

BRADSHAW *v.* STATE.

Opinion delivered October 21, 1905.

LIQUORS—NON-INTOXICATING COMPOUND.—Kirby's Digest, § 5093, makes it unlawful to sell, as a beverage, any compound or preparation containing alcohol, whether intoxicating or not.

Appeal from Pope Circuit Court.

WILLIAM L. MOOSE, Judge.

Affirmed.

*Brooks & Hays*, and *Sam R. Chew*, for appellant.

The amount of alcohol in the drink, as shown by the proof, is not sufficient to bring its sale within the meaning of the statute.

*Robert L. Rogers*, *Attorney General*, for appellee.

McCULLOCH, J. The appellant, Henry Bradshaw, was tried and convicted under an indictment charging him with the unlawful sale, without license, of certain liquor.

No objection has been made, either here or below, to the form of the indictment, and the proof was directed to a sale by appellant of a compound or preparation called "Uno," containing alcohol. It was agreed at the trial below that appellant had sold this preparation as a beverage, without license; "that it has the general appearance of beer; foams, sparkles, and has the color and taste of beer; that a person could not contain enough of it to intoxicate; and that it is used in lieu of the stronger beverages, and almost universally sold in prohibition districts." It was shown by the testimony of other witnesses not to be intoxicating, but to be a "mild, pleasant, and agreeable soft drink, and one in which there is no harm, and from the use of which no intoxication or other deleterious effects can follow."

An analysis of the liquor proved the following to be contained therein:

Alcohol .....	1.84
Proteids .....	.50
Extractive matter .....	3.50
Sugar .....	2.50

The court refused to declare the law, as asked by appellant, that before he could be convicted it must appear that the liquor sold was intoxicating, but declared the law to be that it is unlaw-

ful to sell, without license, any compound or preparation, as a beverage, which contains alcohol.

We are asked by learned counsel for appellant to hold that it is not unlawful to sell, as a beverage, a compound or preparation containing alcohol, unless the same be intoxicating. The statute under which appellant was indicted and convicted has been otherwise construed by the decisions of this court, and we adhere to the construction heretofore given. *Bond v. State*, 56 Ark. 444; *Crawford v. State*, 69 Ark. 360.

In the case last cited the court said that "it is obvious that the liquid sold by the appellant must be a compound of one or more of the liquors under the ban of the law with other ingredients, or contain the elements necessary to constitute an intoxicating liquid in such form as it may be used as a beverage."

It follows from this that the sale without license of any compound containing the liquors enumerated is unlawful, whether such compound be intoxicating or not. If it contains any of the liquors enumerated, a sale thereof as a beverage is unlawful. The statute prohibits the sale, without license, of any of the liquors named, and the sale as a beverage of any compound or preparation containing them, whether it be intoxicating or not, and all intoxicating liquors of any kind.

In the case of *Bond v. State*, *supra*, this court sustained a conviction for sale of a non-intoxicating compound containing substantially the same proportion of alcohol as in the liquor which appellant sold.

Affirmed.

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