

THE EVENING NEWS

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MONDAY, JULY 8, 1912.

B-R OR NEAR B-R.

In view of the raid conducted here last week by the sheriff and his deputies and the district attorney it may not be inopportune to look into the local option laws of Oregon and ascertain its provisions. This county by a majority vote declared that the territory within its borders should be dry. Since the county has been dry there have been a number of successful prosecutions against various individuals who have sold liquor in violation of the law. There is a great difference of opinion among the people as to just what the law is and what are its effects.

Section 4920 of Lord's Oregon Laws states in part: " - - - that whenever ten per cent of the registered voters of any county, or subdivision of any county shall file with the county clerk a petition therefor the county clerk shall order an election to be held to determine whether the sale of intoxicating liquors shall be prohibited in said county or subdivision - - -"

Section 4921 provides in part that the preceding section shall not be construed so as to prohibit the sale of pure alcohol for scientific or manufacturing purposes, or wines to church officials for sacramental purposes, nor alcoholic stimulants as medicine in cases of actual sickness, but such stimulants shall be sold only upon the written prescription of a regular practicing physician, dated and signed by him, and certified, on his honor, that he, the physician, has personally examined the applicant, naming him, and that he finds him actually sick and in need of the stimulant prescribed as medicine - - -"

The law is fatally defective in one respect. It does not designate what per centage of alcohol the liquor must contain to make it an intoxicating beverage. In order to prosecute under the provisions of this statute then the prosecuting attorney must prove two things:

First it must be proved that there has been a sale made, and

Second, it must be proved that that which was sold was intoxicating.

The law nowhere mentions the terms "beer," "whiskey," "malt liquors," or any of the other products that are ordinarily considered intoxicating. It simply provides that no intoxicating liquors shall be sold within dry territory.

What then constitutes intoxicating liquors is the real question of importance in the prosecution of cases arising under the local option laws of this state. It is a fairly easy matter to prove the sale of the liquor, but to prove that it makes its drinker filled with joy and running over with exuberance is not such an easy task.

This is not a new question by any means. It is as old as civilization itself and has been before the courts of all nations. The sale of liquor contrary to law has been tried in courts since courts were first established. In the United States it has been before the judiciary in every conceivable form. Liquor laws have been the

subject of more argument, more legislation, more assault, than all the other laws on the statute books. They take a separate place in the jurisprudence of our country. It will be interesting to see at this time to examine what the courts of other states have to say on what constitutes intoxicating liquor. It will be doubly interesting for the reason that the plea that will in all likelihood be made in the trial of the Roseburg Brewery will be that the product manufactured by that concern is not intoxicating and therefore does not come within the purview of the statute. This is the first time to our knowledge that the local brewery has been arrested on the charge of selling intoxicating liquors contrary to law. It was perhaps a wise move on the part of the officials to try out the case against the brewery. The near beer emporiums are granted a license to sell near beer. They buy what they suppose to be near beer from the local brewery. If what they sell over their bars is not near beer, the brewery is at fault primarily. The brewery is the chief wrongdoer, not the man who sells it over the bar. Of course the law says that the proprietor of a near beer resort who sells intoxicating liquors is guilty just as much as the man or corporation that manufactures and sells the stuff. In Roseburg here nearly all of the local near beer emporiums handle the product of the local brewery. This is a well known fact to any one who has occasion to be on the city streets. The wagon from the brewery stops at the various places almost daily and unloads a keg or two of its product. There has been no effort made to conceal this fact. The proprietor of the near beer resort buys the product from the brewery. If he gets some stronger than near beer the brewery is responsible for the product. The near beer proprietor should be careful and diligent and make proper tests to see that that which he buys and later sells is in fact near beer and not real beer. But like most persons they take for granted that they are getting what they buy and pay for. They may or may not be deceived. But the one way to ascertain just what the product of the local brewery is to try it out in the manner started by the district attorney and the sheriff.

Let us examine now some of the definitions of intoxicating liquor.

In the case of Blatz vs. Rohrbach reported in 116 N. Y. 450 the court says "Beer as it is ordinarily understood, and as it is defined in the dictionary, is a fermented liquor. It is made from malted grain, with hops, or from the extract of roots and other parts of various plants, as spruce, ginger and saffron, etc. It is known under various names, and designated as "ale," "porter," "stout," "strong beer," "small beer," "liquor," "spruce beer," etc."

"Beer is defined to be fermented liquor made from grain and in this country chiefly from barley. Every intelligent person knows that the process of manufacturing lager beer is the same, in all essential particulars, as that of making other kinds of ale and beer from grain, and that the only difference is, so far as intoxicating properties are concerned, a lesser percentage of alcohol." Is the position taken by the court in the case of Kilip vs. McKay, reported 13 N. Y. 5.

