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**WRIT OF ERROR, MATARAZZA AND ARTESE.**

NEW JERSEY, to wit:

The State of New Jersey to Clifton C. Shinn, Esq., Judge of the Court of Quarter Sessions of the County of Atlantic, of the Term of January, in the year of our Lord one thousand nine hundred and eighteen: 10

Because in the record and proceedings and also in the giving of judgment upon a certain indictment against Nicholas Matarazza and Nicholas Artese, of the City of Atlantic City, in the County of Atlantic, for that the said Nicholas Matarazza and Nicholas Artese did, on the nineteenth day of August, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid, and within the jurisdiction of this court, unlawfully sell and knowingly permit to be sold to Ralph J. Serretella and Edmund Perere and certain other persons whose names are unknown to this Grand Inquest, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded or intended to be used as medicine), by less measure than one quart, to wit, beer, wine and whiskey, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided; that Nicholas Matarazza and Nicholas Artese, late of the City of Atlantic City, in the said County of Atlantic, on the twenty-sixth day of August, in the year of our Lord one thousand nine hundred and seventeen, at the Presser 20 30

Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid, and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be sold to one Ralph J. Serretella and Edmund Perere and certain other persons whose names are to this Grand Inquest unknown, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded or intended to be used as medicine) by less measure than one quart, to wit, wine and beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided; that Nicholas Matarazza and Nicholas Artese, late of the City of Atlantic City, in the said County of Atlantic, on the second day of September, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid, and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be sold to one Ralph J. Serretella and Edmund Perere and certain other persons whose names are unknown to this Grand Inquest, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded and intended to be used as medicine) by less measure than one quart, to wit, wine and beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided; that Nicholas Matarazza and Nicholas Artese, late of the City of Atlantic City, in the said County of Atlantic, on the first day of December, in the year of our Lord one thousand nine hundred and fifteen and on divers other days and times between that day and the first

day of November, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in the City of Atlantic City aforesaid, in the county aforesaid, and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be sold to one Ralph J. Serretella and Edmund Perere and certain other persons whose names are unknown to this Grand Inquest, certain vinous, spirituous and malt liquors, wine, gin, rum, brandy and other ardent spirits (the same not being compounded and intended to be used as medicine) by less measure than one quart, to wit, wine and beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided, whereof before you he has been indicted, and is thereof convicted by a certain jury of the county taken between the State of New Jersey and the said Nicholas Matarazza and Nicholas Artese, as it is said, manifest error hath intervened to the great damage of the said Nicholas Matarazza and Nicholas Artese, as from their complaint we have received information, we being willing, in their behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to them, the said Nicholas Matarazza and Nicholas Artese, command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Justices of our Supreme Court of the State of New Jersey, on the ninth day of March, nineteen hundred and eighteen, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon, for correcting that error, what of right and according to the laws of New Jersey ought to be done.

Witness, WILLIAM S. GUMMERE, Esq., Chief Justice of our Supreme Court, at Trenton, this eighteenth day of February, in the year of our Lord, one thousand nine hundred and eighteen.

BABCOCK & CHAMPION,  
*Attorneys.*

WM. C. GEBHARDT,  
*Clerk.*

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**RETURN TO WRIT.**

The answer of C. C. Shinn, Esquire, Judge of the Court of Quarter Sessions of the County of Atlantic within named, the record and proceedings whereof mention is within made, with all things touching the same, I certify to the Justices of our Supreme Court of the State of New Jersey at the day and year within contained, in a certain schedule to this writ annexed, as I am commanded.

C. C. SHINN,  
*Judge.*

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ATLANTIC COUNTY, to wit:

30 Be It Remembered, that a Court of Quarter Sessions, holden at Mays Landing, in and for the County of Atlantic, on the twenty-second day of November, in the year of our Lord one thousand nine hundred and seventeen, before the Honorable Clifton C. Shinn, a Judge of the said court, and of the Court of Common Pleas in and for said county, no Justice of the Supreme Court of the State of New Jersey being present in the Court House, and the Grand

Jury being desirous of making presentments of the sundry bills of indictment according to the form of the statute in such case made and provided, by the oath of Jonathan J. Roberts, P. E. Howard, Henry Rosenblatt, Joseph R. Edmond, John C. Clark, J. A. Wass, Winfield F. Cozart, David Nassano, F. W. Wyld, Wm. S. Emley, Jr., Charles F. Wahl, John W. Conover, Wm. C. Walker, C. W. Gale, Martin R. Herr, Wm. W. Blatchford, E. E. Allison, Charles R. Lewine, Robert B. Scull, George Ripley, Sr., Harry P. Anderson, Luther L. Jones and by the affirmation of J. Haines Lippincott, good and lawful men of the said County of Atlantic, duly summoned and then and there sworn and charged to inquire for the State of New Jersey, in and for the body of the County of Atlantic,

It Is Presented in manner and form following that is to say:

State of New Jersey vs.	Eugene Olden,	Charles	
" " "	" "	Brown	Robbery 20
" " "	" "	Clarence Baker	Larceny
" " "	" "	John Heggan, Helen Davis	Adultery
" " "	" "	Harry Person	
		Grand Larceny	
" " "	" "	Christopher McNaulty	
		Lewdness	
" " "	" "	Michael Renzelli	
		Grand Larceny	
" " "	" "	Jennie Johnson	Larceny 30
" " "	" "	Howard Wilson	
		Manslaughter	
" " "	" "	Charles Wilson	
		Manslaughter	
" " "	" "	Charles Wilson, Howard Wilson, Thomas Alwyn,	

					Walter Ennes, Horace Ennes Manslaughter
	“	“	“	“	“ Horace Ennes Manslaughter
	“	“	“	“	“ Thomas Alwyn Manslaughter
	“	“	“	“	“ Kinsey Custard Manslaughter
10	“	“	“	“	“ Maggie Turner, Selling Liquor without license
	“	“	“	“	“ Clara Bivans Grand Larceny
	“	“	“	“	“ Everett Spellman, Break- ing with intent, etc.
	“	“	“	“	“ Ralph Taylor, Assault & Battery
	“	“	“	“	“ Ralph Taylor, Lewdness
	“	“	“	“	“ Joseph Collins, Rape
	“	“	“	“	“ Melvin Schenk, Breaking with intent, etc.
20	“	“	“	“	“ Joseph Thomas, Break- ing with intent, etc.
	“	“	“	“	“ Melvin Schenk, Joseph Thomas, Breaking with intent, etc.
	“	“	“	“	“ John Steelman, Desertion
	“	“	“	“	“ Lilly Green, alias Lillie Delue, Assault & Bat- tery
30	“	“	“	“	“ John Steelman, Desertion & Non-Support
	“	“	“	“	“ Dottie Wilkinson, Unlaw- ful Conversion
	State of New Jersey vs.				Charles D. Sessons, Sell- ing Liquor on Sunday

"	"	"	"	"	Luthern Price, Larceny	
"	"	"	"	"	Harry Person	
					Grand Larceny	
"	"	"	"	"	Otto Paul, Dersion & Non Support	
"	"	"	"	"	Walter Ennis	
					Manslaughter	
"	"	"	"	"	Robert Tisdale, Desertion	
"	"	"	"	"	Reginald C. Sampson	
					Unlawful Conversion	10
"	"	"	"	"	Reginald C. Sampson	
					Unlawful Conversion	
"	"	"	"	"	Nicholas Artess, Selling liquor without license	
"	"	"	"	"	Nicholas Artess, Nicholas Matarazza, Selling liquor without license	
"	"	"	"	"	Nicholas Matarazza, Selling liquor without license	
						20
"	"	"	"	"	Robert Moratta	
					Disorderly House	
"	"	"	"	"	William Canham	
					Disorderly House	
"	"	"	"	"	Harry Martin	
					Disorderly House	
"	"	"	"	"	Edward Camp	
					Disorderly House	

The bills herewith presented are true bills. 30

J. HAINES LIPPINCOTT,  
Foreman.

(Endorsed)

Filed Nov. 22nd, 1917

EDWIN A. PARKER, Clerk.

IN THE COURT OF OYER AND TERMINER OF  
ATLANTIC COUNTY.

October Term, A. D. 1917.

ATLANTIC COUNTY, to wit:

The Grand Inquest of the State of New Jersey, in and for the body of the County of Atlantic, upon  
10 their respective oath and affirmation, those who affirmed having first alleged themselves to be conscientiously scrupulous against taking an oath, Present, That Nicholas Matarazza and Nicholas Artese late of the City of Atlantic City in the said County of Atlantic, on the nineteenth day of August, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid, and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be sold to Ralph J. Serretella and  
20 Edmund Perere and certain other persons whose names are unknown to this Grand Inquest, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded or intended to be used as medicine), by less measure than one quart, to wit, beer, wine and whiskey, without license for that purpose first had and obtained in the manner prescribed by the  
30 statute in that case made and provided, to the evil example of all others in like case offending, contrary to the form of the statute in such case made and provided, against the peace of this State, the Government and dignity of the same.

And The Grand Inquest aforesaid, upon their respective oath and affirmation aforesaid, do further Present, That Nicholas Matarazza and Nicholas Ar-

tese late of the City of Atlantic City, in the said County of Atlantic, on the twenty-sixth day of August, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid, and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be sold to one Ralph J. Serrettella and Edmund Perere and certain other persons whose names are to this Grand Inquest unknown, 10  
certain vinous, spirituous and malt liquors, wine, rum, gin, brandy, and other ardent spirits (the same not being compounded or intended to be used as medicine), by less measure than one quart, to wit, wine and beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided, to the evil example of all others in like case offending, contrary to the statute in such case made and provided, against the peace of this State, the Government and 20  
dignity of the same.

And The Grand Inquest aforesaid, on their respective oath and affirmation aforesaid, do further Present, That Nicholas Matarazza and Nicholas Artese late of the City of Atlantic City, in the said County of Atlantic, on the second day of September, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid, and within the 30  
jurisdiction of this court, unlawfully did sell and knowingly permit to be sold to one—and certain other persons whose names are unknown to this Grand Inquest, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded and intended to be used as medicine) by less measure than

one quart, to wit, wine and beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided, to the evil example of all others in like case offending, contrary to the form of the statute in such case made and provided, against the peace of this State, the Government and dignity of the same.

- 10 And The Grand Inquest aforesaid, upon their respective oath and affirmation aforesaid, do further Present, That Nicholas Matarazza and Nicholas Ar-  
tесе late of the City of Atlantic City, in the said County of Atlantic, on the first day of December, in the year of our Lord one thousand nine hundred and fifteen and on divers other days and times between that day and the first day of November, in the year of our Lord one thousand nine hundred and seven-  
teen, at the Presser Hotel, number fourteen South Mississippi Avenue, in the City of Atlantic City  
20 aforesaid, in the county aforesaid, and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be sold to one Ralph J. Serretella and Nicholas Artese and certain other persons whose names are unknown to this Grand Inquest, certain vinous, spirituous and malt liquors, wine, gin, rum, brandy and other ardent spirits (the same not being compounded and intended to be used as medicine), by less measure than one quart, to wit,  
30 wine and beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided, to the evil example of all others in like case offending, contrary to the statute in such case made and provided, and against the peace of this State, the Government and dignity of the same.

CHARLES S. MOORE,  
*Prosecutor of the Pleas.*

(Endorsed)

Charges S. Moore,  
Prosecutor of the Pleas

A True Bill

J. Haines Lippincott,  
Foreman

Filed, entered and impounded 11-22 1917  
Edwin A. Parker, Clerk.

Plea of Not Guilty entered 11-27 1917,  
Edwin A. Parker, Clerk.

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ATLANTIC QUARTER SESSIONS  
January Term, 1918.

February 13th.

White  
4081

State  
vs.

Nicholas Matarazza and Nicholas Artese

20

Hon. C. C. Shinn, Presiding.

W. E. Brown, Jr., for State.

Babcock and Champion, for defdts.

Charge, selling liquor without a license.

Plea Not Guilty.

The above-named defendants being brought into court charged pleaded not guilty of the crime as laid to their charge and by agreement of counsel this indictment (No. 4081) was tried jointly with indictments Nos. 4082 and 4084. 30

Whereupon on motion of W. E. Brown, Jr., ass't. prosecutor, on the part of the State it was ordered that the sheriff return a panel of the jury to try the issue joined in the aforesaid plea.

Whereupon the sheriff returned the following-named persons to serve as jurors who were sworn as follows, to wit:

- |                      |                       |
|----------------------|-----------------------|
| 1. Robert McLaughlin | 7. William J. Smith   |
| 2. Joseph M. Johnson | 8. Louis Steinbricker |
| 3. Henry Nusbaum     | 9. Richard Sooy       |
| 4. Albert Hartley    | 10. Sedic Escoffery   |
| 5. C. F. Smith       | 11. George C. Baldwin |
| 6. Henry Martens     | 12. Howell Cook       |

10

the following witnesses who were sworn, Ralph J. Seretella, William H. Baitzell, James Baker, John P. Wilson, Benjamin Nusbaum, Harry Lobocico, Joseph Cook and Louis Romano having been called for the State and there being no witnesses called for the defendants and the evidence being closed and the counsel having summed up the case and the Court having charged the jury they retired at 2.17 P. M. with constable C. C. Patterson who was sworn to attend them and being absent until 2.45 P. M. they returned again into court and being called all appear and being asked say they have agreed upon a verdict and by their foreman further say that they find the defendants Nicholas Matarazza and Nicholas Artese guilty and so say they all.

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Sentence not passed.

(Quarter Sessions Judgment Book #10, page 120.)

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**WRIT OF ERROR, ARTESE.**

NEW JERSEY, to wit:

The State of New Jersey to Clifton C. Shinn, Esq., Judge of the Court of Quarter Sessions of the County of Atlantic,  
(SEAL) of the Term of January, in the year of our Lord one thousand nine hundred and eighteen:

10

Because in the record and proceedings and also in the giving of judgment upon a certain indictment against Nicholas Artese, of the City of Atlantic City, in the County of Atlantic, for that the said Nicholas Artese did, on the nineteenth day of August, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid, and within the jurisdiction of this court, unlawfully sell and knowingly permit to be sold to Ralph J. Serretella and Edmund Perere and certain other persons whose names are unknown to this Grand Inquest, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded or intended to be used as medicine), by less measure than one quart, to wit, beer, wine and whiskey, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided; that Nicholas Artese, late of the City of Atlantic, in the said County of Atlantic, on the twenty-sixth day of August, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid, and within the jurisdiction of this court, unlawfully did sell and

20

30

knowingly permit to be sold to one Ralph J. Serretella and Edmund Perere and certain other persons whose names are to this Grand Inquest unknown, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded or intended to be used as medicine) by less measure than one quart, to wit, wine and beer, without license for that purpose first had and obtained in the manner prescribed by the

10 statute in that case made and provided; that Nicholas Artese, late of the City of Atlantic City, in the said County of Atlantic, on the second day of September, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid, and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be sold to one Ralph J. Serretella and Edmund Perere and certain other

20 persons whose names are unknown to this Grand Inquest, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded and intended to be used as medicine) by less measure than one quart, to wit, wine and beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided; that Nicholas Artese, late of the City of Atlantic City, in the said County of Atlantic, on the first day of December, in the year of our Lord one thousand nine hundred and fifteen, and on divers other days and times

30 between that day and the first day of November, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in the City of Atlantic City aforesaid, in the county aforesaid, and within the jurisdiction of this court, unlawfully did

sell and knowingly permit to be sold to one Ralph J. Serretella and Edmund Perere and certain other persons whose names are unknown to this Grand Inquest, certain vinous, spirituous and malt liquors, wine, gin, rum, brandy and other ardent spirits (the same not being compounded and intended to be used as medicine) by less measure than one quart, to wit, wine and beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided, whereof before you he has been indicted, and is thereof convicted by a certain jury of the county taken between the State of New Jersey and the said Nicholas Artese, as it is said, manifest error hath intervened to the great damage of the said Nicholas Artese, as from his complaint we have received information, we being willing, in his behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said Nicholas Artese, command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Justices of our Supreme Court of the State of New Jersey, on the ninth day of March, nineteen hundred and eighteen, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon, for correcting that error, what of right and according to the laws of New Jersey ought to be done.

Witness, WILLIAM S. GUMMERE, Esq., Chief Justice of our Supreme Court, at Trenton, this eighteenth day of February, in the year of our Lord, one thousand nine hundred and eighteen.

BABCOCK & CHAMPION,  
*Attorneys.*

WM. C. GEBHARDT,  
*Clerk.*

**RETURN TO WRIT.**

The answer of C. C. Shinn, Esquire, Judge of the Court of Quarter Sessions of the County of Atlantic within named, the record and proceedings whereof mention is within made, with all things touching the same, I certify to the Justices of our Supreme Court of the State of New Jersey, at the day and year within contained, in a certain schedule to this writ  
10 annexed, as I am commanded.

