seven to two, the Supreme Court ruled against Clark and upheld the constitutionality of the Webb-Kenyon Act. The majority opinion was written by Supreme Court Chief Justice Edward Douglass White [Figure 7]. Ironically, he had been appointed by President Taft, who opposed Webb-Kenyon. Chief Justice White handed down an opinion that established that in specific instances, Congress may abridge the Interstate Commerce Clause of the Constitution.

Thereupon the Supreme Court decision in James Clark Distilling Co. vs. Western Maryland Railroad Corporation, etc., became part of legal history. It impacted on all mail order whiskey houses, including two of the most prominent, both located hundreds of miles from Cumberland, Maryland - one in Ohio, the other in North Carolina.

Hayner Distilling Company

Lewis Hayner was early on the distilling scene, founding the distillery that bore his name in 1866. Born in Warren County, Ohio in 1821, he worked at the whiskey trade virtually all his life. He founded Hayner Distilling in Troy in 1866 in the immediate aftermath of the Civil War [Figure 8]. Lewis Hayner was successful

in creating a regional trader, but after his death in 1892, the operation went national under the guidance of Lewis’ nephews, William Hayner and C.C. Hayner and William’s brother-in-law, Walter S. Kidder. William Hayner became company president and had been in the whiskey trade since the 1880s down in Waco, Texas. He also had a reputation as an astute businessman who knew spirits merchandising.

It is Walter Kidder, however, who is credited with the advertising flair that marked the Hayner presence on the national distilling scene. He devised the strategy of going directly to customers for sales. Thirsty customers in dry communities were a ready-made market for selling whiskey through the mails. The example of a Hayner ads shown here are just one of many that ran in important national magazines [Figure 9]. Some emphasized that the whiskey would come suitable disguised from the neighbors in “plain brown wrapper.” The postman, probably alerted by the gurgles, must have had some notion of the bottles he was delivering. In those days, incidently, mail carriers were accustomed to daily loads of up to 70 pounds [Figure 10].

Another reason for Hayner’s success may have been its emphasis on the purity of its product against the rotgut that often was being foisted on customer’s by local saloons. Those establishments were notorious for doctoring whiskey with a pharmacy of chemicals that all too often could be dangerous to the health of drinkers. Price too may have played a part. Hayner emphasized “cutting out the middle man” in his ads. Four quarts of Hayner’s Seven Year Rye could be had for \$3.20 total.



Figure 7: Chief Justice Edward D. White.

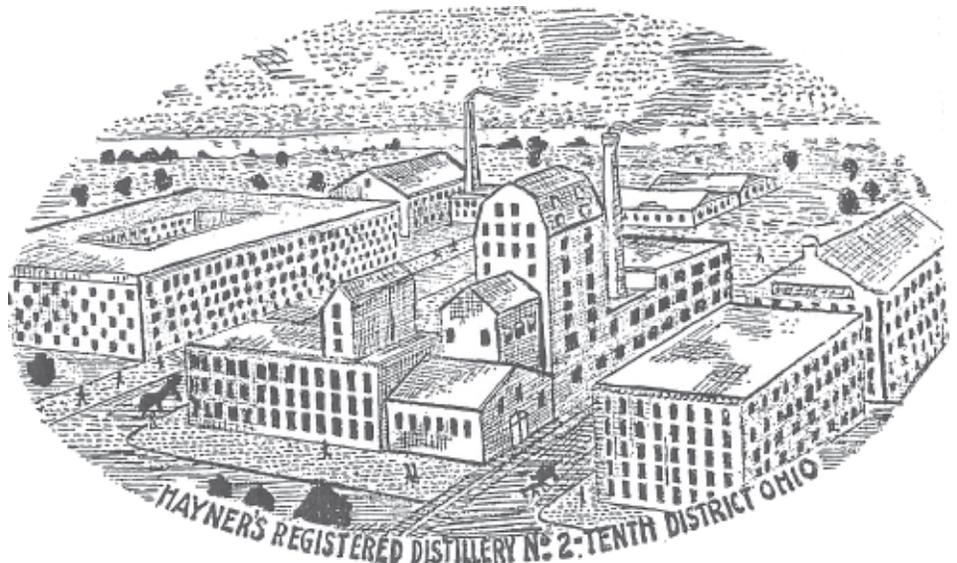


Figure 8: A line drawing of Hayner’s Troy, Ohio distillery, circa 1900.