In Kansas where the liquor laws have been threshed out for many years a court says "Beer is both a fermented and a malt liquor, and generally contains 3.49 to 4.91 per cent of alcohol." This definition is reported in the case of the State vs. Schaefer, 44 Kansas 90.

"Beer is a general term, and includes both alcoholic liquors, and a class of non-intoxicants made from the roots or other parts of various plants, such as spruce beer, ginger beer, and the like. Lager beer is a malt liquor." This definition is found in the reported case of Johnson vs. the State (Texas) 66 S. W. 552.

"Beer in its ordinary sense, denotes a beverage which is intoxicating - - -" This definition is made in a long line of reported cases from the states of Texas, Iowa, Kansas, Indiana, New York and others.

"As the word is generally used and understood "beer" is a malt liquor, and is intoxicating, though there are, however, some light non-intoxicant preparations sometimes vended under that name." This is taken from the case of State vs. Currie 8 N. Dak. 545. The substance of this definition is also found in Commonwealth vs. Goudier 80 Mass. 350.


The U. S. Pharmacopoeia defines beer to be an extract made by the fermentation of malt and hops and containing from 2.9 to 8.25 per centage of alcohol.

Whether beer is intoxicating therefore depends upon the percentage of alcohol that the product contains. The amount of alcohol necessary to



constitute the product intoxicating varies according to who happens to be the defining term. We have no doubt that out of so-called experts placed on the stand for the purpose of giving their opinion on the subject not more than two or three will agree. The product taken in the raid last Wednesday has been analyzed and on the analysis arrests have been made. Certain it is that in the opinion of Professor Shinn, who made the analysis, the product of the local brewery contained sufficient alcohol to make it, in his opinion, intoxicating. Otherwise there would have been no arrests. The local brewery has for some time past been under a cloud. It has been reported on the street that its officers and stockholders were receiving the protection of those officers whose duty it is to enforce the local option laws. If its product is not intoxicating this cloud that the brewery is under will be removed. If the product is in fact intoxicating those responsible for its manufacture should be punished. The law says that intoxicating liquors shall not be sold in this dry territory and the law should be obeyed. This brewery prior to the local option law in this county manufactured and sold a product that was beer and it was intoxicating. There was no effort made to deny this. Since the county went dry the brewery has made a product that it calls near beer. This now is the question that must be determined. The citizenship of this community and county is entitled to this question.

Down in the state of Georgia where prohibition has gained many victories the law courts are besieged by technical points raised by former saloon keepers who after they were forced out of business through the local option laws became proprietors of near beer parlors. In one case a dry community imposed a license fee of two hundred dollars on all near beer businesses. One near beer man tried the question out in the courts. He contended that the city had no right to impose a license on a near beer resort any more than it should cause the owner of an ice cream parlor to pay a heavy license. The argument was to the effect that so far as the law was concerned the two businesses stood on the same footing. Justice Powell who sat in the case and rendered the decision said on this subject as follows: "The argument that, since near beer is

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not an intoxicating liquor, dealers in it should stand on the same footing as dealers in soda water and other similar beverages whose emporiums with the zeal and partisanship which is to be expected of council in the case, but we would stultify ourselves if we did not recognize an essential distinction and a well marked difference between the two classes. Both businesses are in a certain sense alike legitimate, but there are many varieties of legitimate businesses. An occupation may be lawful and yet may be neither useful nor necessary—in fact they may have a harmful tendency. Is the assumption to be indulged in for an instant that a state tax of \$200.00 on each soda water dealer, in addition to such municipal taxes as might lawfully be collected, would cause to be poured into the treasury the vast sum of money which the near beer tax has brought in? And yet, prior to the adoption of the prohibition law, when near beer and soda water were on an equality so far as taxation was concerned, who ever heard of a "near beer" dealer? Who, prior to the advent of prohibition, would have paid even \$10.00 per annum for the privilege of selling imitations and substitutes for beer and other intoxicating liquors? What does all this suggest to the reasoning mind?

"Not only that, but what other business so facilitates the operation of a 'blind tiger' and the sale of liquors that are intoxicating. The state, and under its authority, the municipalities have the right to enact rules for the conduct of the most necessary and common occupations, when from their nature they offer peculiar opportunities for imposition and fraud."

The case just quoted is styled Campbell vs. City of Thomasville, and is reported in 6 Georgia 212.

And the judge is right. We never heard of a near beer emporium in wet territory. They do not sell near beer in wet territory. They call it beer. And it will take the testimony of expert chemists to solve the local trouble.

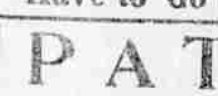
D. C. Brown and wife, of Deer Creek, spent Saturday afternoon in Roseburg visiting with friends.

July 18 Dr. Lowe will be in Oakland; 19 and to noon of 20, in Roseburg. Don't fail to have him test your eyes for glasses.

A BARGAIN.

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