GARNISHEE LAW RULED AGAINST BY CITY JUDGES

Statute Is Unconstitutional, Two Decide; Collins Assails Provisions.

Constitutionality of the state garnishee law has been attacked successfully in Marion county courts wtihin the last year. Why the 1925 statute has been held unconstitutional and the opinions of prominent jurists and lawyers is told in this, the third article of the series.

BY JAMES A. CARVIN

"The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted . . ." Art. I, Sec. 22, Constitution of Indiana.

"Any amount of property not exceeding in value $600, owned by any resident householder shall not be liable for sale on execution or any other final process of a court, for any debt growing out of or founded upon a contract, expressed or implied, after the taking effect of this act." Sec. 769, Burns Rev. St., 1926.

With the fourteenth amendment to the Constitution of the United States and the above two quotations from Indiana law as principal citations, arguments tending to show the unconstitutionality of the Indiana garnishee law have been upheld by Marion county courts.

Furthermore, these decisions have provided a precedent which has convinced contemporary judges and members of the bar that the law not only can not be enforced legally, but that it works tremendous hardships.

Held Unconstitutional

On Feb. 4, 1932, Judge Russell J. Ryan, in superior court five, sustained a motion to quash an execution for judgment in the first contest of the statute's constitutionality.

Only a few weeks ago, on Dec. 7, 1932, Judge Clarence E. Weir, in superior court four, overruled a demurrer to a complaint for a restraining order to enjoin execution of a garnishment.

Although they yet have not been called upon to consider the question, the three other Marion county superior court judges, prevented from expressing opinions before actually handing down decisions, have indicated their concurrence in the finding of the other courts.

Judge William A. Pickens, in superior court three, declared, "Although I have not ruled on the law, I never have enforced it."

McMaster Fights Cases

William S. McMaster, local attorney and former municipal court judge, has played an active part in the fight on the law. He prepared and submitted the case on which Judge Ryan ruled and also acted as counsel in the more recent case before Judge Weir.

There now is pending in circuit court a case in which McMaster also will act as counsel and will submit argument based on the premise that the garnishee law "is in contravention of the provisions of the fourteenth amendment."

Contention of McMaster, upheld by the courts, is that the garnishee law "does not provide for notice or hearing of the defendant before the order is issued" and, therefore, does not follow "due process of law."

James A. Collins, Criminal court judge for many years and now engaged in law practice, also has struck hard at the garnishee statute. In a brief submitted in superior court five, Collins set out five points contending the law's unconstitutionality. The case was dismissed prior to hearing.

No Provision for Hearing

Quoting from the brief, Collins pointed out that the mandatory provision of the law "denies the judgment debtor to claim his statutory exemption of $600;" "singles out a certain class of judgment debtor;" "makes no provision for a hearing that the judgment debtor might be placed in a position to take advantage of the exception provided by law," and makes no provision for notice to him "to be present in court."

Collins' final indictment of the measure states that the law "provides for a hearing and finding solely for the judgment creditor, creating one of the greatest legal absurdities ever fastened upon courts of this commonwealth."

Political "log-rolling" during the period in which the law was passed also is subject to scathing criticism from Collins, and he charged openly that unusual pressure was brought upon the legislature to pass the measure.

Cites Klan—Dry Rule

"The act was passed at a time when we were as near suffering from mob rule as was witnessed in the legislatures of the south during the days of reconstruction. Two powerful minority groups, parading under the banner of a great political party, were so intrenched that each could be of help to the other.

"So intoxicated with power were these groups that they enacted one piece of legislation that was an affront to the great medical profession and an other to the unfortunate debtor from whom his creditor could demand a pound of flesh."

The legislation to which Collins refers is the law forbidding prescription of medicinal whisky and the garnishee statute. The Klan and the Anti-Saloon League were active in state politics at the time.

Firms Join in Fight

Although the garnishee law is mandatory in its application and offers no method of relief, prominent business firms of Indianapolis have joined in the fight against it, and have succeeded in softening much of its severity.