C. C. SHINN,  
*Judge.*

---

ATLANTIC COUNTY, to wit:

Be It Remembered, That a Court of Quarter Sessions, holden at Mays Landing, in and for the County of Atlantic, on the twenty-second day of November, in the year of our Lord one thousand nine hundred and seventeen, before the Honorable Clifton C. Shinn, a Judge of the said Court, and of the Court of Common Pleas in and for said county, no Justice of the Supreme Court of the State of New Jersey being present in the Court House, and the Grand Jury being desirous of making presentments of the sundry bills of indictment according to the form of the statute in such case made and provided,  
20  
30 by the oath of Jonathan J. Roberts, P. E. Howard, Henry Rosenblatt, Joseph R. Edmond, John C. Clark, J. A. Wass, Winfield F. Cozart, David Nassano, F. W. Wyld, Wm. S. Emley, Jr., Charles F. Wahl, John W. Conover, Wm. C. Walker, C. W. Gale, Martin R. Herr, Wm. W. Blatchford, E. E. Allison, Charles R. Lewine, Robert B. Scull, George Ripley, Sr., Harry P. Anderson, Luther L. Jones

and by the affirmation of J. Haines Lippincott, good and lawful men of the said County of Atlantic, duly summoned and then and there sworn and charged to inquire for the State of New Jersey, in and for the body of the County of Atlantic,

It Is Presented in manner and form following, that is to say:

State of New Jersey vs.	Eugene Olden, Charles	
" " " " "	Brown Robbery	
" " " " "	Clarence Baker Larceny	10
" " " " "	John Heggan, Helen Davis	
" " " " "	Adultery	
" " " " "	Harry Person	
" " " " "	Grand Larceny	
" " " " "	Christopher McNaulty	
" " " " "	Lewdness	
" " " " "	Michael Renzelli	
" " " " "	Grand Larceny	
" " " " "	Jennie Johnson	
" " " " "	Larceny	20
" " " " "	Howard Wilson	
" " " " "	Manslaughter	
" " " " "	Charles Wilson	
" " " " "	Manslaughter	
" " " " "	Charles Wilson, Howard Wilson, Thomas Alwyn, Walter Ennes, Horace Ennes	
" " " " "	Manslaughter	
" " " " "	Horace Ennes	
" " " " "	Manslaughter	30
" " " " "	Thomas Alwyn	
" " " " "	Manslaughter	
" " " " "	Kinsey Custard	
" " " " "	Manslaughter	
" " " " "	Maggie Turner, Selling Liquor without license	

	“	“	“	“	“	Clara Bivans Grand Larceny
	“	“	“	“	“	Everett Spellman, Break- ing with intent, etc.
	“	“	“	“	“	Ralph Taylor, Assault & Battery
	“	“	“	“	“	Ralph Taylor, Lewdness
	“	“	“	“	“	Joseph Collins, Rape
	“	“	“	“	“	Melvin Schenk, Breaking with intent, etc.
10	“	“	“	“	“	Joseph Thomas, Break- ing with intent, etc.
	“	“	“	“	“	Melvin Schenk, Joseph Thomas, Breaking with intent, etc.
	“	“	“	“	“	John Steelman, Desertion
	“	“	“	“	“	Lilly Green, alias Lillie Delue, Assault & Bat- tery
20	“	“	“	“	“	John Steelman, Desertion & Non-Support
	“	“	“	“	“	Dottie Wilkinson, Unlaw- ful Conversion
	State of New Jersey	vs.				Charles D. Sessions, Sell- ing Liquor on Sunday
	“	“	“	“	“	Luthern Price, Larceny
	“	“	“	“	“	Harry Person Grand Larceny
	“	“	“	“	“	Otto Paul, Dersion & Non Support
30	“	“	“	“	“	Walter Ennis Manslaughter
	“	“	“	“	“	Robert Tisdale, Desertion
	“	“	“	“	“	Reginald C. Sampson Unlawful Conversion
	“	“	“	“	“	Reginald C. Sampson Unlawful Conversion

“	“	“	“	“	Nicholas Artess, Selling liquor without license	
“	“	“	“	“	Nicholas Artess, Nicholas Mitarazza, Selling li- quor without license	
“	“	“	“	“	Nicholas Matarazza, Sell- ing liquor without li- cense	
“	“	“	“	“	Robert Moratta Disorderly House	10
“	“	“	“	“	William Canham Disorderly House	
“	“	“	“	“	Harry Martin Disorderly House	
“	“	“	“	“	Edward Camp Disorderly House	

The bills herewith presented are true bills.

J. HAINES LIPPINCOTT,  
*Foreman.*

20

(Endorsed)

Filed Nov. 22nd, 1917

EDWIN A. PARKER, *Clerk.*

---

IN THE COURT OF OYER AND TERMINER OF  
ATLANTIC COUNTY.

October Term, A. D. 1917.

ATLANTIC COUNTY, to wit:

30

The Grand Inquest of the State of New Jersey, in and for the body of the County of Atlantic, upon their respective oath and affirmation, those who affirmed having first alleged themselves to be conscientiously scrupulous against taking an oath, Pres-

ent, That Nicholas Artese, late of the City of Atlantic City in the said County of Atlantic on the nineteenth day of August, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid, and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be sold to Ralph L. Serretella and Edmund Perere and certain other persons whose names are unknown to this Grand Inquest, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded or intended to be used as medicine), by less measure than one quart, to wit, beer, wine, and whiskey, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided, to the evil example of all others in like case offending, contrary to the form of the statute in such case made and provided, against the peace of this State, the Government and dignity of the same.

And The Grand Inquest Aforesaid, upon their respective oath and affirmation aforesaid, do further Present, That Nicholas Artese, late of the City of Atlantic City, in the said County of Atlantic, on the twenty-sixth day of August, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid, and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be sold to one Ralph J. Serretella and Edmund Perere and certain other persons whose names are to this Grand Inquest unknown, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded or in-

tended to be used as medicine), by less measure than one quart, to wit, wine and beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided, to the evil example of all others in like case offending, contrary to the statute in such case made and provided, against the peace of this State, the Government and dignity of the same.

And The Grand Inquest aforesaid, on their respective oath and affirmation aforesaid, do further 10  
Present, That Nicholas Artese late of the City of Atlantic City, in the said County of Atlantic, on the second day of September, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid, and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be sold to one Ralph J. Serretella and Edmund Perere and certain other persons whose names are unknown to 20  
this Grand Inquest, certain vinous, spirituous and malt liquor, wine, rum, gin, brandy and other ardent spirits (the same not being compounded and intended to be used as medicine) by less measure than one quart, to wit, wine and beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided, to the evil example of all others in like case offending, contrary to the form of the statute in such case made and provided, against the peace of this 30  
State, the Government and dignity of the same.

And The Grand Inquest aforesaid, upon their respective oath and affirmation aforesaid, do further Present, That Nicholas Artese late of the City of Atlantic City, in the said County of Atlantic, on the first day of December in the year of our Lord one thousand nine hundred and fifteen and on divers

other days and times between that day and the first day of November, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in the City of Atlantic City aforesaid, in the county aforesaid, and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be sold to one Ralph J. Serretella and Edmund Perere and certain other persons whose names are unknown to  
 10 this Grand Inquest, certain vinous, spirituous and malt liquors, wine, gin, rum, brandy and other ardent spirits (the same not being compounded and intended to be used as medicine), by less measure than one quart, to wit, wine, and beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided, to the evil example of all others in like case offending, contrary to the statute in such case made and provided, and against the peace of  
 20 this State, the Government and dignity of the same.

CHARLES S. MOORE,  
*Prosecutor of the Pleas.*

(Endorsed)

Charles S. Moore,  
 Prosecutor of the Pleas

A True Bill  
 J. Haines Lippincott,  
 Foreman

30 Filed, entered and impounded 11-22 1917  
 Edwin A. Parker, Clerk.  
 Plea of Not Guilty entered 11-27 1917  
 Edwin A. Parker, Clerk.



the following witnesses who were sworn Ralph Serretella, William H. Baitzell, James Baker, John P. Wilson, Benjamin Nusbaum, Harry Lobocico, Joseph Cook and Louis Romano having been called for the State and there being no witnesses called for the defendant and the evidence being closed and the counsel having summed up the case and the Court having charged the jury they retired at 2.17 P. M. with constable C. C. Patterson who was sworn  
10 to attend them and being absent until 2.45 P. M. they returned again into court and being called all appear and being asked say they have agreed upon a verdict and by their foreman further say that they find the defendant Nicholas Artese guilty and so say they all.

Whereupon it is on this 26th day of February, A. D. 1918, ordered that the defendant be placed at the bar and he being accordingly set at the bar the Court doth order and adjudge that the defendant  
20 Nicholas Artese be committed to the care and custody of the probation officer for a period of three years and pay the sum of two dollars per week during that period. Also pay the sum of three hundred fifty dollars within one week.

(Quarter Sessions Judgment Book #10 page 122.)

**WRIT OF ERROR, MATARAZZA.**

NEW JERSEY, to wit:

The State of New Jersey to Clifton C. Shinn, Esq., Judge of the Court of Quarter Sessions of the County of Atlantic,  
(SEAL) of the Term of January, in the year of our Lord one thousand nine hundred and eighteen:

Because in the record and proceedings and also in 10  
the giving of judgment upon a certain indictment against Nicholas Matarazza, of the City of Atlantic City, in the County of Atlantic, for that the said Nicholas Matarazza did, on the nineteenth day of August, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid, and within the jurisdiction of this court, unlawfully sell and knowingly permit to be sold to Ralph J. Serretella 20  
and Edmund Perere and certain other persons whose names are unknown to this Grand Inquest, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded or intended to be used as medicine), by less measure than one quart, to wit, beer, wine and whiskey, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided; that Nicholas Mat- 30  
arazza, late of the City of Atlantic City, in the said County of Atlantic, on the twenty-sixth day of August, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid, and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be sold to one Ralph J. Serre-

tella and Edmund Perere and certain other persons whose names are to this Grand Inquest unknown, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded or intended to be used as medicine) by less measure than one quart, to wit, wine and beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided; that

10 Nicholas Matarazza, late of the City of Atlantic City, in the said County of Atlantic, on the second day of September, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid, and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be sold to one Ralph J. Sarretella and Edmund Perere and certain other persons whose names are unknown to this Grand

20 Inquest, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded and intended to be used as medicine) by less measure than one quart, to wit, wine and beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided; that Nicholas Matarazza, late of the City of Atlantic City, in the said County of Atlantic, on the first day of December, in the year of our Lord one thousand nine hundred and fifteen, and on divers other days and

30 times between that day and the first day of November, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in the City of Atlantic City aforesaid, in the county aforesaid, and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be sold to one Ralph

J. Serretella and Edmund Perere and certain other persons whose names are unknown to this Grand Inquest, certain vinous, spirituous and malt liquors, wine, gin, rum, brandy and other ardent spirits (the same not being compounded and intended to be used as medicine) by less measure than one quart, to wit, wine and beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided, whereof before you he has been indicted, and is thereof convicted by a certain jury of the county taken between the State of New Jersey and the said Nicholas Matarazza, as it is said, manifest error hath intervened to the great damage of the said Nicholas Matarazza, as from his complaint we have received information, we being willing, in his behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said Nicholas Matarazza, command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Justices of our Supreme Court of the State of New Jersey, on the ninth day of March, nineteen hundred and eighteen, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon, for correcting that error, what of right and according to the laws of New Jersey ought to be done.

Witness, WILLIAM S. GUMMERE, Esq., Chief Justice of our Supreme Court, at Trenton, this eighteenth day of February, in the year of our Lord, one thousand nine hundred and eighteen.

BABCOCK & CHAMPION,  
*Attorneys.*

WM. C. GEBHARDT,  
*Clerk.*

**RETURN TO WRIT.**

The answer of C. C. Shinn, Esquire, Judge of the Court of Quarter Sessions of the County of Atlantic within named, the record and proceedings whereof mention is within made, with all things touching the same, I certify to the Justices of our Supreme Court of the State of New Jersey at the day and year  
 10 within contained, in a certain schedule to this writ annexed, as I am commanded.

C. C. SHINN,  
*Judge.*

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ATLANTIC COUNTY, to wit:

Be It Remembered, That a Court of Quarter Ses-  
 20 sions, holden at Mays Landing, in and for the County of Atlantic, on the twenty-second day of November, in the year of our Lord one thousand nine hundred and seventeen, before the Honorable Clifton C. Shinn, a Judge of the said court and of the Court of Common Pleas in and for said county, no Justice of the Supreme Court of the State of New Jersey being present in the Court House, and the Grand Jury being desirous of making presentments of the  
 30 sundry bills of indictment according to the form of the statute in such case made and provided, by the oath of Jonathan J. Roberts, P. E. Howard, Henry Rosenblatt, Joseph R. Edmond, John C. Clark, J. A. Wass, Winfield F. Cozart, David Nassano, F. W. Wyld, Wm. S. Emley, J., Charles F. Wahl, John W. Conover, Wm. C. Walker, C. W. Gale, Martin R. Hess, Wm. N. Blatchford, E. E. Allison, Charles R. Lewine, Robert B. Scull, George Ripley, Sr., Harry



	“	“	“	“	“	Maggie Turner, Selling Liquor without license
	“	“	“	“	“	Clara Bivans Grand Larceny
	“	“	“	“	“	Everett Spellman, Break- ing with intent, etc.
	“	“	“	“	“	Ralph Taylor, Assault & Battery
	“	“	“	“	“	Ralph Taylor, Lewdness
10	“	“	“	“	“	Joseph Collins, Rape
	“	“	“	“	“	Melvin Schenk, Breaking with intent, etc.
	“	“	“	“	“	Joseph Thomas, Break- ing with intent, etc.
	“	“	“	“	“	Melvin Schenk, Joseph Thomas, Breaking with intent, etc.
	“	“	“	“	“	John Steelman, Desertion
	“	“	“	“	“	Lilly Green, alias Lillie Delue, Assault & Bat- tery
20						
	“	“	“	“	“	John Steelman, Desertion & Non-Support
	“	“	“	“	“	Dottie Wilkinson, Unlaw- ful Conversion
	State of New Jersey	vs.				Charles D. Sessions, Sell- ing Liquor on Sunday
	“	“	“	“	“	Luthern Price, Larceny
	“	“	“	“	“	Harry Person Grand Larceny
30	“	“	“	“	“	Otto Paul, <i>Dersion</i> & Non Support
	“	“	“	“	“	Walter Ennis Manslaughter
	“	“	“	“	“	Robert Tisdale, Desertion
	“	“	“	“	“	Reginald C. Sampson Unlawful Conversion

“	“	“	“	“	Reginald C. Sampson Unlawful Conversion	
“	“	“	“	“	Nicholas Artess, Selling liquor without license	
“	“	“	“	“	Nicholas Artess, Nicholas Mitarazza, Selling li- quor without license	
“	“	“	“	“	Nicholas Matarazza, Sell- ing liquor without li- cense	10
“	“	“	“	“	Robert Moratta Disorderly House	
“	“	“	“	“	William Canham Disorderly House	
“	“	“	“	“	Harry Martin Disorderly House	
“	“	“	“	“	Edward Camp Disorderly House	

The bills herewith presented are true bills. 20  
 J. HAINES LIPPINCOTT,  
*Foreman.*

(Endorsed)  
 Filed Nov. 22nd, 1917  
 EDWIN A. PARKER, *Clerk.*

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IN THE COURT OF OYER AND TERMINER OF  
 ATLANTIC COUNTY. 30  
 October Term, A. D. 1917.

ATLANTIC COUNTY, to wit:

The Grand Inquest of the State of New Jersey, in  
 and for the body of the County of Atlantic, upon  
 their respective oath and affirmation, those who af-

firmed having first alleged themselves to be conscientiously scrupulous against taking an oath, Present, That Nicholas Matarazza, late of the City of Atlantic City in the said County of Atlantic, on the nineteenth day of August, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid, and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be sold to Ralph J. Serretella and Edmund Perere and certain other persons whose names are unknown to this Grand Inquest, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded or intended to be used as medicine), by less measure than one quart, to wit, beer, wine and whiskey, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided, to the evil example of all others in like case offending, contrary to the form of the statute in such case made and provided, against the peace of this State, the Government and dignity of the same.

And The Grand Inquest aforesaid, upon their respective oath and affirmation aforesaid, do further Present, That Nicholas Matarazza, late of the City of Atlantic City, in the said County of Atlantic, on the twenty-sixth day of August, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid, and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be sold to one Ralph J. Serretella and Edmund Perere and certain other persons whose names are to this Grand Inquest unknown, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and

other ardent spirits (the same not being compounded or intended to be used as medicine), by less measure than one quart, to wit, wine and beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided, to the evil example of all others in like case offending, contrary to the statute in such case made and provided, against the peace of this State, the Government and dignity of the same.

And The Grand Inquest aforesaid, on their respective oath and affirmation aforesaid, do further Present, That Nicholas Matarazza, late of the City of Atlantic City, in the said County of Atlantic, on the second day of September, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid, and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be sold to one Ralph J. Serretella and Edmund Perere and certain other persons whose names are unknown to this Grand Inquest, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded and intended to be used as medicine) by less measure than one quart, to wit, wine and beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided, to the evil example of all others in like case offending, contrary to the form of the statute in such case made and provided, against the peace of this State, the Government and dignity of the same.

And The Grand Inquest aforesaid, upon their respective oath and affirmation aforesaid, do further Present, that Nicholas Mattarazza, late of the City of Atlantic City, in the said County of Atlantic, on

the first day of December, in the year of our Lord one thousand nine hundred and fifteen and on divers other days and times between that day and the first day of November, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in the City of Atlantic City aforesaid, in the county aforesaid, and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be sold to one Ralph J. Serrettella and Edmund Perere and certain other persons whose names are unknown to this Grand Inquest, certain vinous, spirituous and malt liquors, wine, gin, rum, brandy and other ardent spirits (the same not being compounded and intended to be used as medicine), by less measure than one quart, to wit, wine, and beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided, to the evil example of all others in like case offending, contrary to the statute in such case made and provided, and against the peace of this State, the Government and dignity of the same.

