

'Dry' beer caused controversy in dealership test case

Colfax, Ind., is a long way from Bloomington, but the two communities shared the same controversy in July of 1908. What set off the legal argument was a "dry" beer manufactured by the Indianapolis Brewing Company.

In Colfax a man by the name of Bert Johns sold what he considered a non-alcoholic drink called "Tonica." The State of Indiana had some reservations about whether it was truly non-alcoholic, and the case ended up in court. A special judge ruled that "Tonica" was a malt beverage and that Johns was guilty of selling it without a license.

Meanwhile, in Bloomington there were arguments about whether the "dry" beer that Charles Murphy was selling was really dry. Murphy deliberately sold a bottle to make a test case of the issue. At issue was whether he was selling an alcoholic beverage without a license.

The Bloomington *Evening World* of July 21 explained that Murphy ran a refreshment stand on West Kirkwood, where he sold lemonade, soft drinks and "dry" beer. "All the other dealers backed him and agreed to pay



LOOKING BACK

By Rose McIlveen

their share of the costs."

Specifically Murphy was charged with violating Section 12 of the amended liquor law of 1907, more commonly referred to as the "blind tiger" act. The trial began on the Monroe Circuit Court on July 20.

Murphy and the local "dry" beer sellers were not defenseless. The Capital City Brewing Company, manufacturer of the controversial beer, had sent down their chief counsel, Elmer Whetsell and Master Brewer John W. Gleason. The local attorney for the defense was J.E. Henley.

The *Evening World* described what happened in court. "Chief among the witnesses on the stand for the defense was Dr. Robert Lyons, head of the chemical department of Indiana University, who stated that he had made analysis of the contents of the bottles of

"dry" beer brought to him last Saturday by Chief of Police Johns."

Lyons reported that the brew was certainly made of malt that had no harmful preservatives and had "less than 48¹/₁₀ part of 1 percent alcohol. Another witness testified that a normal adult could drink 12 bottles at one sitting and not become intoxicated.

The prosecutor took a different tack, asking if habitual drinking of the beverage would lead to drinking the real thing. The question was disallowed by the judge.

The master brewer had his time on the stand and testified that he was responsible for testing all of the beer leaving the brewery. He also explained that the origin of the name, "dry" beer was that it was sold in what are considered dry counties. He declined to reveal the recipe for the product and claimed that the beer was not made of malt and was not intoxicating.

Members of the jury were Maurice Demaree, Isaac Goodman, Charles Blakely, P.H. Kerr, Harry Rott, C.M. Norman, Oscar Lampkins, James Bright, Fred Garrison, Theo. Treadway, C.H. Marxson, and A.H. Beldon.

They voted in favor of Murphy, declaring that he was not in violation of the "blind tiger" act.

Despite the jury's decision, Mayor Claude Mallott did not immediately lift his order against the sale of "dry" beer. Instead, he requested that Dr. Lyons test the most common brands - "Tonica," "Jingo," "Next-to-Beer," "White Ribbon" and others. Mallott had also made a trip to Indianapolis to pick up a copy of the federal laws regarding alcoholic beverages.

Dealers in other cities in Indiana and Kentucky contacted the defense attorney (Henley) to get copies of the proceedings. The Monroe County Circuit Court's jury decision wasn't the last word on the subject. The *Evening World* of July 22 reported the Logansport chief of police's announcement that he would arrest anyone selling "Tonica" or any other "dry" beer.

Said the chief, "They look like beer, they taste like beer, and I'll be darned if they ain't beer. If 'Tonica' does not intoxicate, if has a bad effect on drinkers. It may not make them stagger, but it certainly gives them a laughing jag."

#-T 11/21/94