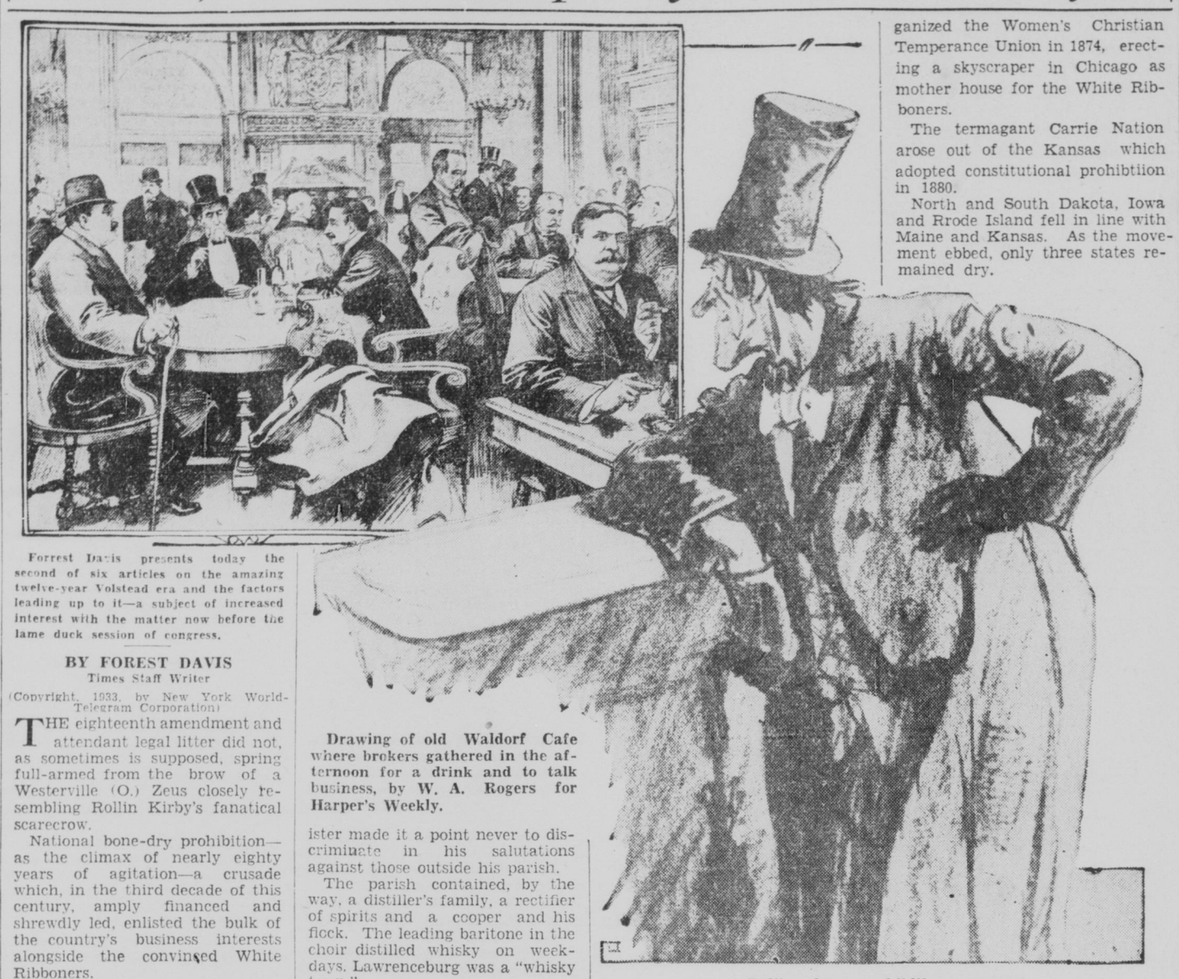
They have aided employes unfortunate enough to become entangled in the meshes of garnishment by actively entering the fight and throwing their own legal resources into the breach to test the law's constitutionality.

The latest development in the fight against the garnishee law on the part of employers will be told Thursday in the fourth of this series.

Sweet Land of Volstead—No. 2

DRYS WIN EIGHTY-YEAR STRIFE

Families, Communities Split by Bitter Rum Warfare



Drawing of old Waldorf Cafe where brokers gathered in the afternoon for a drink and to talk business, by W. A. Rogers for Harper's Weekly.