CHARLES S. MOORE,  
*Prosecutor of the Pleas.*

(Endorsed)

Charles S. Moore,  
Prosecutor of the Pleas.

A True Bill

J. Haines Lippincott,

Foreman

Filed, entered and impounded 11-22 1917

Edwin A. Parker, Clerk.

Plea of Not Guilty entered 11-27 1917

Edwin A. Parker, Clerk.

## ATLANTIC QUARTER SESSIONS.

January Term, 1918.

February 13th.

White  
4084State  
vs.  
Nicholas Matarazza

Hon. C. C. Shinn, presiding. 10  
 W. E. Brown, Jr., for State.  
 Babcock and Champion, for defdt.  
 Charge, Selling liquor without a license.  
 Plea Not Guilty.

The above-named defendant being brought into court, charged pleaded not guilty of the crime as laid to his charge and by agreement of counsel this indictment (No. 4084) was tried jointly with indictments Nos. 4082 and 4081.

Whereupon on motion of W. E. Brown, Jr., ass't. 20  
 prosecutor on the part of the State, it was ordered that the sheriff return a panel of the jury to try the issue joined in the aforesaid plea.

Whereupon the sheriff returned the following-named persons to serve as jurors who were sworn as follows to wit:

- |                      |                       |    |
|----------------------|-----------------------|----|
| 1. Robert McLaughlin | 7. William J. Smith   |    |
| 2. Joseph M. Johnson | 8. Louis Steinbricker |    |
| 3. Henry Nusbaum     | 9. Richard Sooy       | 30 |
| 4. Albert Hartley    | 10. Sedric Escoffery  |    |
| 5. C. F. Smith       | 11. George C. Baldwin |    |
| 6. Henry Martens     | 12. Howell Cook       |    |

the following witnesses who were sworn, Ralph J. Serretella, William H. Baitzell, James Baker, John

P. Wilson, Benjamin Nusbaum, Harry Lobocico, Joseph Cook and Louis Romano having been called for the State and there being no witnesses called for the defendant and the evidence being closed and the counsel having summed up the case and the Court having charged the jury they retired at 2.17 P. M. with Constable C. C. Patterson who was sworn to attend them and being absent until 2.45 P. M., they returned again into court and being called all appear and being asked say they have agreed upon a verdict and by their foreman further say that they find the defendant Nicholas Matarazza guilty and so say they all.

10  
20 Whereupon it is on this 26th day of February, A. D. 1918, ordered that the defendant be placed at the bar and he being accordingly set at the bar the Court doth order and adjudge that the defendant Nicholas Matarazza be committed to the care and custody of the probation officer for a period of three years and pay the sum of two dollars per week during that period. Also pay the sum of three hundred fifty dollars within one week.

(Quarter Sessions Judgment Book #10 page 121.)

**JOINDER IN ERROR.**

NEW JERSEY SUPREME COURT.

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STATE, <i>Defendant in Error,</i> vs. NICHOLAS MATARAZZA and NICHOLAS ARTESE, <i>Plaintiffs in Error.</i>	}	In Error. Joinder in Error. (Three Cases.)	10
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And hereupon, the State of New Jersey, by Edmund C. Gaskill, Jr., prosecutor of the pleas of Atlantic County, comes into court and says that there is no error either in the records and proceedings aforesaid, or in giving the judgments aforesaid, and he prays that the Court here may proceed to examine as well the records and proceedings aforesaid, and the matters assigned for error, and that the judgments aforesaid, in manner aforesaid, may in all things be affirmed. 20

EDMUND C. GASKILL, JR.,  
*Prosecutor of the Pleas of the  
 County of Atlantic.* 30

**TESTIMONY.**

## ATLANTIC COUNTY QUARTER SESSIONS.

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STATE OF NEW JERSEY,  
 vs.  
 10 NICHOLAS MATARAZZA and )  
 NICHOLAS ARTESE, )  
 On Indictment, &c.  
 No. 4081.

STATE OF NEW JERSEY,  
 vs.  
 NICHOLAS MATARAZZA. )  
 On Indictment, &c.  
 No. 4084.

STATE OF NEW JERSEY,  
 vs.  
 20 NICHOLAS ARTESE. )  
 On Indictment, &c.  
 No. 4082.

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Mays Landing, N. J., February 13, 1918.

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**TESTIMONY**

30 Before HON. CLIFTON C. SHINN, Judge and jury.

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**APPEARANCES:**

For the State, WILLIAM ELMER BROWN, JR., Esq.  
 For the defendants, MESSRS. BABCOCK & CHAMPION.

Mr. Babcock: I would like the privilege of withdrawing the pleas for the purpose of making a motion.

The Court: The motion will be granted.

Mr. Babcock: If the Court please, there are two separate indictments, one indictment is against Matarazza and Artese and the other indictment is against Matarazza. Both indictments apparently 10  
are for the same alleged illegal acts.

Mr. Brown: Excuse me for the interruption, but it might be correct to say that there are three indictments, one general and two individual.

The Court: There is one indictment No. 4081 against Matarazza and Artese; 4082 is against Nicholas Artese and 4084 is against Nicholas Matarazza.

Mr. Babcock: That simply adds one indictment 20  
and bears out what I mean to suggest that for these same alleged offences they have been jointly and separately indicted, so that what I have to say goes to all of the indictments, really to count two, because I assume for the purposes of this motion that they will be tried together.

Now, each indictment contains four counts. The first three counts recite sales on specific dates and the fourth count recites divers sales between certain 30  
dates.

The Court: That is a blanket count.

Mr. Babcock: Now, the counts are all the same with the exception of the dates, so when I refer to one count it means what I say to that has applica-

tion to all the others. Take, for example, the first count charges that these defendants on the nineteenth day of August, at Hotel Presser, No. 14 South Mississippi Avenue, Atlantic City, did sell and knowingly permit to be sold to Ralph J. Serratella and Edmund Parera and certain other persons, whose names are unknown to this Grand Inquest, certain vinous, spirituous, and malt liquors, and so forth, to wit, beer, wine and whiskey, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided.

In the first place we say that these indictments are faulty because of duplicity. Each count shows at least two separate offences and if it is true that there were other persons unknown then many more offences. Now, it is well settled in this State that two separate and distinct offences cannot be incorporated in the same count.

20

The Court: How can that be, Mr. Babcock? Suppose a man conducts a gambling establishment and there are a number of persons playing? Isn't the offence in this case the illegal sale or unlawful sale of liquor, rather than the sale to a, b, c, d, e and f? Doesn't that all constitute one offence?

Mr. Babcock: No, there could not be a sale, of course, unless there was a purchaser for it and when a sale is made to a purchaser, then an offence is committed and is complete in itself, whereas in gambling there may be a number of persons all participating in the same game, which makes it all one and the same transaction.

30

The Court: Suppose that I went into a speakeasy and say, "Come on, boys, what will you have?" and

they all drank, then they will say, "Now, Shinn, you have been a pretty good fellow, what will you have?" and they drink?

Mr. Babcock: Each transaction is a separate and distinct offence.

The Court: Mr. Babcock, it is the unlawful sale without a license.

10

Mr. Babcock: I know, but each sale is an offence. If there is but one sale that would be an offence. If there is more than one sale it constitutes several offences according to the number of sales.

The Court: Do you mean to say, Mr. Babcock, that there must be an indictment for each specific sale?

Mr. Babcock: Yes, sir; not a specific indictment, 20  
a specific count.

The Court: A count?

Mr. Babcock: In the case of State vs. Delonzo, Justice Minturn had occasion to deal with a similar situation. The case did not turn on that point, but the language is pertinent because it refers to another case which settles the law very emphatically, The plaintiff was indicted and convicted for selling 30  
liquor without a license in less quantity than five gallons, &c. Before the jury had been sworn the attorney for the defendant moved to quash upon the ground of duplicity and it was further defective in that it did not set out the names of the persons to whom the sales were made. The Court says, "The correct practice in such cases undoubtedly is to

charge the distinct offences in separate and distinct counts. An indictment such as is presented by this writ for that reason has been the subject of judicial criticism." *State vs. Farrell*. In the case of *State vs. Farrell*, the Court said: "First the joinder of two or more distinct offences in one count in an indictment is undoubtedly faulty and is not permitted by the rules of criminal law."

10 The Court: What was that case about, the Farrell case?

Mr. Babcock: That was a rape case. Here the Court laid down the principle, but in the rape case was an assault which was charged along with the greater offence and the Court held that that grew out of the other and was necessarily associated with it, was not a distinct thing like two distinct sales of liquor, for example. That is the first point we make.

20 The Court: Doesn't that mean, Mr. Babcock, that there could not be, in the same count, an indictment for conducting a disorderly house, to wit, gambling, and the charge of selling liquor without a license? Now, there is only one offence charged here, that is the unlawful sale of liquors without license first had and obtained.

30 Mr. Babcock: Where there are a number of counts in an indictment, it means that the counts must be more or less consistent. If the offences are unrelated and are different in their general character, then there can't be two or more counts in the same indictment.

The Court: That is undoubtedly true, but here is the rape case that is the greater offence and all other

offences which grow out of that are merged or swallowed up by the greater offence.

Mr. Babcock: But with a saloonkeeper or hotelman or speakeasy keeper, whatever you may call him, who sells to you today, that is an offence; tomorrow he sells to me; that is another offence.

The Court: I grant you that.

Mr. Babcock: Now, it makes no difference how close or how far apart they may be, each transaction is an offence in itself.

10

The Court: No, Mr. Babcock, I do not agree with you because here this first count sets out a specific date on which these unlawful sales took place, and I overrule your motion with respect to that.

(Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

20

C. C. SHINN, (SEAL)  
J.

Mr. Babcock: Now, the next point we make is that under the statute there is no offence unless it appears by the indictment that the person had not the lawful right to sell. These indictments set forth that the sale was made without a license first had and obtained by the statute in that case made and provided. In the first place, to what statute does that refer? There is more than one statute which applies to licenses.

30

The Court: This Court has held several times, to my certain knowledge, that the burden of showing

that one charged with the unlawful sale of liquor is duly licensed therefor is upon the defendant.

Mr. Babcock: What we are saying is that under the statute there is not an offence if there is a license and, of course, an indictment does not show an offence unless it shows that the sale was made without a license. I don't think your Honor has ruled to the contrary on that.

10

The Court: No, but what I have ruled is that the burden of showing that the person charged with the unlawful act has a license is upon the person so charged. The State, in other words, is not obliged to produce the city clerk and have him say that after a diligent search of the records he fails to find that the person is licensed.

20

Mr. Babcock: That goes, of course, to the question of proof. Certainly an indictment which fails to show that the defendant did not have a license would not be a good indictment because it would not show that there had been any offence committed because if the defendant has a license then there would be no offence.

The Court: But this says that he had no license.

30

Mr. Babcock: Had no license in the manner prescribed by the statute in that case made and provided. I think your Honor must take judicial notice of Leeds vs. Altreuter decided by the Court of Errors and Appeals, which shows that Atlantic City has the power by ordinance and has exercised the power to grant licenses.

The Court: Well, if there has been a license granted to these defendants or either of them, then you have a right to —

Mr. Babcock: But I am speaking of the sufficiency of the indictment. Now the Chief Justice in the case of *State vs. Webster*, 10 New Jersey Law, says:

“We are all of opinion that this indictment was rightly quashed by the Court of Quarter Sessions. 10  
The manner in which a license is obtained, is in part directed by the Act of 1917, and in part by the Act of 1820, and does not depend exclusively upon either. This indictment alleges, that the defendant did not obtain ‘a license in the manner directed by the act concerning inns and taverns.’ To say that he had not obtained a license according to the act concerning inns and taverns (which is the Act of 1797) is not sufficient, for that act does not alone prescribe the mode of obtaining license. It is in part pre- 20  
scribed by the Act of 1820. Therefore to negative the former act only, is not sufficient.”

In that case they charged that there had been no license as required by the Inns and Taverns Act or under the ordinance of the municipality. Here simply is the statement that there was no license in the manner prescribed by the statute in that case made and provided. Now, there are several statutes and it does not say which one and includes all of them and clearly under *Leeds vs. Altreuter* your Honor 30  
would have to take judicial notice of the fact that the city has legislated on that.

The Court: The city has simply delegated the power as allowed by the statute.

Mr. Babcock: That doesn't only mean statute but means ordinance and it has been so considered.

The Court: You say it has been so considered? Where is your authority for that?

Mr. Babcock: Cyc.

The Court: What does it say?

Mr. Champion: I haven't got it here.

10 The Court: That is a broad statement.

Mr. Babcock: It would seem to me evident that the word statute certainly does not mean municipal ordinance.

20 The Court: I think, Mr. Babcock, "without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided" simply means that there has been no license obtained as is prescribed by law and if there has been such license you may show it. The motion is denied.

(Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

C. C. SHINN, (SEAL)  
J.

30 Mr. Babcock: May I call your Honor's attention to the construction of the word "statute" in Words and Phrases, Volume 7, page 6648: "A statute is the written will of the legislature, expressed in the form necessary to constitute it a part of the law, an act of legislation, an enactment, or a written law; and it is manifest that a municipal ordinance is not a statute in the sense in which that word is used in

Mill. & vs. Code, Par. 47, providing that the repeal of a statute does not affect any penalty incurred nor any proceeding commenced under the statute repealed."

The Court: I can't help but agree to that. I know that an ordinance is not a statute. The city, as I have before stated, can derive no powers or exercise no powers with respect to licenses except those which are delegated to it by the legislature, no more than they can impose a tax contrary to the statute or issue bonds in excess of those prescribed by the law. 10

Mr. Babcock: Suppose the indictment had said "without a license first had and obtained as required by the constitution," there can be no law without constitutional authority, still that would not be a good indictment.

Mr. Brown: We had law before the constitution, if your Honor please, form of common law. 20

The Court: The indictment would have been sound if the prosecutor or the pleader had stopped after the words "without a license for that purpose first had and obtained."

Mr. Babcock: I agree to that.

The Court: The balance of the words mean practically nothing. 30

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Pleas of not guilty entered for both defendants by Mr. Babcock.

Mr. Babcock: Try them all.

The Court: I understand that indictments 4081, 4082 and 4084 are moved.

Mr. Brown: Yes, tried as one transaction.

The Court: By consent of counsel for the defence are tried together.

10

—————  
Jury empanelled and sworn.  
—————

Mr. Brown: Where are the defendants? Can't we have them up here, if I have reference to them during the course of the trial?

20 (Three gentlemen come up and take seats at the counsel table.)

Mr. Brown: There are only two defendants and three are brought up.

Mr. Babcock: I am not obliged to point out these men to the prosecutor.

Mr. Brown: Nicholas Artese, stand up, please.

30

Mr. Babcock: There are two sides to this thing and it may be some question whether the officers can identify these men. All the defendants are here and we are not obliged to —

Mr. Brown: I withdraw any motion that I made. Nicholas Artese, stand up. You are charged —

Mr. Babcock: They have pleaded.

Mr. Brown: The plea has been withdrawn.

Mr. Babcock: The plea has been re-entered.

Mr. Brown: I reserve the right to enter the plea in the regular form.

Mr. Babcock: I object; they have already pleaded.

10

The Court: Counsel entered the plea of not guilty.

Mr. Brown: That is not the regular form. Nicholas Artese, you are charged by indictment with the illegal sale of liquor first on the nineteenth day of August, then on the twenty-sixth day of August, then on the second day of September, 1917, and on divers days between the first of December, 1915, and the first of December, 1917; how do you plead to that, guilty or not guilty?

20

Defendant Artese: Well, I don't know. I am not guilty.

Mr. Brown: You are charged in an indictment separately with the same offence. How do you plead to that, guilty or not guilty?

Mr. Babcock: Not guilty.

30

Mr. Brown: Nicholas Matarazza.

Mr. Babcock: Same plea is entered for him, if your Honor please.

The Court: Very well.

RALPH J. SERRETELLA, SWORN.

Direct examination.

By Mr. Brown:

Q. Mr. Serretella, where do you live?

A. Newark, New Jersey.

Q. What is your business?

10 A. At the present time?

Q. Yes.

A. I am timekeeper for the Submarine Boat Corporation.

Q. At Newark?

A. Yes, sir.

Q. Last August were you employed by the prosecutor's office of this county to make certain investigations in the county?

A. Yes, sir; as investigator.

20 Q. About what time was it that your employment started?

A. In August sometime.

Q. Among other investigations did you investigate a place known as the Presser Hotel in Atlantic City?

A. Yes, sir.

Q. Do you know the address of the Presser Hotel, what avenue?

A. I think it is fourteen South Mississippi Avenue.

30 Q. Do you remember the days when you were there?

A. Well, I have made notes of them, if I would look at my note book I would know the exact date.

Q. When did you make your notes?

A. The same evening, every time I would investigate a place why I would go to my room and I would make a note of it.

Mr. Brown: I think, if your Honor please, this witness is entitled to use his note book for refreshing his memory.

The Court: Yes, you may do so.

Q. You have the note book there?

A. Yes, sir.

Q. You may refer to it.

A. Saturday, August the twenty-fifth, I first visited this place. 10

Q. What time on —

Mr. Babcock: I object, if your Honor please. That date is not included in any of the indictments.