PURE WHISKEY

*Direct from Distiller
To Consumer*

**FOUR FULL QUARTS
for \$ 3.20**

EXPRESS PREPAID By US

**SAVES MIDDLEMENS PROFITS
PREVENTS ADULTERATION**

Since 1866

Hayner's pure double copper distilled Rye Whiskey has been sold to Consumers direct from our own Distillery, known as "Hayner's Registered Distillery No. 2, Teuth District, Ohio." No other Distillers sell to consumers direct. Those who offer to sell you whiskey in this way are speculators who buy to sell again, on which plan they are compelled to add a profit, which you can save by buying from us direct.

We will send four full quarts of Hayner's Seven-Year-Old Double Copper Distilled Rye Whiskey for \$3.20, express prepaid. We ship on approval in plain, sealed boxes, with no marks to indicate contents. When you receive and test it, if not satisfactory return it at our expense and we will return your \$3.20.

Such whiskey as we offer you for \$3.20 cannot be purchased elsewhere for less than \$5.00, and the low price at which we offer it saves you the addition of middlemen's profits, besides you are guaranteed the certainty of pure whiskey absolutely free from adulteration.

RESERVED TO—Third National Bank, Dayton; State National Bank, St. Louis, or any of the Express Companies.

WRITE NEAREST ADDRESS.

THE HAYNER DISTILLING CO.,
270-276 West Fifth Street, DAYTON, O. 305-307 S. Seventh St., St. Louis, Mo.
N.B.—Orders from Ark., Cal., Idaho, Mont., Nev., N. Mex., Ore., Utah, Wash., Wyo., must call for Rye, by freight, prepaid.

Figure 9: A Hayner whiskey ad.

Postpaid.

Sometime in the early 1900s, to facilitate the transport of its products, the firm moved its main office and shipping depot to Dayton, Ohio about 30 miles down the road from Troy. Dayton was an excellent location for a national mail order trade because its location put it within 800 miles of the bulk of the U.S. population. From there, the firm could ship quickly to most locations east of the Mississippi and via railroad to California. By 1904, Hayner had additional offices and shipping depots in Jacksonville, Florida and New Orleans. Its ads boasted capitalization at \$5,000,000, a hefty sum for those days, and a factory covering three city blocks, consumption of 2,000 bushels of grain per day, and three million gallons of whiskey in its warehouses. Mail order was very, very good to Hayner Distilling.



Figure 11: A line of Hayner jugs.

The Casper Company

Meanwhile, down in Winston-Salem, North Carolina, a man named John L. Casper was working hard to catch up with the Hayners. A pitchman, not a distiller, Casper conceived of the idea of buying whiskey from distilleries in North Carolina's Yadkin and Davis Counties, bottling it under his own brand names and mailing it via mail order direct to consumers. By his own account, he started small with limited mailing lists in the 1880s, gradually expanding until 1900 when he sought capital from friends and incorporated as The Casper Company. Soon he owned a warehouse as long as a city block in downtown Winston-Salem, which he declared to be: "The largest building in the United States devoted exclusively to the mail order whiskey business." [Figure 12]

Like Hayner, John Casper advertised his product widely and emphasized mail order sales [Figure 13]. He stressed its "purity" in a typical ad from 1903, the dapper, amount-saving whiskey