Rollin Kirby's prohibition scarecrow.

Forrest Davis presents today the second of six articles on the amazing twelve-year Volstead era and the factors leading up to it—a subject of increased interest with the matter now before the lame duck session of congress.

BY FOREST DAVIS
Times Staff Writer

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THE eighteenth amendment and attendant legal litter did not, as sometimes is supposed, spring full-armed from the brow of a Westerville (O.) Zeus closely resembling Rollin Kirby's fanatical scarecrow.

National bone-dry prohibition—as the climax of nearly eighty years of agitation—a crusade which, in the third decade of this century, amply financed and shrewdly led, enlisted the bulk of the country's business interests alongside the convinced White Ribboners.

The crusade ebbed and rose at various periods. But it remained inflammatory throughout. From 1903 onward the politics of every state was roiled; legislatures were besieged, to the detriment of other business, by amiably insistent clergymen and plaintively metallic women on the one hand, by genially stupid and open-handed lobbies of the "liquor interests" on the other.

Communities, parishes, families were divided bitterly as by no other question since slavery.

The fine, evangelistic frenzy poured into the dry cause, the implacable, humorous zeal invoked by the war on social drinking seems now to have been symptomatic of a large-scale emotional derangement. I recall how the serpent of liquor reform entered one Eden during that fabulous period.

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MR. FLANAGAN, proprietor of the Central Buffet, made it his habit to walk thrice daily from home to "store" and the reverse along Elm street. His path carried him past the red brick Henry Ward Beecher Memorial church and the modest, two-storied manse alongside. Mr. Flanagan kept a respectable place. He allowed no minors or women, observed the closing ordinances and served the more sedate among Lawrenceburg's merchants, bankers, and lawyers.

A solid man, he trod solidly, looking every man in the eye. His progress along Elm street was an ambulatory embodiment of self-conscious rectitude and virtue.

For several years Mr. Flanagan, in passing, made it part of his routine gravely to regard the minister's lady and, raising his derby hat ponderously, to call out a greeting.

"Good day, ma'am," he would say. "It's warming up." Or, "Good day, ma'am. It looks as if we're in for a shower."

A neighborly gesture, and the minister's wife invariably replied to the polite saloonkeeper. "How-do, Mr. Flanagan? Yes it is," or "So it looks."

If the minister happened to be out on the veranda or met Mr. Flanagan anywhere on the street, he always spoke genially, as he would to any merchant. The minister made it a point never to discriminate in his salutations against those outside his parish.

The parish contained, by the way, a distiller's family, a rectifier of spirits and a cooper and his flock. The leading baritone in the choir distilled whisky on weekdays. Lawrenceburg was a "whisky town."

# # #

THEN, with lightning suddenness, the warm neighborliness went out of parish and town. Mr. Flanagan and the minister's wife stopped exchanging comments on the weather as he clumped past the manse.

The minister and Mr. Flanagan addressed each other stiffly, when at all. The distiller's family gave up coming to church except at Easter and Christmas; the rectifier surrendered his pew.

An Anti-Saloon League "speaker" had at last been introduced into the pulpit. His "sermon," reported in the local weeklies, had instantly separated the congregation into two ranks.

Vehemently the strange reformer had flayed rum-sellers, brewers, distillers—the "liquor interests"—as limbs of Satan, evil men richly deserving ostracism and worse. The feelings of Mr. Flanagan were hurt.

Almost overnight the congregation and the town fell into line on two sides of an artificial chasm. People no longer were Americans, Italians, Kentuckians, Hoosiers, Republicans, Methodists, Masons, Odd Fellows, benedicts, bachelors, dry goods merchants and railway conductors.

They became merely "wets" or "drys." The sociological effects were unhappy. For years the town wallowed in its obsessions; families, parishes and lodges upset and angry.

That situation, magnified a thousandfold, represented the social distress that followed everywhere in the train of the political "direct actionists" of the Anti-Saloon League at work in the churches.

# # #

THE larger cities escaped some of the acerbity that deranged life in the smaller places. But the acid megalonanias of the paid reformers colored political and social life everywhere in these states until, satisfied with the eighteenth amendment, their handiwork, the anti-saloonists released into enjoyment of a rumless country and a new style of agitation—the more moderate activities of the Al Smiths, Captain Billy Staytons and Mrs. Charles H. Sabins—succeeded them.