Mr. Brown: It is included in the blanket count.

Mr. Babcock: I object to it.

The Court: Objection overruled. 20

(Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

C. C. SHINN, (SEAL)  
J.

Q. What time on that day did you go there?

A. About six P. M.

Q. And did you have any difficulty in getting in? 30

A. Well, when I went up the steps there Mr. Matarazza, this here fellow at the end asked me what I wanted. I says, "You serve spaghetti here?" He says, "Sure." I says, "I would like to have a dish of it." So I went inside and Mr. Matarazza called a waiter, kind of a tall fellow, and I was served spaghetti.

Q. Was that on the twenty-fifth?

A. Yes, sir; on the twenty-fifth.

Q. Now, were you—did you have anything to drink in there?

A. Yes, I had two bottles of cold beer, lager beer.

Q. And what label was on them?

A. Schlitz lager beer label on them.

Q. Now, did you see Nicholas Artese there?

A. Yes, they were present, both of them were present. Mr. —

10 Q. Where were you served? What part of the house were you served with this beer?

A. In the dining room.

Q. When you were served with beer were both Nicholas Artese, the man on the end next to the window, and this man here present?

A. They were present.

Q. Where was Artese?

A. Artese was having a conversation with Parera at the time.

20 Q. Now, who was Parera?

A. He was my partner.

Q. Parera from Newark?

A. Yes, sir, from Newark.

Q. He came here from Newark on this investigation?

A. Yes, sir.

Q. Was he sitting at the table with you?

A. He was sitting at the next table.

30 Q. Did you go to the hotel together?

A. No, sir.

Q. Now, who served you the beer?

A. Why this here waiter, I don't know his name, tall fellow, kind of a tall fellow.

Q. And did you pay for it?

A. Yes, sir.

Q. How much did you pay for the beer?

A. Ten cents a bottle; twenty cents for the two bottles.

Q. Did you have anything else to drink on that day in the way of intoxicating liquors, that is on the twenty-fifth?

A. Yes, I had two glasses of candy wine.

Q. Who did you get that from?

A. From the same waiter.

Q. And how much did you pay for them? 10

A. Paid ten cents a glass for them too.

Q. Now, how did you get this beer and wine?

A. Why, the beer came in bottles.

Q. No, but I mean how did you get it? How did it come to you?

A. Well, with my meals. I ordered with my meals.

Q. You ordered it?

A. Oh, yes; sure.

Q. Now, was Parera, your partner, drinking any wines or beer? 20

A. Yes, he had, he had a glass of candy wine in front of him.

Q. Did you see him get that or was it there when you went in?

A. Well, that one was there and then I seen him have another one. He had two in all. One was in front of him when I entered.

Q. Who served him with the wine?

A. Why, Mr. Artese, they were having a conversation at the time and he served him. 30

By the Court:

Q. This second glass was served by him?

A. Yes, sir; second.

Q. You didn't see the first?

A. No, sir.

By Mr. Brown:

Q. How long did you remain there on that day?

A. Why, about an hour.

Q. Were you there at any other day beside the twenty-fifth?

A. I was there on the twenty-sixth.

Q. And what day of the week was that?

A. Sunday.

10 Q. And what time on that day did you go there?

A. Seven P. M.

Mr. Babcock: If it is intended, if your Honor please, to charge Sunday sales, then this evidence is entirely incompetent. Should have been indicted under an entirely different section.

Mr. Brown: Certainly that evidence is not to be eliminated because it happens to be on a Sunday.

20

Mr. Babcock: If there is any point being made that these sales were made on Sunday, then the indictments are not sufficient. If they are still relying under Section 66, of course, that is a different question.

The Court: There is no allegation that there was a sale on Sunday.

30

Mr. Babcock: Our thought is that Section 66 applies to sales without a license on week days and when you show that sales were made on Sunday or charge they were on Sunday, then it is under an entirely different section of the act and ought to be an entirely different kind of an indictment.

The Court: You don't mean to say that the State can't show sales on any day, do you, irrespective of whether it is a Sunday or week day?

Mr. Babcock: I say, if they are making any point of that fact they are on a Sunday, my thought is that —

The Court: The indictment does not charge —

Mr. Babcock: The indictments on the face of them do not show a Sunday transaction, but the evidence shows Sunday transactions, then the indictment should have been under a different section and are improper, we say, because Section 66, we think in that section only applies to week days and not Sundays.

The Court: The allegation in the indictment is that there were sales without a license and it strikes me it is immaterial whether it was on a week day or on Sunday. You object to this?

Mr. Babcock: Yes, sir.

The Court: Objection overruled.

(Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

C. C. SHINN, (SEAL)  
J.

Q. Was your partner Parera there the same day?

A. Yes, sir.

Q. To your knowledge?

A. Yes, sir.

Q. At the same time that you were there?

A. Yes, sir.

Q. Did you go there together or separately?

A. No, sir, I went in first and he followed.

Q. Now, when you went there on that day to what part of the hotel did you go?

A. In the dining room.

Q. While in the dining room did you have anything to drink?

10 A. Yes, sir.

Q. What did you have there?

A. Had a bottle of wine, candy wine.

Q. And from whom did you get it?

A. From Artese.

Q. Man on the end next to the window?

A. Yes, sir.

Q. And did you pay for it?

A. Yes, sir.

Q. How much did you pay for it?

20 A. One dollar and a half.

Q. And who did you pay?

A. Mr. Artese.

Q. Did you see Mr. Matarazza there, this man here on this end?

A. Yes, sir; he was there.

Q. Was he in the dining room at the time you were served?

A. Yes, sir; he was having something to eat also at the time. He was right in the dining room.

30 Q. And were there other people in there besides you and Parera?

A. Yes, there was quite a few, but I don't remember who they were now, didn't know them.

Q. And did you see anybody else drinking?

A. Drinking beer and wine, yes, sir.

Q. Was this waiter that you speak of also there serving on table?

A. Yes, sir.

Q. Did your partner have anything to drink on that day?

A. Yes, sir; he also had a bottle of—no, wait a minute. I had lager beer and my partner had the bottle of wine. He paid a dollar and a half for it and I paid twenty cents for two bottles of beer. That is it.

Q. Now, what kind of beer did you have there? Have a label on it?

10

A. It was the same kind, Schlitz beer.

The Court: From whom did you purchase the beer?

A. From Mr. Artese.

Q. Did you see who served your partner with the wine?

A. Yes, sir; Mr. Artese.

Q. Now, were you there at any other day besides the twenty-fifth and twenty-sixth?

20

A. Yes, sir; I visited the place on the twenty-seventh, Monday the twenty-seventh.

Q. What time did you go there on that day?

Mr. Babcock: Same question and same objection; your Honor, that is not charged in the indictment.

The Court: But, Mr. Babcock, the last count in the indictment charges these practices took place between the first day of December, 1915, and the first day of November in the year 1917.

30

Mr. Babcock: The point was made at the very beginning that is an improper charge and if it is a charge to show a disorderly house then they must show the sales to have been habitual.

The Court: Under the law as it stands at present there can be no indictment for keeping a disorderly house for the unlawful sale of liquor.

Mr. Babcock: Except under the 74th Section of the Criminal Procedure Act which says that all such offenses shall be charged in an indictment alleging unlawful sales of liquors. Then the Courts have said what such indictments must show. Now, if it is intended to show merely a sale of liquor without a license, then clearly that indictment is improper because it did not specify what he is to meet.

The Court: Under the law as it now stands for keeping a disorderly house, where the offence is merely selling liquor without a license ———

Mr. Babcock: What I am making is considering this, it is insufficient for that purpose, taking it as an allegation against the sale of liquors without a license, then it is insufficient and the defendant is entitled to know something. They don't give the names or give the dates or anything else. Now that is clearly insufficient.

The Court: Objection is overruled.

(Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

C. C. SHINN, (SEAL)  
J.

(Question repeated.)

Q. That is on Monday the twenty-seventh?

A. At seven P. M.

Q. And did you go there in company with any one on that day?

A. No, I went all alone.

Q. Was your partner there at the time that you were there?

A. Yes, sir.

Q. And by your partner I refer to Parera.

A. Yes, sir.

Q. On this occasion to what part of the hotel did you go?

10

A. The dining room.

Q. And when you got there were either Mr. Artese or Mr. Matarazza, the man here on the end, present?

A. Yes, sir.

The Court: Were they both present?

A. Yes, sir.

Q. And were they in the dining room where you were?

20

A. Yes, sir.

Q. Did you have anything to drink on that occasion?

A. Yes, sir; I had a bottle of wine, Bosco mark. I paid a dollar and a half for it.

Q. Bosco?

A. Bosco.

Q. Ca or Co?

A. Co.

30

The Court: Co on the box there.

Q. And who did you get that from?

A. I got that from Mr. Artese.

Q. How much, if anything, did you pay for it?

A. One dollar and a half.

Q. Did you pay Mr. Artese?

A. Yes, sir.

Q. Now, did you have anything else besides a bottle of wine on that day?

A. No, sir.

Q. Did you see your partner have anything to drink?

A. Yes, sir; he had a glass of wine.

Q. And did you see him pay for it?

10 A. Yes, sir.

Q. Do you know how much he paid for it or do you mean you just saw the money passed, which?

A. Just saw the money passed.

The Court: To whom did he pay the money?

A. To Mr. Artese.

Q. Now, is Mr. Parera here today?

A. No, sir; he is in the service in France.

20 Q. In what part of the hotel, if you know, was this liquor kept? Do you know?

A. Well, I know where the beer was kept, where it was ice cold, that was when you would go in the hallway right under the steps on the south of the hallway there was a little partition off and there was a door leading right under the steps and you would go in there and you would hear the rattle of bottles and ice whenever you would want to. It was nice and cold all the time.

30 Q. Now, were you there any other day after the twenty-seventh of August?

A. I was there, I think it was second of September that was the day the raid took place.

Q. And was your partner Parera there too?

A. Yes, sir; his wife was also with him.

Q. Were you present at the time of the raid?

A. Yes, sir.

- Q. You were in there when the raid was made?  
A. Yes, sir.
- Q. Did you have anything to drink in there that day?  
A. Yes, sir; we had cold bottles of beer.
- Q. Each of you?  
A. Yes, sir.
- Q. And had you paid for it before the raid was made?  
A. No, sir. 10
- Q. Was any one else in there at the time?  
A. Well, was another man and lady there, couple of others were eating at different tables there.
- Q. This man here between Artese and Matarazza, did you see him there?  
A. Yes, he was there.
- Q. On the day of the raid did you see him there?  
A. That is the only day I did see him there, is the day of the raid.
- Q. Is the only day you did see him there? 20  
A. Yes, sir.
- Q. Now, what time of the day did you go there on the second of September?  
A. About one o'clock, about that time.
- Q. About what time was the raid made, do you recall?  
A. About quarter to two or half-past two, something like that about quarter to two.
- Q. Quarter to two or what?  
A. In the neighborhood of quarter to two or half- 30  
past two.
- Q. Or half-past two?  
A. Yes.
- Q. That is within that three-quarters of an hour?  
A. Yes, sir.
- Q. Now, then—did you see Mr. Baker here that day?

A. Yes, sir, he put them all under arrest.

Q. And at the time the raid was made and the men came in was Mr., both Mr. Artese and this man here on this end in the dining room?

A. Yes, sir, both of them, yes, sir.

Q. And did you have your bottles of beer in front of you at that time?

A. Oh, yes, sure.

Q. And after Mr. Baker had placed these people  
10 under arrest did he remain in the dining room, that is Mr. Baker?

A. No, he went downstairs looking for other stuff.

Q. While he was downstairs did Mr. Matarazza remain in the dining room?

A. For about five or ten minutes.

Q. Well, what became of him, do you know?

A. He disappeared.

Q. Do you know where he went yourself, of your own knowledge?

20 A. I seen him go upstairs; that is all I seen.

Q. Anybody with him?

A. All alone.

Q. And did Mr. Artese remain there?

A. Yes, sir; he remained.

Q. And did you see this man Matarazza come downstairs later?

A. Yes, sir.

Q. What was he doing? What was his appearance when he came downstairs?

30 A. Why, he was rubbing his eyes as if he was asleep.

Q. Did you see at the time the raid was made any liquors in boxes taken away from there?

A. Before the time?

Q. No, at the time?

A. At the time, yes, sir.

Q. Was there much of it?

A. Quite a lot.

Q. And what did it consist of, do you know? Do you remember?

A. Wine, beer and some Vermouth.

Q. Do you recognize any of this stuff here as stuff that was taken out of that place?

A. Yes, sir.

Q. Now, in this dining room was there any desk or table or cash register or anything like that?

A. Yes, sir.

Q. And was that in the dining room?

A. Yes, sir.

Q. Did you see Mr. Baker take anything from there?

A. Why, I seen him take a stack of receipts or bills there that were paid by customers.

Q. Tell me this, when you went in to this dining room and took your seat at the table, did the water come to you for your order?

A. Yes, sir.

Q. Now, as you told him what you wanted did he make any note of that?

A. I wouldn't see him write it before me, but I guess —

The Court: Don't guess.

A. He wouldn't make no order in front of me.

Q. He wouldn't make any order in front of you?

A. No.

Q. Did you see him hand any slips to either Artese or Matarazza?

A. Yes, sir.

Q. Did you ever see him with a book like that in his possession?

A. Yes, sir.

The Court: Speaking now of the waiter?

Mr. Brown: Of the waiter, yes, sir.

Q. Did you ever see him —

By the Court:

Q. To whom would these slips be given?

10 A. To the customers.

Q. But the slip wouldn't go to the customer?

A. Just to verify it.

By Mr. Brown:

Q. Then after it had been given to the customer what happened to it?

A. Why, it would be put on a file there near the

cash register after it would be paid for.

20 Q. I show you here some slips and ask you if you recognize them?

Mr. Babcock: We object to anything in the possession of the defendant.

The Court: They haven't been offered in evidence yet.

Mr. Babcock: We object to any testimony concerning them.

30

The Court: Objection overruled.

(Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

C. C. SHINN, (SEAL)  
J.

Q. You recognize them as having seen them before or similar to them?

A. Yes, sir.

Q. Are they the slips that you refer to that are given to the customers?

A. Yes, sir.

Q. Then after they are given to the customers then you say they are put on a file on the desk?

A. Yes, sir.

Cross-examination. •

10

By Mr. Babcock:

Q. You say that you were hired by the prosecutor's office to make these investigations?

A. Yes, sir.

Q. And do you depend for your recollection of the various transactions upon the notes which you made each evening?

A. You mean do I get all my information from these notes? 20

Q. Yes, I am asking you the question.

A. I want you to make the question plain to me.

Q. If it is not plain, I will; I think it is, however.

(Question repeated.)

A. Yes, sir.

Q. Let me see it. Turn to the first transaction.

30

Mr. Brown: Begins on the second page, I think.

Q. The first time you were there was on August twenty-fifth?

A. Yes, sir.

Q. And when you first went there you saw Mr. Matarazza?

A. Both.

Q. I thought you said in your direct examination, told him you would like to have some spaghetti?

A. I met him first. He met me on the steps there.

Q. Met you on the steps of the hotel?

A. And asked me what I wanted, yes, sir.

10 Q. And you told him you would like to have some spaghetti?

A. Yes, sir.

Q. And he told you all right, to go ahead and get it?

A. Yes, sir.

Q. And then you went on in the house and saw Artese, did you?

A. Yes, sir.

Q. And had something to eat?

A. Yes, sir.

20 Q. And gave an order for one beer or something else, whatever it was, to the waiter?

A. Yes, sir.

Q. And he brought it to you?

A. Yes, sir.

Q. And when you got through you paid Mr. Matarazza, I mean paid Mr. Artese?

A. Yes, sir.

Q. And went on about your business?

A. Yes, sir.

30 Q. And went to your hotel and made a note all about it, I suppose?

A. Yes, sir.

Q. I suppose, Mr. Serratella, that you didn't go there with Mr. Parera?

A. No, sir; but we would meet there.

Q. You saw him there?

A. Yes, sir.

- Q. He was at one table and you were at another?  
A. Yes, sir.
- Q. That is, he ordered his meal and his drinks and paid for them and you ordered yours and paid for yours?  
A. Yes, sir.
- Q. You saw him have some liquor on that occasion, did you?  
A. Yes, sir.
- Q. I think you have said it was two glasses of wine? 10  
A. Yes, sir.
- Q. Did he pay Mr. Artese for the wine before you paid him or afterwards?  
A. Before I paid him?
- Q. Yes, or didn't you see him pay?  
A. He would pay, yes, sir, before—well, sometimes he would pay before.
- Q. On that particular occasion did you see him pay Mr. Artese? 20  
A. Yes, sir.
- Q. Now, on August twenty-sixth, 1917, what time of day was it you went there then?  
A. It says there on my note.
- Q. You don't remember apart from the note what time it was?  
A. Well, if I would look at it.
- Q. But anyhow you went there on that day?  
A. Yes, sir.
- Q. Who did you see first that time? 30  
A. Who did I see first?  
Q. Yes.  
A. Well, they were both in there.
- Q. Both in where?  
A. In the dining room.
- Q. What were they doing?  
A. Mr. Artese would hold a conversation with my

partner, Parera, on the other table, and Mr. Matarazza would be around the dining room, in and out.