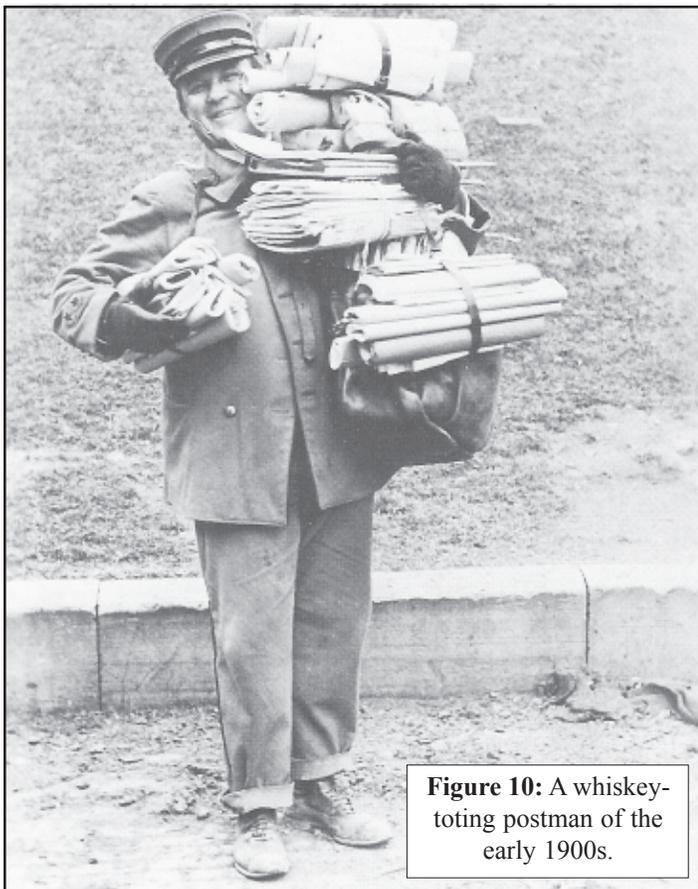


Figure 10: A whiskey-toting postman of the early 1900s.



Figure 12: Casper and his warehouse, as shown in an ad.

merchant claimed: "All the North Carolina whiskey we sell is good - there's no bad. People here wouldn't adulterate it if they knew how - they are too honest! Most whiskey sellers are noted for mixing, blending and watering. We sell more genuine whiskey and less water than any known competitor."

While both Casper and Hayner sold most of their product in glass and some in ceramic, Casper appears to have been more adventurous in his selection of containers. His highly decorative paper-labeled cobalt bottles are decades ahead of their time in advertising sophistication. His stoneware jugs came in a number of sizes and shapes [Figures 14 and 15]. Some featured a bail handle. He also liked to give minis at Christmas.

Prohibition Strikes South

But if John Casper had a desire to surpass the Hayner Distillery and other rivals in the mail order liquor business, he was doomed to disappointment by those honest North Carolinians he boasted about. It turned out that many home folk were anti-drink. Little by little laws were put on the books that drove John Casper out of North Carolina and ultimately out of business. The process began in 1901 when the State Legislature decreed that distilleries could operate only in incorporated towns and ended in 1906 when the

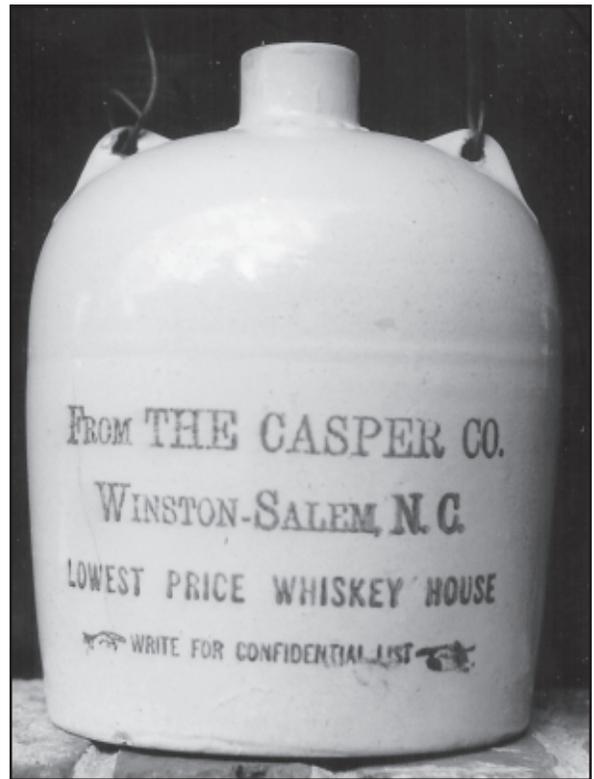


Figure 14: A Casper whiskey jug.

250,000
Favored
Customers.
Shipments
made in plain
boxes. No
marks to indi-
cate contents

ONE FULL QUART of Whiskey FREE!

Everlastingly keeping faith with the people has made this concern what it is. We claim to be the Lowest Priced Whiskey House and the Largest Mail Order Concern in this Country. All the North Carolina Whiskey we sell is good—and there is no "Just as Good" kind on the market.

CASPER'S 11 YEAR OLD WHISKEY IS A LIQUID JOY.

It is made by honest people in the Mountains of North Carolina, in Old Style Copper Stills, just as it was made by our grandfathers.