Attempts to regulate the use of alcoholic beverage, morally and politically, have engaged organized societies in one way and another since indefatigably curious man discovered the beguiling physiological effects of fermented juices.

But it was not until the so-called "great religious awakening" of the 1830s and 1840s that the temperance folk grew exigent and sought to abet their moral aims with the secular arm.

Revivalists ranging the land, sending thousands of poorly balanced folk into twichings and spasms at camp meetings, discovered that a political objective made their extortations imagible.

# # #

THEREAFTER the first great wave of prohibition slowly spread over the east and south. In 1846 Maine, the granny of the dry crusade, voted dry by statute, and in 1851 to imbed prohibition in its Constitution.

Between 1846 and 1855 thirteen states fell into line—New Hampshire, Vermont, Delaware, Michigan, Indiana, Iowa, Minnesota, Nebraska, Massachusetts, Rhode Island, Connecticut and wicked New York.

A second came about in the 1880s. The Prohibition party had been organized in 1869 and offered a candidate for President in 1872. Miss Frances Willard organized the Women's Christian Temperance Union in 1874, erecting a skyscraper in Chicago as mother house for the White Ribboners.

The termagant Carrie Nation arose out of the Kansas which adopted constitutional prohibtiion in 1880.

North and South Dakota, Iowa and Rrode Island fell in line with Maine and Kansas. As the movement ebbed, only three states remained dry.

PROHIBITION prospered in the muckraking period of political unrest that followed the trust movement early in this century. Only three states were dry in 1905 Maine, Kansas, and North Dakota. But soon thereafter the crusade renewed itself with augmented fervor.

Six states voted dry between 1907 and 1913. In that year the Anti-Saloon League launched its national bone-dry program. In that December the house of representatives adopted a resolution for a dry amendment proposed by Richmond Pearson Hobson.

By 1917, when the eighteenth amendment was authorized by congress, twenty-six states possessed prohibitory laws of greater or less severity.

ACQUIT HOTEL MAN IN LEGION LIQUOR TRIAL

Federal Court Jury Frees Davis in Alleged Booze Plot.

What goes on in a hotel room is no concern of the hotel proprietor, a federal court jury held, in effect, when it acquitted Ernest T. Davis, Kokomo, defendant in the Kokomo Legion convention liquor conspiracy case.

The verdict was returned late Tuesday by the jury, which included three Legion members.

Davis testified that the hotel, which he owned, had gone into receivership a few days before the convention and that he acted as manager without pay during the convention to help the receiver and Legionnaires.

Denies He Drank Beer

He admitted knowing there was a quantity of beer in Room 214, but denied goverrment testimony that he drank some of the beer, and that he had consented to its sale by a group of Legionnaires for convenience of convention visitors.

Federal dry agents who raided the room July 30, 1932, confiscated 872 pints of Canadian beer and seventy-two pints of whisky.

Two other defendants were to have been tried jointly with Davis. They were John Roach, Delphi, accused as a bootlegger supplying part of the convention liquor, who pleaded guilty before the trial, and Roy King, state policeman, who was injured Saturday night in an automobile accident.

King Trial to Be Jan. 30

King, accused of arranging for part of the liquor supply and helping to transport it, will be tried Jan. 30.

Three other defendants, who have pleaded guilty and will be sentenced after King's trial, are Herman Albrecht, Kokomo, who was chairman of the convention housing committee; Rockford D. Robbins, Legionnaire, and James Farduto, Beech Grove, alleged bootlegger.

THWARTED ON DIVORCE

Husband Thought Mate Had Decree; Arrested for Bigamy.

By United Press

BOSTON, Jan. 4.—William C. Lane's wife played a mean trick on him when she didn't get a divorce. A few months ago Lane's wife told him that she was going to sue for freedom. Lane left for the middle west with the idea that she would keep her word.

Believing that his wife had secured the divorce, he married Honora Small in Ohio. When he returned east, he discovered that his wife had not secured the decree, and he was arrested for bigamy.