Q. Then you saw Mr. Artese having a conversation with your partner?

A. Yes, sir.

Q. And you saw Mr. Matarazza walking through the dining room?

A. Yes, sir.

Q. On that occasion you paid Mr. Artese also?

10 A. Yes, sir.

Q. And ordered your wine from the waiter?

A. Yes, sir.

Q. And did you on that occasion, same as before, have the wine with your meal?

A. Yes, sir.

Q. After you told him you wanted a drink they disappeared, the waiter disappeared and came back with what you had ordered?

A. Yes, sir.

20 Q. Now, with respect to the twenty-seventh, you went separately on that occasion also, as before?

A. Yes, sir.

Q. And did you see Mr. Parera?

A. Yes, sir.

Q. Sitting at a table there eating?

A. Yes, sir.

Q. And had either wine or beer or whatever it was he had purchased before him?

A. Yes, sir.

30 Q. And did you have your wine or beer, whatever it was you had, as a part of your meal?

A. Yes, sir.

Q. And did you obtain it in the same way that you had obtained this before?

A. Yes, sir.

Q. And on that occasion you said you paid Mr. Artese also?

A. Yes, sir.

Q. Did you see Mr. Matarazza at all on that occasion?

A. Yes, he was there.

Q. Where did you see him?

A. Why, he would always be in the dining room or running in the kitchen and out.

Q. I think you said on one occasion he was in there eating?

A. That was on Sunday.

10

Q. What did you say?

A. On Sunday he was eating.

Q. What date was that?

A. That was the day of the raid—well, he was eating there on another occasion.

Q. Then on two occasions when you saw him, he was in there eating?

A. Yes, sir.

Q. Same as you were?

A. Yes, sir.

20

Q. And on the twenty-seventh you say you also paid Mr. Artese?

A. Yes, sir.

Q. And on August the second you were there also, or September the second?

A. Yes, sir.

Q. How was it you didn't make any notes of that?

A. I left right after the raid and fixed an interview at the prosecutor's office and we left.

Q. Well, you had always left the place.

30

A. Well, being in the prosecutor's office made a memoranda of it.

Q. What was the reason for your not making notes on that occasion?

A. Well, the prosecutor made notes on that day. I didn't think it was necessary for me to make a note on that day.

Q. Well, you were able to depend upon your memory on that one occasion?

A. On a case of a raid, yes, pretty well.

Q. About the raid, what you had to eat and to drink?

A. We had spaghetti, and I had beer also.

Q. I say, but you could depend upon your memory upon what you had to eat and drink on that day, but not on the other days without the aid of this book?

10 A. Well, we didn't pay for it on that day; that is the reason I didn't make no memorandum of it.

Q. Is that the reason you can remember it also, because you didn't pay for it?

A. Yes, sir.

Q. Now, on that day I think you said that Mr. Matarazza was eating at one of the tables?

A. Yes, sir; he was with some other gentleman.

Q. And after the officers came he, after a few minutes, went upstairs and later came down again?

20 A. Yes, sir.

Q. That is all you saw of him that day?

A. I seen him in the prosecutor's office.

Q. I say that is all you saw of him that day?

A. Yes, sir.

---

WILLIAM BAITZELL, SWORN.

30 Direct examination.

By Mr. Brown:

Q. Mr. Baitzell, you live in Atlantic City?

A. I do, yes, sir.

Q. You hold any official position in Atlantic City?

A. Assistant mercantile appraiser.

Q. And as such do you have access to the records of that office?

A. Yes, sir.

Q. Do you take part in the making of the records of that office?

A. I do.

Q. Do you take any part in the appraisal of licensed places?

A. I do.

Q. Do you remember making an appraisal of a place fourteen South Mississippi Avenue known as the Presser Hotel? 10

A. Yes, sir.

Q. Do you remember a license issuing from your office in that case?

A. I do.

Q. Do you have with you the record of that license?

A. I have a card of the, of the file.

Q. Is that the record of your office with reference to that? 20

A. Yes, sir.

Q. In whose name is the license to that hotel?

Mr. Babcock: The card would speak, would it not?

Mr. Brown: I don't know as I have any objections.

The Court: Any objection?

30

Mr. Babcock: Yes, sir, we object; like to have a chance to see the card.

The Court: All right; you may do that.

Mr. Brown: I offer it in evidence.

Mr. Babcock: I object, if your Honor please. The card really doesn't show anything but the date on it appears June first. Now, the record of June first certainly could not be binding on these defendants in a criminal case in July, rather in August and September. That is no evidence that they were partners in a business or had anything to do with the conduct of the hotel at the time of this alleged offence.

10 By the Court:

Q. Mr. Baitzell, when does the license year begin, the mercantile license year begin in Atlantic City?

A. First of June. We make the canvas in May, the bills are sent out on the fifteenth of May and they are all due the first of June which, according to that tag, that bill was paid on the first of June.

20 The Court: That was my recollection. I was supposed to have been mercantile appraiser of Atlantic City at one time.

Q. And the records which you keep in your office is this record?

30 A. Yes, sir. The license is issued similar to this; this is a carbon copy, you understand, similar—that is a carbon copy. Every day the cash and the carbon copy has got to balance, every day, consequently then there is a card made out, similar to that, and put in the filing cash, the cash, the card and the duplicate slips have got to balance every day before we close.

Q. Now, this carbon copy, do I understand, is made at the same time that the original license is made?

A. Yes, sir.

Q. In other words there is a sheet of carbon?

A. Exactly.

Q. Placed like that and then the original license is here?

A. Yes, sir.

Q. And the original license is written out?

A. Exactly.

Q. And this carbon copy results?

A. Exactly; that is turned over to the comptroller.

Q. By one operation?

10

A. By one operation. That is not it, only a facsimile, understand; of course, that carbon copy is in the possession of the comptroller.

By Mr. Brown:

Q. That doesn't remain in your office, that carbon copy?

A. No, sir; that goes to the comptroller.

Q. And this is the record in your office as to the license at 14 South Mississippi for Presser House?

20

A. That is right; I have made that canvas at that particular place on May twelfth, 1917.

By the Court:

Q. Whom did you see, do you know?

A. I couldn't remember.

The Court: Objection overruled. Card will be admitted in evidence.

30

(Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

C. C. SHINN, (SEAL)

J.

(Card admitted and marked Exhibit S1.)

Mr. Babcock: Your Honor understands that our objection goes to the point that it is not a legal record and secondly that it is not evidential of anything in this case.

Mr. Brown: The card produced reads as follows:  
"Name, Mattazza & Artisi.

- 10 Fee, \$12.50  
Address, 14 South Missip. Avenue.  
Business, Presser House, 25 rooms.  
Date paid \_\_\_\_\_  
Hotel \_\_\_\_\_  
Stores \_\_\_\_\_  
1917, Jun. 1.  
Number rooms \_\_\_\_\_  
1918—1919—1921 \_\_\_\_\_  
No. of two horse busses \_\_\_\_\_  
20 No. of Auto busses \_\_\_\_\_  
Number of auto delivery \_\_\_\_\_  
Number of Horse delivery \_\_\_\_\_  
Number of one horse delivery \_\_\_\_\_  
Number of two horse delivery \_\_\_\_\_  
Number of auto delivery \_\_\_\_\_  
Remarks \_\_\_\_\_"

JAMES V. BAKER, SWORN.

- 30 Direct examination.

By Mr. Brown:

Q. Mr. Baker, you hold any official position in this county?

A. Yes, sir.

Q. What is it?

A. One of the county detectives.

Q. Did you personally employ this man Serratella and his partner Parera to come to Atlantic City to make certain investigations?

A. I did; yes, sir.

Q. And as the result of the investigations which they made and their reports to you—did they make reports to you of their investigations?

A. They did, every day, yes, sir.

10

Q. And as a result of reports which you received from Serratella and Parera did you do anything as respects the Presser Hotel 14 South Mississippi Avenue?

A. Raided it in the afternoon of September second, Sunday afternoon.

Q. Now, at about what time was it that you made that raid?

A. The raid was timed originally for one-thirty. I was out in front of the place for sometime after that. I don't recall just how much, until I had the arrangements as made for a certain thing to happen, and when that happened I called, went to the phone and called up my partner, Mr. Wilson, and he came down in company with Mr. Cressman, Mr. Nusbaum and Mr. Martz. Now, this happened, I should judge, somewhere about two o'clock; I couldn't tell, just when, a few minutes before or a few minutes after.

20

Q. When you went in—did you go in this Hotel Presser?

30

A. Yes, sir, the car with the men in it came down Atlantic Avenue and stopped at Atlantic and Mississippi and I had told Mr. Wilson to come down first and meet me in front of the Presser House. He came down and Wilson and I walked up together the steps of the Presser House and the other men followed after them.

Q. And did you have any trouble getting in?

A. No, we walked up the steps and the young fellow asked me what I wanted and I said we had come for a spaghetti dinner. He said, "All right, come in," and we went in, Mr. Wilson and I did.

Q. What do you mean by young fellow?

A. Morristine Matarazza, nephew of Matarazza. He is here; I saw him around a while ago.

10 Mr. Brown: Morristine Matarazza, stand up, please.

(Young man stands up in court room.)

Q. Is that the man you mean?

A. That is the man.

Q. Did you go in then to the dining room?

A. Wilson and I walked in. Wilson stopped at the entrance and I walked through to the rear. I picked  
20 out the two proprietors from my description that I had of them.

Q. Who did you pick out from the descriptions that you had?

A. The gentleman on this side and the gentleman on that side, Mr. Artese was standing by a small table in the center of the room, at the rear, and Mr. Matarazza was standing by a table at the right rear of the room, at which there were two people seated eating. I spoke to Mr. Artese first and placed him  
30 under arrest and I walked over to Mr. Matarazza. He immediately plumped himself down in the chair and grabbed ——

Q. Just a minute; did you say anything to Matarazza?

A. Placed him under arrest; yes, sir.

Q. What did you say to him?

A. I said, "This is Mr. Matarazza; I have a warrant for you. You are under arrest."

Q. And what did he say to you?

A. He say, "I am just stop here," and he threw himself down in the chair and grabbed some stuff on his plate and started to eat it.

Q. And is this the man on this end?

A. That is the man; I told him then—for he was in his shirt sleeves—I said, "Get your coat on and come with us," and by that time the rest of the men had come in and they placed themselves around the room and I walked on down to the basement to see what there was in the basement. 10

Q. Who went to the basement with you? Do you recall?

A. Nusbaum I think was down.

Q. When you got down in the basement, what did you find, if anything?

A. I went through and the front of the basement was divided off with the passageway leading up from the center of it. Basement divided off, partitioned off into rooms, but at the front the part wasn't divided, when you came through it led into an open space there, that space forty to fifty feet long, twenty to twenty-five feet wide, and that place was covered with bottles, candy wine bottles and other wine bottles and beer bottles, oh, there was a big pile of them in the front part. At the rear — 20

Q. You feel capable of estimating the number of bottles that were there?

A. I should judge altogether that there were in the neighborhood of fifteen hundred empty bottles in the place. 30

Q. Did I understand that they were piled up in two rooms?

A. As I was going to say then I came back and at the right as I came back, first room I came to, there

were cases of beer, both empty and full cases, piled up and just opposite that on the left there was a locked door. I went through the door and in that was a number of cases of wine, some filled and some partly filled, and some wine on the floor and some on the tables. A number of empty cases which we gathered up and took out everything that was filled. We didn't take the empty bottles or empty cases out of that room. On the other side of that then was, 10 as I said, the room with the beer in, and then further along on the right, coming back to the back of the house, was another room full of empty bottles, the floor of that room was, oh, eighteen inches deep, covered with these bottles.

Q. Now, did you find any liquors of any kind on the floor with the dining room?

A. At the rear, the first I found the refrigerator at the rear of the place, it was full of bottled beer.

Q. That refrigerator was in what part, what room 20 of the hotel?

A. That was in the extreme rear, out in the kitchen.

Q. In the kitchen?

A. Yes.

Q. How many bottles were there, do you know, in that?

A. I think I filled a case. It was a small refrigerator. I think I filled a case out of that refrigerator.

Q. Did you find any anywhere else on that floor?

30 A. Under the stairway or passageway, as they come into the dining room. Of course, it was divided into, the hallway is divided so that only part of it is a passageway down to the dining room and the other is a stairway leading upstairs. Under that stairway there was a door. Behind the door there were a couple of galvanized tubs full of bottled beer iced up. Above that was a shelf with a

number of different wines and cordials on this shelf, just above where the beer was.

Q. All of this beer and wines that you found did you take away with you?

A. Loaded—got it ready and we sent out and got an expressman to come and take it down to the prosecutor's office.

Q. Is this the stuff that you took away?

A. This is the stuff; yes, sir.

Mr. Brown: I offer this in evidence, if your Honor please. 10

The Court: Any objection?

Mr. Babcock: Yes, we object.

The Court: On what ground?

Mr. Babcock: Well, it isn't connected up with these defendants at all; merely finding it there on the place wouldn't justify the offering of it in evidence. 20

The Court: Objection overruled.

(Number of boxes of both empty and full bottles, containing wines, &c., and beer offered and admitted in evidence, but not marked.)

(Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.) 30

C. C. SHINN, (SEAL)  
J.

Q. Now, Mr. Baker, you say you found—by the way, when you went in the dining room did you find this man Serratella there?

A. Serratella and Parera were both there sitting at different tables.

Q. At different tables?

A. Yes, sir.

Q. Did they have any beer or wine in front of them?

10 A. Beer in front of them, I think.

Q. Did you see this man Artese there at a table in the center of the room? What was he doing at that table?

A. Was the cash register there, slips and books, which I took.

Q. Now, I show you here two books and ask you whether or not you have seen them before?

A. I did, sir.

Q. Where did you get those?

20 A. Got them off this table on the rear left-hand as you went through the dining room in the Hotel Presser, September the second.

Q. Was this at the table where Artese was?

A. Where Artese was standing, yes, sir.

Q. Was Artese at this table when you picked them off the table?

A. Yes, sir.

Q. I show you there what appears to be a freight bill and ask you whether or not you recognize that?

30 A. Yes, sir; we took that out at the time, took it out of the place there with the slips and other things.

Q. I show you here what appear to be some slips and ask you whether or not you have seen those before?

A. Yes, sir; some of those slips were lying on the table and some of them were on a file just above the table, on the wall.

Q. Are you referring to the table where Mr. Artese was?

A. Exactly, yes, sir.

Q. And was Mr. Artese there when you took all those things?

A. Yes, he was.

Mr. Brown: I offer these in evidence, if your Honor please.

Mr. Babcock: We object, if your Honor please. 10  
Apparently from a purely superficial examination of these papers they are the private records of the defendants, and that being so the State can't take them and use them against the will and wishes of the defendants. It is in the nature of making a defendant testify against himself and on that ground, and for other reasons, we object to their admission in evidence.

Mr. Brown: If your Honor please, under the same 20  
theory I have no right to know this.

The Court: You say for other reasons, Mr. Babcock. I wish you would state all of your reasons.

Mr. Babcock: Well, if your Honor please, these records ostensibly are the private records of the defendants and they constitute the property, certainly at least of Mr. Artese. They were in his possession. Now, the State hasn't any right, by its strong arm, 30  
to arrest a man and grab whatever books or records he may find and then use them against the person. That is compelling a person to testify against himself. I want to say, in fairness to the Court, that this question was up before the higher Courts and I am sure it has been settled definitely one way or the

other. We may be able to find it during the recess, but a case came up from the upper part of the State and I think went to the Court of Errors and Appeals, but I haven't been able yet to find the result of it. I haven't looked it up in connection with this case because I didn't know this was coming up, but I want the benefit of it.

10 The Court: I had occasion sometime ago in some case—I don't recall just what it was—to examine into this very question and I find that the cases hold just the reverse from what you state.

Mr. Babcock: I say that in fairness, as I mentioned a moment ago, I remembered hearing the case argued in the Supreme Court.

The Court: There is a case in the United States Supreme Court which holds against you.

20 Mr. Babcock: The case I have in mind was, I think, in the Supreme Court and I think went from there to the Court of Errors. It involved a disorderly house indictment and trial in the upper part of the State and some of the records had been taken at the time of the raid and there the point was made same as I am making here, but I don't know what was the outcome of that case, but there seems to be merit in that contention.

30 The Court: Well, from my examination—I went into it somewhat exhaustively—I am convinced that the law is just the reverse. I recall one case which held that evidence, although unlawfully obtained, might be used against the defendant and it was not in the nature of compelling him to testify against himself. Your objection will be overruled and the slips and books will be admitted in evidence.

(Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

C. C. SHINN, (SEAL)  
J.

The Court: Whatever papers there were that were identified by Mr. Baker.

Mr. Brown: I want to offer them in bulk and I am just counting now the number. I offer in evidence 116 slips or sheets of paper bearing the name "Presser Hotel, 14 South Mississippi Avenue," and the names "N. Matarazza and N. Artese" with certain printing on them in the Italian language, and writing in pencil. 10

(Bundle of slips referred to admitted and marked Exhibit S2.)

Mr. Brown: I also offer in evidence what appears to be freight bill of goods, ten cases of wine in a case consigned to the Hotel Matarazza, 14 South Mississippi Avenue. 20

(Freight bill admitted in evidence and marked Exhibit S3.)

The Court: What date is that?

Mr. Brown: That is dated August thirteenth, 1917. They were receipted for. The slip is dated eighth month, ninth, 1917. And the two books which contain sheets yellow in color, markings apparently in carbon, containing the names of the "Presser Hotel" and the two defendants "N. Matarazza and N. Artese." Offer those in evidence. 30

(Two books admitted in evidence and marked Exhibit S4.)