To introduce this old honest whiskey we offer four full quarts of "Casper's 11 Year Old"—two sample bottles, one 15, one 18 year old, a corkcreeper and a drinking glass—all for 25 cts. If \$1.00 is sent we will double the above and put in FREE one full quart extra. We ship in plain boxes with no marks to indicate contents, and prepay all express charges. Buyers West of Texas, Kansas, Nebraska and Dakota must add 20 cents per quart extra.

SPECIAL CONFIDENTIAL PRICE LIST.

NAME OF LIQUOR.	Price Per Gall.	Price Per Full
	1/2 Gall.	Quart Bottle
"Mountain," 8 Years Old.....	\$1.50	.50
Casper's 5 Year Old, N. C. Corn.....	1.80	.60
Casper's "Standard" 8 Year Old.....	2.10	.68
"Golden Rose" Rye, Over 10 Years Old.....	2.25	.75
"Pennybrannin" Rye, Splendid Value.....	2.00	.68
Holland Gin, For Medical Use Ad.....	1.85	.60
Apple Brandy, Old Stock.....	2.25	.75
Peach Brandy, Old Stock.....	2.50	.80
Sweet Mash N. C. Whiskey.....	2.50	.80
Casper's 11 Year Old, (in glass bottles).....	2.60	.85
Casper's 12 Year Old, Water White.....	3.10	.95
"Gold Band" 15 Year Old Private Stock.....	2.90	.90
"Zallica," Very Old, Ripe and Mellow.....	3.10	.95
Cognac Brandy, Old and High Proof.....	3.00	.90
Jamaica Imported Rum, Old.....	2.50	.80
Peach and Honey, Rich Grade.....	2.00	.65
Rock and Rice, Extra Fine.....	2.00	.65

Quantities below see for
the goods in our boxes.
Sugar, is pay either ex-
press or freight.

NAME OF LIQUOR.	Price Per Gall.	Price Per Full
	1/2 Gall.	Quart Bottle
Sweet Catawba, Last Year's Stock.....	\$.35	\$.35
Sweet Catawba, made in 1890.....	1.50	.50
Pure Old Calves.....	.85	.28
Sherry, 2 Years Old.....	.15	.48
Port Wine, Vintage 1888.....	1.15	.40
"Old Royal" Port, Made in 1890.....	.95	.35
Pure N. C. Sassafras Sweet.....	.85	.31
Blackberry, Fair Grade.....	.75	.30
Muscatel, 10 Years Old.....	1.15	.40
Aspetica, 10 Years Old.....	1.15	.40
Dry Catawba, Excellent Old Stock.....	1.50	.45
Hochheimer, Extra Dry.....	1.50	.45
Alcohol, Drugists High Grade Grain.....	2.50	.70
"Imported" Scotch Whiskey.....	3.50	1.00
"Imported" Champagne, Big Value and Equal to Any Other.....	3.50	1.00

Casper's 5 Year Old.
12 Full Quarts Express
Paid to Points East of
Miss. River. \$7.95

PURE WINES FOR HOME USE

NAME OF WINES.	Price Per Gall.	Price Per Full
	1/2 Gall.	Quart Bottle
Sweet Catawba, Last Year's Stock.....	\$.35	\$.35
Sweet Catawba, made in 1890.....	1.50	.50
Pure Old Calves.....	.85	.28
Sherry, 2 Years Old.....	.15	.48
Port Wine, Vintage 1888.....	1.15	.40
"Old Royal" Port, Made in 1890.....	.95	.35
Pure N. C. Sassafras Sweet.....	.85	.31
Blackberry, Fair Grade.....	.75	.30
Muscatel, 10 Years Old.....	1.15	.40
Aspetica, 10 Years Old.....	1.15	.40
Dry Catawba, Excellent Old Stock.....	1.50	.45
Hochheimer, Extra Dry.....	1.50	.45
Alcohol, Drugists High Grade Grain.....	2.50	.70
"Imported" Scotch Whiskey.....	3.50	1.00
"Imported" Champagne, Big Value and Equal to Any Other.....	3.50	1.00

THE CASPER CO., Winston-Salem, N. C.

Figure 13: A Casper whiskey ad.

state went completely "dry."