Mr. Babcock: May I ask the purpose of the offer?

10 Mr. Brown: If your Honor please, the purpose of the offer is this: not only connects the two defendants with the Presser Hotel, the place where these alleged illegal practices were going on, but it also bears evidence that certain liquors were sold, to wit, wine, beer and others, names of which appear on these slips, together with individual charges for those, so much a bottle, so much a glass, etc., and I think it is a very important and vital circumstance, at least, from which this jury can draw a conclusion that they sold intoxicating liquors.

20 Mr. Babcock: We make the further objections, as far as containing the names of the two defendants, they could not be evidential of the partnership unless it appears that they were used by the authority, permission and knowledge of the one side to be charged and they can't prove, the State can't prove sales of intoxicating liquors by these slips. These cases are not set forth in the indictments. The indictments are confined to exact dates, outside of that omnibus clause. Respecting that your Honor has ruled against me on one phase of it, but the State can't come in here with information as to when sales were made and unload them on this court and on this jury. The indictment charges that the sales were made—that is the last count, this omnibus count—were made persons whose names were unknown.

30 Mr. Brown: Well, if Mr. Babcock will show me any names on these slips, I would like to know it.

Mr. Babcock: And it is from one date, I think in December, 1915, to November first, 1917. In other words an omnibus charge for a period of about two years and I claim that the State has not the right to prove any offences or any cases they want to under that omnibus clause. They are bound to set out in the indictment when those sales took place under this statute, and that they have not done, and these slips cannot be evidential of sales made to bind these defendants.

10

The Court: I think that the State may prove anything between those two dates which bear, of course, upon the offences charged against these defendants, and I think it is for the jury to say whether or not these slips have any probative force whatever.

Mr. Babcock: But they do not even show they were issued by the authority of these people.

Mr. Brown: May I make a suggestion to the Court?

20

The Court: It shows this, or it may show this—I don't say that it does—Mr. Sarratella testified that he saw slips handed to the customers as they—after they had given their orders and then he afterwards saw them delivered to Mr. Artese who placed them on file. Mr. Baker says some of these came from the file. Now, it is for the jury to say whether or not there is any connection between what Mr. Sarratella saw and these very slips.

30

Mr. Babcock: I was just wondering how he could do that, if your Honor please ——

Mr. Brown: May I make a suggestion to the Court, that there is nothing on which your Honor can rule? This objection is out of order. He had the opportunity to object to the introduction of these exhibits prior to their introduction. They have been introduced and marked, then later he asked for the privilege of making a later objection. I say the objection comes too late, even though there is no ground, that it is a well-settled proposition of law involved.

10

The Court: These books and other papers will be admitted in evidence and marked.

(Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

C. C. SHINN, (SEAL)  
J.

20 Q. You say that when you went in to this dining room, when you first entered the hotel, you told Mr. Matarazza that he was under arrest?

A. Yes, sir.

Q. And directed him ——

A. To get his coat and to come along.

Q. Then do I understand that after this you went downstairs?

A. The other men had come in by that time and I saw that the place was well covered and then I went downstairs to see what there was down cellar.

30 Q. And when you came back where was Matarazza? Was he in the dining room?

A. Matarazza had disappeared.

Q. How long were you downstairs?

A. Oh, I was down there probably ten minutes, at the outside or fifteen.

Q. And did you later find him?

A. I looked around for him and made inquiry as to where he had gone and no one seemed to know much about it.

Mr. Babcock: I object, if your Honor please; that is not in answer to the question.

A. I went upstairs.

Q. And what sort of rooms were there?

10

A. The hallway led right down through the center, dividing.

Q. What sort of rooms?

A. Bedrooms, sleeping rooms on the second floor and third floor.

Q. Did you make a search in those rooms for the defendant Matarazza?

A. I called, as soon as I got on the top of the stairway, I called for all the doors to be opened, and some of the doors were open and some were not. I took a chair, there were transoms on each door, I got on the chair and looked over the transoms and as I did the fourth room I looked in I saw a pair of feet and part of the trousers, part of the legs covered with trousers on a bed. They looked like Mr. Matarazza's trousers, remember he was wearing striped trousers at that time and I knocked on the door and called for the door to be opened. I got no response. I got down from the chair and I put my shoulder against the door and started to force the door. With that some one said, "What is the matter?" and I said, "Open the door or I will break it down." And they said, "All right," and opened the door.

20

30

Q. And who was in the room?

A. Mr. Matarazza was in the room standing —

Q. The man on this end?

A. Standing at the bed rubbing his eyes. I said, "What are you doing?" He said, "I have been asleep." I said, "You fell asleep mighty quick. You were downstairs a few minutes ago." I said, "Come on, I want to take you down to the prosecutor's office." Mr. Wilson was there in the hallway with me.

Cross-examination.

10

By Mr. Babcock:

Q. When you first went in you saw Mr. Artese at the cash register?

A. Standing at the left by the cash register.

Q. And Mr. Matarazza was down at the corner of the room at one of the tables?

A. About eight or ten feet away from where Mr. Artese was standing and Matarazza was standing at a table, right at the corner of the table.

20

Q. And you first went to Mr. Artese?

A. First went over to Artese.

Q. And told him quietly, I suppose, that he was under arrest?

A. Not very quietly; I called to, in a voice loud enough for any one to hear, for every one to remain where they were; the place was under arrest.

Q. And then you walked over to Matarazza?

A. I next walked over to Matarazza.

30

Q. And he immediately sat down and commenced eating?

A. And took some of the food of these people. It wasn't served for him.

Q. How do you know it wasn't served for him?

A. Because they were sitting beside them and they had their macaroni up about half or two-thirds way of the table, up about here, and he grabbed a chair

and sat down and took some of that and started to eat. He was standing up talking.

Q. Of course, he had both in front of him, but when he sat down he had a share of the table, is that right?

A. Yes, sir.

Q. How long did you stay in the room?

A. At that time?

Q. Yes.

A. Probably four or five minutes, long enough for the men to come in and take charge of the place. 10

Q. Did you take charge of Mr. Artese at that time?

A. The other men had come in.

Q. You turn him over?

A. Yes, sir.

Q. Why didn't you turn Mr. Matarazza?

A. I told Matarazza to get his coat, and knowing the place was covered, it wasn't possible for him to get away, I didn't bother with him any more.

Q. You didn't have a man accompany him to get his coat? 20

A. No, sir.

Q. Where was Serratella when this happened?

A. Serratella was sitting at the left, over near the side wall.

Q. When was it that Matarazza rubbed his eyes and said he had been sleeping?

A. Probably ten, maybe fifteen minutes after that.

Q. Up in his bedroom? 30

A. Yes, sir.

Q. Were you up there by yourself?

A. Mr. Wilson was with me.

Q. You left Mr. Serratella downstairs, did you?

A. Every one was left downstairs excepting, of course, there were a number of people in the hotel upstairs that were running around on the upper floor.

JOHN P. WILSON, SWORN.

Direct examination.

By Mr. Brown:

Q. Mr. Wilson, you are a county detective of this county?

A. Yes, sir.

10 Q. Connected with the prosecutor's office?

A. Yes, sir.

Q. And you remember the second of September of going with others to the Presser Hotel at 14 South Mississippi Avenue?

A. Yes.

Q. Who did you go with?

A. Benjamin Nusbaum, William Cressman and David D. Martz.

Q. And did you meet any one there?

20 A. Yes, sir.

Q. Who did you meet?

A. Mr. Baker.

Q. After meeting Mr. Baker what did you do?

A. Went up the steps of the Presser Hotel, number fourteen South Mississippi Avenue.

Q. And did you go in the hotel?

A. Yes, sir.

Q. To what part of the hotel did you go?

A. Right through the hall into the dining room.

30 Q. And was any one in the dining room?

A. Yes, sir.

Q. Who? Do you recognize anybody here that was in the dining room?

A. That gentleman that was on the stand, Serratella.

Q. Serratella here?

A. Yes, sir. And this gentleman, smooth-faced

man, Artese, and this little short, stout fellow here on the end, Matarazza.

Q. Do you know a man by the name of Parera?

A. Yes, sir.

Q. Was Parera there?

A. Yes, sir.

Q. And when you went in did you see any liquor of any kind on the table where Serratella and Parera were sitting?

A. Two bottles of beer on each table.

10

Q. Were they sitting at the same table?

A. No, sir.

Q. And did you and Mr. Baker place all present under arrest?

A. Yes, sir.

Q. Where was Artese at that time that you entered?

A. Artese was standing by a little table, cash register, over kind of on the south side of the dining room.

20

Q. Where was Matarazza, this man on the end?

A. Matarazza stood as you go out in the kitchen, the door, there is a table here, stout gentleman and lady sat there eating spaghetti and he stood talking with this man, with his hand on the chair talking to them, holding conversation with this man; this man here.

Q. Now, did they have anything in front of them to drink?

A. They had two bottles of beer, one bottle of beer about half empty, and then another part of the bottle of beer they were drinking.

30

Q. That is this man and woman at the table where Matarazza was?

A. Yes, sir.

Q. Did you accompany Mr. Baker to the cellar?

A. No, sir.

- Q. To make the search?  
A. No, sir.  
Q. You didn't go down there with him?  
A. No, sir.  
Q. Did you remain in the dining room?  
A. I had charge of the dining room.  
Q. And did Matarazza remain there?  
A. For a while.  
Q. Well, did he leave the dining room?  
10 A. Yes.  
Q. Did you know that he was going?  
A. Not at the time. I didn't see him when he went.  
Q. Did you search for him after he left the dining room?  
A. Yes, sir.  
Q. And who was with you at the time of that search, if anybody?  
A. Mr. Baker.  
Q. And where did you find him?  
20 A. On the second floor about five or six doors down the hall to the right, north side of the house.  
Q. How did you come to find him there?  
A. Why we knocked on several doors, some were open and some we couldn't get open, so Mr. Baker took a chair and started to look in over two or three transoms, couldn't see any one so he came to this door, and got on a chair and looked over the transom and he said, "There is somebody in here because I see part of the legs," and then he asked them  
30 to open the door and there was no response. He said, "If you don't open the door I will burst it open," and then a voice said, "All right," and then the door was opened and this man came out rubbing his eyes.  
Q. This the same man that was downstairs arrested?  
A. Same man; I had him right beside me.

Q. Did you hear what Mr. Baker said to him when he was placed under arrest?

A. Placed under arrest and told him to get on his coat, that he would have to go to the prosecutor's office.

Q. Did you hear him make any reply?

A. Do not recall him making any reply.

Q. Now, did you make any search of the floor where the dining room was situated for any liquors?

A. Yes, sir.

10

Q. Did you see any liquors located around that floor?

A. Yes, sir.

Q. Where?

A. Where the step goes up, just before you go in the dining room, there is a closet there, two galvanized tubs with beer iced up and then up on the shelf is a number of bottles of wine. Then down further to the southwest corner of the dining room there was a big dresser and we got, all those boxes of wine came out from underneath that dresser.

20

Q. You say two galvanized tubs, that is ordinary wash tubs?

A. Ordinary galvanized wash tubs.

Q. Were the liquors that were found there taken away?

A. Yes, sir.

Q. And does this represent what was taken away (referring to boxes, and so forth, previously offered in evidence)?

30

A. Yes, sir.

Q. Did you see Mr. Baker take these slips?

A. Yes, sir.

Q. And where were they taken from?

A. From over by the cash register, off the file there.

Q. Where Mr. Artese was?

A. Yes, sir.

Cross-examination.

By Mr. Babcock:

Q. Mr. Wilson, how large a hotel is the Presser Hotel?

10 A. It is three-story frame with a basement. I couldn't just give ——

Q. Good-sized boarding house?

A. Yes, I should judge about twenty to twenty-five bedrooms.

Q. On South Mississippi Avenue, Atlantic City?

A. 14 South Mississippi Avenue; yes, sir.

Q. Were you standing by Mr. Matarazza all the time you were in the dining room?

A. No, sir.

20 Q. Where did you go after you left the table where he was?

A. Why, there is a confusion there and some one called to me that the back door was not covered and there was two or three people in the kitchen and I jumped into the back door to cover the back door to keep any one from running out.

Q. You heard Mr. Baker tell him that he should get his coat?

A. Just before that, yes, sir.

30

Recess taken until 1.15 P. M.

AFTERNOON SESSION.

Trial of the cause resumed at 1.15 P. M.

BENJAMIN NUSBAUM, SWORN.

Direct examination.

By Mr. Brown:

10

Q. Mr. Nusbaum, are you employed in the prosecutor's office?

A. I am.

Q. And were you so employed during the months of August, and September just past?

A. I was.

Q. And did you take part in this raid that has been testified to on the Presser Hotel, 14 South Mississippi Avenue?

20

A. I did.

Q. On September second?

A. Yes, sir.

Q. And when you went into the hotel and went into the dining room did you see Mr. Artese, the middleman, and this man Matarazza here?

A. I did.

Q. Where was Artese when you went in, do you recall?

A. Well, they were both in the dining room, Mr. Artese and Mr. Matarazza. 30

Q. Did you accompany Mr. Baker downstairs in the basement?

A. In the basement? I did.

Q. And did you and Mr. Baker make a search there for liquors?

A. We did.

Q. And what did you find downstairs?

A. We found a lot of case goods, wines, and a lot of empty bottles and wine bottles.

Q. Did you find any beer or beer bottles, empty beer bottles?

A. Empty beer bottles, yes, sir.

Q. And does this represent some of the stuff that you found down there (referring to boxes, and so forth previously offered in evidence)?

10 A. Yes.

Q. Now, where did you see all those empty bottles?

A. In the basement.

Q. What part of the basement were they, in one room, more than one room or what?

A. No, in more than one room, in the wine room, so-called wine room, I presume that is what they had it for, that was locked and Baker broke the door down and there was a lot of empties and full cases.

20 Q. Now, have you any idea how many empty bottles you saw down there?

A. There were a number of them, hundreds of them; I couldn't say now how many there were.

Cross-examination.

By Mr. Babcock:

Q. Mr. Nusbaum, this boarding house is located on Mississippi Avenue, is it not, lower side of Mississippi Avenue?

30 A. Yes, sir.

Q. And about how far from Atlantic Avenue?

A. I should judge about one hundred and fifty feet.

HARRY LODOVICO, SWORN.

Direct examination.

By Mr. Brown:

Q. Mr. Lodovico, you are in the express business in Atlantic City?

A. Yes, sir.

Q. Do hauling?

A. Yes, sir.

10

Q. Did you ever haul any cases of wines or other liquors to the Presser Hotel on 14 South Mississippi Avenue?

A. Yes, sir.

Q. How many occasions to your recollection? at least, so far as I know.

Q. Do you recall how many cases of goods you delivered there on those three deliveries?

A. Well, on one delivery I kind of think it was about ten cases, but other deliveries I can't re- 20 member.

The Court: When was this?

A. Well, that I don't know, the date.

Q. Well, was it during the summer months just past?

A. During the summer months, yes, sir.

Q. Just past?

A. Yes, sir.

30

Q. That is last summer?

A. Yes.

Q. Do you recognize that as ever having seen it before, that freight bill (showing witness Exhibit

A. Well, to my recollection it has been about three S3)?

A. Yes, sir; they are my signatures on that.

Q. And that seems to call for ten cases of wine in a case; did you deliver those ten cases?

A. Yes, sir.

Cross-examination.

By Mr. Babcock:

10 Q. How many deliveries did you make?

A. Well, about three.

Q. Do you know all of them were liquors?

A. No, sir; I can't swear that it was liquors. All I know one of them stated right on the bill it was wine, but other deliveries I can't remember what it was, just contained groceries or whatever it was; I couldn't say.

Re-direct examination.

20 By Mr. Brown:

Q. On either of these other deliveries did you have any freight bills that designated wine?

A. Oh, yes; I had to have a freight bill in order to —

Q. Well, did you have a freight bill that designated wine?

A. I couldn't just remember.

30 Mr. Babcock: I object, if your Honor please.

The Court: Yes, that is objectionable, Mr. Brown.

JOSEPH POCK, sworn.

Direct examination.

By Mr. Brown:

Q. Mr. Pock, are you in the express business or hauling business in Atlantic City?

A. Yes, sir.

Q. And do you remember a day last September, the early part of September, when you were called upon to haul some things away from the Presser Hotel on Sunday? 10

A. I do.

Q. Is this the stuff that you hauled (referring to boxes, and so forth, previously offered in evidence)?

A. Looks a little bit like it.

Q. Was it a lot of bottles like these?

A. Yes, sir.

No cross-examination.

20

30

LOUIS ROMANO, SWORN.

Direct examination.

By Mr. Brown:

Q. Mr. Romano, you have been acting as court interpreter here for the past year or so?

A. Yes, sir.

10 Q. You speak Italian?

A. Yes, sir.

Q. Italian by birth?

A. Yes, sir.

Q. What is the Italian word for wine?

A. Vino.

Q. How do you spell it?

A. V-i-n-o.

Q. What is the Italian word for beer?

A. We call it birra.

20 Q. And how do you spell that?

A. B-i-r-r-a.

No cross-examination.

STATE RESTS.

## DEFENDANTS' TESTIMONY.

Mr. Babcock: If your Honor please, I would like to offer in evidence two ordinances of Atlantic City. I spoke to Mr. Brown about these and he said he would not insist upon formal proof. Of course, he did not concede the materiality of them. Anyhow, I have the book which is published by authority of law and which we offer, if otherwise competent. The one ordinance is "An ordinance regulating, relating to and prescribing the terms and conditions upon which licenses to sell malt, spirituous, vinous and all intoxicating liquors shall be granted, the restrictions and limitations imposed, the fees to be paid therefor, and dividing the city into districts and prescribing the fees, terms and conditions under which such licenses shall be granted in such districts and the restrictions imposed, and providing for a penalty for violation of matter therein contained," passed by the city council of Atlantic City February 27, 1905, and approved February 28, 1905; the other ordinance being the amendment to the ordinance first mentioned passed June 26, 1911, and approved June 30, 1911.

The Court: They will be admitted.

Mr. Brown: If your Honor please, I have an objection to their admission.

The Court: I understood that you —

Mr. Brown: No, I simply agreed with Mr. Babcock that I would agree that they should be admitted if the Court ruled they were material.

Mr. Babcock: May I make the rest of my offer, Mr. Brown, and then you may answer all together. It seems to me important and I also want to show the adoption by Atlantic City in 1902 of the act relating to cities, popularly known as the city charter, and also the adoption, prior to these indictments, of the act commonly known as the commission form of government act.

10 Mr. Brown: Now, if your Honor please, I want to ask what is the purpose of the offer before making my objection.

Mr. Babcock: Why the purpose of the offer is to show that there is a statute which relates to the sale of intoxicating liquors and the Act of 1902 conferred full power upon Atlantic City to pass ordinances regulating the licensing and sale of intoxicating liquors; that Atlantic City exercised that  
20 right and passed the ordinances which I have offered and that there is complete and legal regulation by ordinance concerning the sale of intoxicating liquors in Atlantic City.

The Court: Also provides for the punishment too.

Mr. Babcock: And also provides for the punishment of persons who sell liquor without having a license. Of course, I want them also to be offered  
30 for any purpose for which they may be competent.

The Court: Is it your contention that Atlantic City, through its proper officers, has the sole power to punish for a violation of the laws relating to the sale of liquors for offences committed in Atlantic City?

Mr. Babcock: I assume that your Honor has in mind some cases which hold that the 66th Section of the Crimes Act does not apply in cities where there has been regulation by way of ordinance touching the sale of liquors without a license, but the Court of Errors has decided that Section 66 of the Crimes Act superseded those old statutes and it had the effect of destroying the supplement of 1874, which provided that there should not be indictments and convictions in cases where the city had legislated by ordinance punishing the sale of liquor. I imagine that is what your Honor has in mind. I do not contend that to be the law. That was settled in the case of the State against Berry. 10

The Court: That being true, what is the purpose of this offer?

Mr. Babcock: I want to later on make a motion, in which I would, of course, elaborate upon the things I have in mind. I may say, however, at this time that I think it is important because it shows Atlantic City has provided, lawfully provided for the granting of licenses and the regulating of the liquor business and particularly is that important in view of the indictment which fails to show that there was no license as required by the ordinance. I think it is competent for several purposes. That is one of the reasons. 20

The Court: Mr. Babcock, Atlantic City by its recorder, has ample authority to punish for palm reading, fortune telling, and so on, and there may also be an indictment after punishment by the recorder. They may be indicted and tried in this court for the same offence. I have in mind specific cases. There was a Syrian named Alexander and there 30

were, I think, three or four other defendants, each of whom had been fined in the recorder's court in Atlantic City, some more than once, who were subsequently indicted and plead guilty in this court. So that, even if Atlantic City should punish for a violation, as it is alleged in this case, the defendants should be tried by this court for the same offence.

10 Mr. Babcock: Probably I haven't made myself plain. I want the benefit of these ordinances for the reason that they show what I claim they show. Of course, I intend to follow it with a motion, but, if your Honor please, the indictments say that he sold liquor without having a license as required by statute. Now, I made a motion to your Honor to quash on the ground that did not constitute any offence. The question may be raised that you could not take into consideration on that motion the question of there being an ordinance because that did not appear  
20 on the face of the indictment.

The Court: Let me understand, you want these ordinances introduced in evidence for the purpose of establishing a fact that Atlantic City has sole jurisdiction to punish for these offences?

30 Mr. Babcock: No, I don't say anything about punishing the offences. I want to offer them in evidence for the purpose of showing that the legislature by the Act of 1902 gave the city power to legislate with relation to the sale of intoxicating liquors, that it did in fact legislate by way of ordinance. That is what I want.

Mr. Brown: Will your Honor hear me? The question that he has raised here it would seem to me has no materiality, these ordinances, even, be-

cause the State has said that no man shall sell liquor without a license first had and obtained. Now, they do not give Atlantic City the right, or any other municipality the right to issue licenses as they see fit. They have the right simply to regulate the traffic. That regulation, however, is to be governed and guided by the State legislation. Now, the city, through its ordinances, cannot supersede the State act which requires, in the first instance, a license.

10

The Court: Certainly.

Mr. Brown: Now, these statutes only regulate the granting of the license, regulate the fee, for instance, on which the license shall be given, who it shall be given to, the qualifications of the applicant and all that sort of thing. Now, we are only interested here in whether or not this defendant had a license because we say in the indictment that the license must be obtained in accordance with the statute made and provided, and that this license was gotten under an ordinance, if gotten at all, therefore there is a variance between the proof and the indictment and therefore we must fail, but that is not so, because the State in its legislation has required the selling of liquor with a license. Now, then the regulation under that license is given to the city, of course, guided and governed by the State legislation.

20

The Court: That was the ruling this morning.

30

Mr. Babcock: This ordinance says how licenses are to be obtained and certainly it is important, in a case which charges a defendant with selling liquor without a license, to show the law or regulation disposing of the question as to how licenses shall be granted.

The Court: Did these defendants or either of them obtain a license?

Mr. Babcock: I am not discussing that question.

The Court: I am asking you. I think it is pertinent at this time.

Mr. Babcock: I do not care to make any admissions, your Honor, on the record with respect to their having or not having a license.

The Court: Well, if there is no license, what is the purpose of —

Mr. Babcock: I have made my offer. I can't make it any plainer.

Mr. Brown: It is not a question of how they get a license; it is a question of whether they have it.

The Court: I confess, Mr. Babcock, that I do not understand your offer.

Mr. Babcock: If your Honor please, suppose this case, in addition to the other things: suppose the language of that indictment is considered to mean that they did not have a license in accordance with the statute and the statute was not broad enough to include an ordinance, would the question of whether there is an ordinance be important with respect to the legal question as to whether that is a sufficient indictment or not?

The Court: Isn't that ordinance necessarily predicated upon the statute?

Mr. Babcock: Yes, it is predicated upon the statute, but suppose it shall be held that where there is an ordinance that legislates on the subject and takes care of it and that it is required to be set forth in the indictment that there has not been a license as required by law, which would not only cover the statute, but cover the ordinance as well. Here is an allegation that there was no license as provided by statute. That might mean a license under the Inns and Taverns Act, the whole category for granting license is taken care of in the act. We think it is important as showing the law. 10

The Court: I am going to admit this ordinance and the supplement for the purpose of showing that Atlantic City has passed those two ordinances, or rather the ordinance and the supplement, in compliance with an act of the legislature, and I am going to charge the jury at this time that no ordinance passed by a municipal body can rise above the State law. The very right to pass the ordinance is derived from the legislative enactment and that is particularly true with respect to these ordinances. The State legislature has fixed the method by which licenses may be procured for the purpose of selling liquors, and, as I say, that ordinance and the supplement can't rise above the law. 20

Mr. Babcock: What about the admission that the city adopted the Act of 1902 and also adopted the Commission Form of Government Act? 30

Mr. Brown: I interpose the same objection there, if your Honor please, because it would seem to me that the materiality of these things comes into question only after the defence has proven that they have a license and that they got that license in accordance

with law. Now, it doesn't seem to me that there is any materiality as to these things at all in any way, shape or form.

The Court: There may be merit in what you say, and I am inclined to think that is true, but, in fairness to the defendants, I think I may take judicial notice of the fact that Atlantic City did adopt the so-called charter, the Act of 1902, and also the fact  
10 that Atlantic City has also adopted what is known as the commission form of government. I think those are matters that may be taken judicial notice of. Proceed with the defence.

Mr. Babcock: Your Honor allow us an exception for any limitation you put upon the offer?

(Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed  
20 and sealed accordingly.)

C. C. SHINN, (SEAL)  
J.

DEFENDANTS REST.

TESTIMONY CLOSED.

**MOTION FOR DIRECTION.**

Mr. Babcock: If the Court please, we desire to move for a direction in favor of the defendants. In the first place I would like to have it understood that I may have the benefit of all of the objections which were made on the motion to quash the indictment. In other words I renew that motion at this time.

We contend that clearly, after the evidence has been adduced, that the indictments are faulty because of duplicity. We also claim that the indictments do not show a crime has been committed, particularly in view of the ordinances and the act which your Honor has referred to, and for that reason the indictments should be quashed and there should be a direction in favor of the defendants. 10

We also say that there should be a direction because of the failure to show that either of these defendants has violated the law. Section 66 of the Crimes Act, which I assume the prosecutor is relying upon, provides — 20

The Court: Let's have the act itself. I want to read it. You are making a motion based upon that. Won't you get it for me, please?

Mr. Babcock: Section 66 provides that the sale of intoxicating liquors without a license for that purpose first had and obtained shall constitute a misdemeanor, punishable, and so forth. The indictments charge that the defendants made a sale of liquors without having the requisite license. It is certainly necessary to allege in the indictment the absence of a license as required by law and it is equally essential for the State to prove that the defendants did not have a license; in other words that the pre- 30

sumption of innocence in favor of the defendant stands throughout the whole case, and the burden is upon the State to show the defendant to be guilty. There has been a direct failure in this case to show that these defendants had not a license; in other words an entire failure to show that there had been a violation or that these defendants are within Section 66 of the Criminal Procedure Act.

We also contend that there can be no conviction  
10 under the fourth count in these indictments, the omnibus counts, for the reason that they are not framed under the 66th Section and are not framed as required when it is desired to charge the offence of keeping a disorderly house where the offence consists of the habitual sale of intoxicating liquors as required by Section 74 of the Criminal Procedure Act. There is no proof in the case that Matarazza had any connection whatever with the sales of liquor there and no proof which legally connects Mr. Ar-  
20 tese either with such sales, nothing to show that they actually sold the liquor. All that the witness is able to say is when he placed an order with the waiter the waiter went out somewhere and brought it back again.

The Court: Well, there was some testimony that Artese, at least, actually served liquors.

Mr. Babcock: No such evidence, I am quite sure.

30

(Testimony read.)

The Court: Your first ground for a direction was what, Mr. Babcock?

Mr. Babcock: First ground is that we renew the objections to the indictment as not setting forth any offence.

The Court: Will be the same ruling as previously.

(Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

C. C. SHINN, (SEAL)  
J.

Mr. Babcock: The next ground was, if your Honor please, in addition to what was said in the motion to quash, there should be no conviction now because of the showing that there was in fact an ordinance which legislates on the subject and shows the importance of negating in the indictment the fact that there had been a license under an ordinance. 10

The Court: The motion based upon that reason will be overruled for the reason that the ordinance is based upon the law which it is claimed by the State has been violated. 20

(Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

C. C. SHINN, (SEAL)  
J.

Mr. Babcock: And furthermore that there was not any proof in the case that the defendants did not have a license to sell liquors. 30

The Court: Your motion on that ground is overruled for the reason that it is alleged in the indictment that there was no license and the burden in such a case shifts to the defendant to show that he had a license. He could have taken the stand and

produced—or they, rather, if such was the fact, they could have taken the stand and produced the very certificate of license itself.

(Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

C. C. SHINN, (SEAL)  
J.

10 Mr. Babcock: Also that there was not any evidence to show that Matarazza had any connection with any alleged sales of liquor and no evidence either to connect Mr. Artese. Your Honor has asked me very briefly, but I want the benefit of more elaboration.

20 The Court: Your motion on that ground is overruled, for the reason that the records from the office of the mercantile appraiser disclose the fact that the license was taken out in the name of Matazza and Artisi. The spelling does not coincide with the correct spelling of the names of these defendants. For the further reason that the slips bear the names of both defendants, and for the still further reason that some of these packages here bear the name of both defendants.

30 (Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

C. C. SHINN, (SEAL)  
J.

The Court: Now, there was another ground, duplicity, wasn't it?

Mr. Babcock: Of course, that went in the general objection, in the motion to quash the indictment.

The Court: Your motion will be denied upon that ground as well.

(Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

C. C. SHINN, (SEAL) 10  
*J.*

(Ordinance of 1905 admitted in evidence and marked Exhibit D1.)

(Ordinance of 1911 admitted in evidence and marked Exhibit D2.)

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30

**COURT'S CHARGE TO JURY.**

SHINN, J.:

Gentlemen, these defendants have been indicted by the Grand Inquest of this county, charging them with the unlawful sale of liquors, intoxicating and other liquors. The section of our criminal law upon  
10 which the indictment is based reads as follows:

“It shall not be lawful for any person, without license for that purpose first had and obtained, to sell or permit to be sold any vinous, spirituous, or malt liquors, wine, rum, gin, brandy or other arduous spirits or any composition of which any of the said liquors shall form the chief ingredient, except such as shall be compounded and intended to be used as medicines, by less measure than one quart, or  
20 any mixed liquors by less measure than five gallons, and any person so offending shall be guilty of a misdemeanor.”

You will note, gentlemen, that the law prohibits not only the persons themselves to sell, but to permit others to do it with their knowledge.

Now, it is uncontradicted that Serratella and his partner Parera visited the establishment of these defendants on some four different occasions, as I recall, the twenty-fifth, twenty-sixth, and twenty-seventh of August and on the second of September  
30 and that on each occasion they were served with sometimes beer and other times wine, both by the glass and by the bottle, and that on all of the occasions, except that of September second, the wines or other liquors were paid for; that Mr. Artese was present and received the money on at least some of the occasions and that Mr. Matarazza was present, I think, on all occasions, was in the dining room where

this was going on, in and out of the dining room very frequently.

It is also uncontradicted, gentlemen, that on the occasion of the raid that these packages, boxes and bottles and whatever you see in the baskets, and so on, were seized and removed from the premises conducted, as it is alleged, by the State, by these defendants. In substantiation of the allegation of ownership the State has produced before you the card or record from the mercantile appraiser's office by Mr. Baitzell, who says the license was granted, a license to keep a boarding house was granted to Mat- 10  
arazza and Artese, the names, however, being misspelled in each case, Matazza and Artisi respectively. The State has further produced the expressman who delivered the goods, the ten cases of wine, and also the slips which were taken from the premises of these two defendants, if you find that the premises were actually conducted by them.

Now, if you believe that these witnesses—and as I say it is uncontradicted—if you believe that they have told the truth, and you further believe that these sales were made, either by or with the knowledge and consent of these defendants, then your verdict should be that of guilty. If, on the other hand, you find that they were not the proprietors or that neither of them made sales or that the sales were not made with their knowledge or consent, then your verdict should be that of not guilty. These defendants, as is the case with all defendants, at the outset of this trial are presumed by law to be innocent and that presumption prevails until the State, by a preponderance of evidence, proves to your satisfaction beyond a reasonable doubt that they are guilty. If there should be reasonable doubt of their guilt then you should give them the benefit of that by an acquittal. 20  
30

I call your attention, gentlemen, to the testimony of the detectives. Such testimony should be scrutinized and criticised a little more carefully than testimony of other witnesses, not that they do not or can't tell the truth, but to satisfy yourselves that they have not so colored their testimony by a desire to secure a conviction as to be misleading.

Now, are there any other questions upon which you desire to be charged, gentlemen? If not, you  
10 may retire.

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**DEFENDANT'S EXCEPTIONS.**

Mr. Babcock: We desire to take an exception to that part of the Court's charge to the effect that the card from the mercantile appraiser's office might be received as evidence of ownership.

20 (Which exception is hereby allowed and sealed accordingly.)

C. C. SHINN, (SEAL)  
J.

Also to what the Court said about the misspelling of the names in that card, as there was no evidence to show that the persons in the card were the defendants or that there had been any misspelling of the names.

30 (Which exception is hereby allowed and sealed accordingly.)

C. C. SHINN, (SEAL)  
J.

Mays Landing, N. J., February 26, 1918.

The Court: The judgment heretofore entered in this case is vacated. The sentence of the Court is that you —

Mr. Champion: If your Honor please, before your Honor imposes sentence, now that there has been a vacation, I would like to move in arrest of judgment, and base that upon the grounds which were urged to your Honor on the motion for direction, namely, that there is no — 10

The Court: I recall what the former motion was and there will be the same ruling.

Mr. Champion: Your Honor has in mind all the grounds that were made before?

The Court: Yes. 20

Mr. Champion: It may be considered they are made on the record?

The Court: Yes, same ruling.

(Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.)

C. C. SHINN, (SEAL)  
J. 30

**EXHIBITS.**

## EXHIBIT D1.

## AN ORDINANCE.

10 Regulating, relating to and prescribing the terms and conditions upon which licenses to sell malt, spirituous, vinous and all intoxicating liquors shall be granted the restrictions and limitations imposed, the fees to be paid therefor, and dividing the City into districts and prescribing the fees, terms and conditions under which such licenses shall be granted in such districts and the restrictions imposed, and providing for a penalty for violation of matters therein contained.