Casper then folded up lock, stock and whiskey barrel in Winston-Salem and moved his operation to Roanoke, where he operated for several years. Then he moved to Jacksonville, Florida, where in 1911, he was listed as the vice-president of the Atlantic Coast Distilling Company, which boasted annual business of "over one-half million dollars." According to a Winston-Salem newspaper account, Casper eventually moved his business west, to Kansas City, Missouri, and then to Ft. Smith, Arkansas.

While Hayner Distilling apparently had fewer problems with creeping Prohibition in Ohio, time was running out on its operation as well. The Supreme Court decision in the Clark Distilling case had a decisive impact. In a short time, the mail order whiskey business - and Hayner - were in serious financial trouble. The coming of National Prohibition six years later finished the job.

The End of the Story

Judge White, an obese man, dropped dead in office in 1921 at the age of 76 and is buried in Oak Hill Cemetery in Washington, D.C. He was preceded in death by the James Clark Distilling Co., which closed its doors in 1920 with the onset of National Prohibition - never to open them again. The Irish distiller's legacy, however, may still be seen in downtown Cumberland. The Clark-Keating Building, which once held his retail liquor store, remains at 55 Baltimore Street [Figure 16]. Constructed in 1899, it currently is on the town's historic walking tour.

The 1920 Hayner shutdown was a blow to Troy, Ohio, but the town survived. In 1914, Mary Jane Colman Hayner, widow of William, had built a mansion in Troy, filling it with objects collected during her international travels. Open to the public, it helps keep alive the memory of the nation's largest ever whiskey mail order house. By contrast, the legacy of John Casper seems to have been lost in time. A Winston-Salem newspaper article of the 1930s



Figure 15: Another Casper whiskey jug.

reports only that Casper died in Mexico.

By contrast, the much-maligned Webb-Kenyon Act for years continued on as the unimpeded law of the land. It was reenacted by Congress in 1935 as part of post-Prohibition "tidying up" with exactly the same language that had been passed in 1913. As a result, mail order liquor never truly has revived. The May 2005 Supreme Court decision, however, may change all that. Stay tuned.

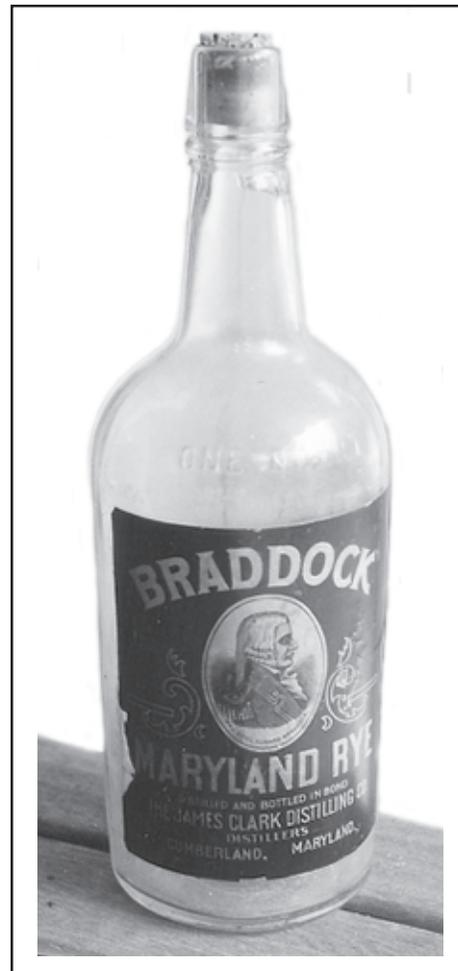
The information for this article, some of which previously has appeared in the Potomac Pontil, came from a wide range of sources. Material on Clark Distilling largely was gleaned from the Internet. Jim Bready, the recognized guru on Maryland distillers, also provided information. The Clark, Hayner and Casper ads shown here are from Robert Snyder's "Whiskey Papers." Donald Denzin of Plano, Texas, in his excellent book, *Antique Eastern Whiskey Bottles*, provides a great deal of good research on both Hayner and Casper. Corky Shore of Lewisville, North Carolina, who may know more about the subject than anyone else, has been very helpful through the years in sending me materials on the Casper company.



Figure 16: The Clark-Keathing Building, 55 Baltimore Street.



A pint bottle of Clark's Old Mountain brand rye whiskey with a label showing a rustic distillery. *Photo courtesy of Jim Bready.*



A labeled Braddock Rye quart bottle. *Photo courtesy of Jim Bready.*