20 Sec. 1. Be it Ordained by the City Council of Atlantic City, that no person or persons shall sell, offer or expose for sale or dispense at any place in Atlantic City any malt, spirituous, vinous or other intoxicating liquors in quantities less than one quart to be drunk on or about the premises where sold, without a license first had and obtained as directed by this ordinance, which license shall be designated a retail license.

30 Sec. 2. Be it Further Ordained that no person or persons shall sell or offer for sale or deliver any of the liquors aforesaid in quantities of one quart or more without a license first had and obtained as directed by this ordinance which license shall be designated as a wholesale.

Sec. 3. Be it Further Ordained that for the licensing for the sale of malt, spirituous, vinous and all intoxicating liquors, this City be divided into two districts to be known and designated as District No. 1 and District No. 2. District No. 1 to comprise those sections of the City bounded as follows:

Beginning at a point in the Southerly line of Atlantic Avenue at its intersection with Jackson Avenue, running thence (1) southwardly along Jackson Avenue to the interior line of the sixty (60) feet wide street known as the Boardwalk, thence (2) northeastwardly following and along the interior line of said Boardwalk to its intersection with the easterly line of Texas Avenue; thence (3) northwardly along the easterly line of Texas Avenue to the Southerly line of Pacific Avenue; thence (4) westerly along the southerly line of Pacific Avenue to its intersection with the westerly line of Albany Avenue; thence (5) northwardly along Albany Avenue to the Southerly line of Atlantic Avenue; thence (6) westwardly along the southerly line of Atlantic Avenue to the place of beginning. Also beginning at a point distant fifty feet northwardly from the northerly line of Pacific Avenue and one hundred and fifty feet westwardly from the Westerly line of Michigan Avenue and runs thence (1) southwardly parallel with Michigan Avenue to the interior line of the sixty feet wide street known as the Boardwalk; thence (2) northeastwardly following and along the interior line of said Boardwalk to its intersection with Massachusetts Avenue; thence (3) northwardly and northwestwardly still following said interior line to its intersection with Caspian Avenue; thence (4) northeasterly parallel with Caspian Avenue (if extended) one hundred and fifty feet; thence (5) northeasterwardly following the shore line of Absecon Inlet or Beach Thoroughfare and one hundred and fifty (150) feet distant therefrom to a point distant 150 feet eastwardly from the east line of New Hampshire Avenue, if New Hampshire Avenue was extended to that point; thence (6) southwardly parallel with New Hampshire Avenue to a point distant fifty feet northwardly from the northerly line of

Pacific Avenue; thence (7) westwardly parallel with Pacific Avenue to the place of beginning.

District No. 2 to comprise all other lands within the boundaries of Atlantic City not included in District No. 1, except lands lying seaward or oceanward of the interior line of the said sixty (60) feet wide street known as the Boardwalk.

10 Sec. 4. Be it Further Ordained that retail licenses may be granted by City Council to sell malt, spirituous, vinous and all intoxicating liquors in District No. 1, but shall be granted upon the following terms and conditions:

(a) The applicant shall pay to the City of Atlantic City the sum of Three Hundred and Fifty (\$350) Dollars for each year for which a license shall be granted or renewed, said Three Hundred and Fifty (\$350) Dollars to accompany the petition for the license or the renewal.

20 (b) The person licensed shall not have in the place or building where said liquors are sold, more than one bar or sideboard from which said liquors shall be sold to persons at such bar or sideboard, and no such liquors shall be sold between the hours of two A. M. and five A. M. of any day.

30 (c) Theatrical or musical entertainments or concerts of any kind or description shall not be given or permitted in any place where said liquors are licensed to be sold unless as hereinafter provided and unless the person licensed shall have designated in his or her petition the kind or nature of the theatrical or musical entertainment or concert to be given or rendered.

(d) No new license, that is to say a license for a place or location not heretofore licensed by City Council, shall be granted in this District, south of Pacific Avenue, unless the petition therefor shall be accompanied by a written consent of two-thirds of

the owners of properties abutting or fronting upon both sides of the street, between Pacific Avenue and the Boardwalk, upon which the applicants place may be provided, however, that this condition shall not apply to hotels or boarding houses having more than one hundred sleeping rooms.

(e) No sign of any description containing the words Bar, Cafe, Buffet, Concert Garden, or any other word or words indicating that intoxicating liquors are for sale, shall be placed or project upon or over the sidewalk in front of or near any licensed place within one hundred and fifty feet of the Boardwalk. 10

Sec. 5. Be it Further Ordained that wholesale and retail licenses may be granted by City Council to sell malt, spirituous, vinous and all intoxicating liquors in District No. 2, but shall be granted upon the following terms and conditions:

(a) Every applicant shall pay to the City of Atlantic City newed, said Three Hundred and Fifty (\$350) Dollars to for each year for which license may be granted or renewed, said Three Hundred and Fifty (\$350) Dollars to accompany the petition for the license or renewal. 20

(b) The person licensed shall not have in the place or building where said liquors are sold more than one bar or sideboard from which said liquors shall be sold to persons at such bar or sideboard.

Sec. 6. Be it Further Ordained that no license to sell malt, spirituous, vinous and all intoxicating liquors shall be granted in any other section or part of Atlantic City other than those sections or parts designated by District No. 1 and District No. 2. And no such liquors shall be sold, served or dispensed in any other section of Atlantic City. 30

Sec. 7. Be it Further Ordained that no malt, spirituous, vinous or intoxicating liquors licensed to be

sold under and by virtue of any license provided hereby, shall be sold, served or dispensed in any room or place where any concert, theatrical or musical entertainment is regularly held, given or rendered, unless the said concert, theatrical or musical entertainment is one licensed as may be required by ordinance of Atlantic City now existing or to be hereafter enacted, and no concert, theatrical or musical entertainments shall be furnished nor permitted to be furnished between the hours of one o'clock A. M. and ten o'clock A. M. of any day, provided however, that nothing in this ordinance contained shall prevent the furnishing prior to 9 P. M. of each day during regular meal hours, of music in the regular dining room of any hotel or boarding house, nor the furnishing of musical entertainment in any part thereof where malt, spirituous, vinous and all intoxicating liquors are not sold or served, and which musical entertainment cannot be distinctly heard in any part where such liquors are sold.

Sec. 8. Be it Further Ordained that any bar or room where drinking is permitted connected with any bar, fronting on or visible from the Boardwalk, shall be thoroughly and effectively screened from the view of persons passing on said Boardwalk.

Sec. 9. Be it Further Ordained that no license shall be granted to any person not a Citizen of the United States at the time of filing his application for said license.

Sec. 10. Be it Further Ordained, that any licenses applied for by any corporation under the laws of the State of New Jersey or any other State shall be applied for in the name of the President, Treasurer, General Manager, or Steward of any such corporation, and shall be issued in the name of the President, Treasurer, General Manager, or Steward of any such corporation, who shall be personally re-

sponsible for the proper conduct of the place licensed and shall be amenable to the penalty provided by this ordinance for violation.

Sec. 11. Be it Further Ordained that all applications when so presented to the City Clerk shall be read by the Clerk before City Council and shall be referred to the License and Police Committee for examination and no application for a liquor license shall be finally considered by City Council within one week from the time of filing said application, all applications recommended by the License and Police Committee shall be indorsed by a majority of the said Committee and in cash any license shall be refused by City Council the license fee accompanying the application shall be returned to the applicant. 10

Sec. 12. Be it Further Ordained that bottlers of malt, spirituous, vinous and all intoxicating liquors shall be considered wholesale dealers and shall be subject to all requirements and penalties of those selling liquor in quantities of one quart or more. 20

Sec. 13. Be it Further Ordained that no wholesale license or licenses to bottlers of malt, spirituous or vinous and all intoxicating liquors shall be granted in district designated as District No. 1.

Sec. 14. Be it Further Ordained that every person before receiving a certificate for license to sell any of said liquors shall become bound by recognizance to the State of New Jersey in the sum of One Hundred (\$100) Dollars as principal with two sufficient sureties being freeholders of the County of Atlantic in the sum of Fifty (\$50) Dollars each, as provided for an act entitled, "An act concerning Inns and Taverns, approved April 17, 1846, and the supplements thereof." 30

Sec. 15. Be it Further Ordained that the City Clerk shall keep in a separate book provided for that purpose a complete record of the names of all per-

sons to whom licenses shall be granted and places where licenses shall be authorized to sell any of said liquors, date of granting the license names of persons signing the petition, and the names of the bondsmen, provided by this ordinance or by law, and shall also file and preserve all papers relating to the granting of said license, for which service the City Clerk shall receive a fee of Four Dollars for each License issued to be paid by the applicant for any  
10 such license before any license certificate is issued.

Sec. 16. Be it Further Ordained that any person who shall violate any of the provisions or conditions of this ordinance or who shall fail to prevent disorderly persons and known disreputable persons from frequenting any of the places licensed hereby, or who shall permit objectionable lounging and loafing at or near the entrance to the licensed place, or who shall permit brawls or other great disorder therein, may the City Council be summoned, by notice served personally or left at his licensed place, at least five days  
20 before return, before City Council and upon hearing of the matters constituting an alleged violation, City Council shall have the power to revoke the license granted the person charged with any such violation.

Sec. 17. Be it Further Ordained that any person violating any provision of this ordinance shall upon conviction thereof before the Recorder or other proper officer having authority to hear and try such violation, pay a fine of Two Hundred Dollars and  
30 be imprisoned in the City or county jail for ninety days in default of the payment of such fines.

Sec. 18. Be it Further Ordained that all ordinances or parts of ordinances inconsistent herewith be and the same are hereby repealed, and that this ordinance shall take effect immediately.

Passed at a Regular Meeting of City Council, February 27, 1905.

Approved February 28, 1905.

EXHIBIT D2.

AN ORDINANCE.

To amend section eleven of an ordinance entitled, "An Ordinance regulating, relating to and prescribing the terms and conditions upon which licenses to sell malt, spirituous, vinous and all intoxicating liquors, shall be granted and restrictions and limitations imposed, the fees to be paid therefor, and dividing the city into districts and prescribing the fees, terms and conditions under which such licenses shall be granted in such districts and the restrictions imposed, and providing for a penalty for violation of matters therein contained," approved February twenty-eighth, nineteen hundred and five, and by such amendment establishing provisions to be inserted in application to sell intoxicating liquors. 10

Section I. Be it Ordained by the City Council of Atlantic City that section eleven of the ordinance referred to in the title of this ordinance be amended and read as follows: 20

Section II. Be it further ordained that no license to sell malt, spirituous, vinous and all intoxicating liquors at retail shall be granted unless there shall have been filed with the City Council, a written or printed application signed by the person applying for the same; such application shall set forth that the applicant is well provided with the requisites incident to the carrying on of said business; that the applicant is a citizen of the United States and a resident of the State of New Jersey and shall set forth the nature and character of theatrical or musical entertainment, if any, to be given in the place licensed. Such application shall have been recommended by at least twelve freeholders of the City of Atlantic City who shall certify that the applicant 30

- is of good repute for honesty and temperance; that he is a fit and suitable person to be licensed; that the premises to be licensed are suitable for conducting said business and that the selling of such liquors at the location designated is necessary and will conduce to the public good. The freeholders so recommending, and any one of them, shall have recommended no other applicant to sell such liquors during the twelve months preceding unless the license
- 10 granted under the form of application shall have been revoked, surrendered or the place licensed vacated and abandoned by the licensee. After the signatures of the parties recommending there shall be set forth a brief statement indicating the residence of each and location of the property owned by the recommender. The application also shall have subscribed to an oath setting forth that the application is signed by twelve freeholders of Atlantic City, who had not to the knowledge of the applicant recom-
- 20 mended any other application for a similar license therein within the preceding twelve months; no other form of application shall be required. All applications before being acted upon shall have been presented to the City Clerk, read by him before the City Council and referred to the License and Police Committee for examination and subsequent report to City Council; such report to be at least one week later than date of reference. Nothing herein shall, however, apply to such renewals as may be permitted by law. The vote upon the granting or re-
- 30 fusal of such application may be by aye and nay vote.

Sec. 2. Be it further ordained, that all ordinances or parts of ordinances inconsistent herewith be and the same are hereby repealed, and that this ordinance shall take effect immediately.

Passed at a regular meeting of City Council June 26, 1911.

Approved June 26, 1911. No. 63.

**CERTIFICATION.**

ATLANTIC COUNTY COURT OF QUARTER  
SESSIONS.

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STATE,		}	On Indictment, &c. Certification.	10
vs.				
NICHOLAS MATARAZZA and NICHOLAS ARTESE.				

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I, Clifton C. Shinn, Judge of the Court of Quarter Sessions of the County of Atlantic, do hereby certify that the foregoing is a true and correct transcript of the testimony, together with all proceedings had upon the trial of the indictments of State vs. Nicholas Matarazza and Nicholas Artese; that included within the said transcript and proceedings are the exceptions signed and sealed by me, and that all proceedings hereinbefore certified and transmitted by me to the New Jersey Supreme Court comprise the entire record of the proceedings had upon the trial of said cause. 20

C. C. SHINN,  
*Judge of Atlantic County Court  
of Quarter Sessions.* 30

**STIPULATION.**

NEW JERSEY SUPREME COURT.

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10	STATE,	}	On Error. Stipulation.
	<i>Defendant in Error,</i>		
	vs.		
	NICHOLAS MATARAZZA and NICHOLAS ARTESE, <i>Plaintiffs in Error.</i>		

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It Is Hereby Stipulated and Agreed by and between Edmund C. Gaskill, Jr., prosecutor of the  
 20 pleas of the County of Atlantic, and Babcock and  
 Champion, counsel for plaintiffs in error, that the  
 plaintiffs in error need not prepare and serve the  
 State of Case for, and notice and prosecute the argu-  
 ment of, the above-stated cause at the June Term  
 of the New Jersey Supreme Court, but that the argu-  
 ment thereof shall be brought on by plaintiffs in  
 error at the November Term of the Supreme Court.

Dated May 27th, A. D. 1918.

30	EDMUND C. GASKILL, JR., <i>Prosecutor of the Pleas.</i>
	BABCOCK & CHAMPION, <i>Attorneys for Plaintiffs in Error.</i>

**ASSIGNMENTS OF ERROR.**

NEW JERSEY SUPREME COURT.

STATE, <i>Defendant in Error,</i> vs. NICHOLAS MATARAZZA and NICHOLAS ARTESE, <i>Plaintiffs in Error.</i>	}	On Error. (Three Cases.) Assignments of Error.	10
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Now comes the said Nicholas Matarazza and Nicholas Artese by Babcock & Champion, their attorneys, and say that in the record and proceedings aforesaid and also in the giving of judgment aforesaid, there is manifest error and they say that the said judgment should be reversed and assign the following assignments of error: 20

1. The trial Court should have granted the defendants' motion to quash the indictments upon which the defendants were convicted for the following reasons:

(a) The indictments are void because of duplicity.

(b) The indictments do not charge a crime, because they charge that the sales in question were made without a license, first had and obtained by the statute in that case made and provided, there being several statutes in New Jersey unrepealed, regulating the grant of licenses and the indictments failing to charge the violation of a particular statute. 30

2. Because the trial Court, over the objection of counsel for defendants, permitted the State's witness, Serretella, to testify as to offenses not set forth in the indictments.

10 3. The trial Court improperly admitted in evidence, a card from the office of the mercantile appraiser of the City of Atlantic City purporting to show the issuance of a mercantile license for premises, 14 South Mississippi Avenue, known as the Presser Hotel, Atlantic City, New Jersey, dated June first, to "Matazza & Artisi," said card not being an original record and having no probative force.

4. The trial Court should have granted the motion of counsel for defendants for the direction of a verdict for the reasons following:

(a) The indictments are void because of duplicity.

20 (b) The indictments do not charge a crime, because they charge that the sales in question were made without a license, first had and obtained by the statute in that case made and provided, there being several statutes in New Jersey unrepealed, regulating the grant of licenses and the indictments failing to charge the violation of a particular statute.

30 (c) The evidence submitted upon the part of the State, did not show the commission of the crime charged, there being no proof that the defendants or either of them did not have a license to sell intoxicating liquors.

5. Because the trial Court charged the jury as follows:

"In substantiation of the allegation of ownership the State has produced before you the

card or record from the mercantile appraiser's office by Mr. Baitzell, who says the license was granted, a license to keep a boarding house was granted to Matarazza and Artese, the names, however, being misspelled in each case, Matazza and Artisi respectively."

6. Because the trial Court refused the motion made by counsel for defendants in arrest of judgment.

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7. Upon the face of the whole record it does not appear that the defendants were charged with the commission of any crime.

BABCOCK & CHAMPION,  
*Attorneys for Plaintiffs in Error.*

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**CAUSES FOR REVERSAL.**

## NEW JERSEY SUPREME COURT.

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10	STATE, <i>Defendant in Error,</i> vs. NICHOLAS MATARAZZA and NICHOLAS ARTESE, <i>Plaintiffs in Error.</i>	}	On Error. (Three Cases.) Causes for Reversal.
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20 Now comes the said Nicholas Matarazza and Nicholas Artese by Babcock & Champion, their attorneys, and say that in the record and proceedings aforesaid and also in the giving of judgment aforesaid, there is manifest error and they say that the said judgment should be reversed and assign the following causes for reversal:

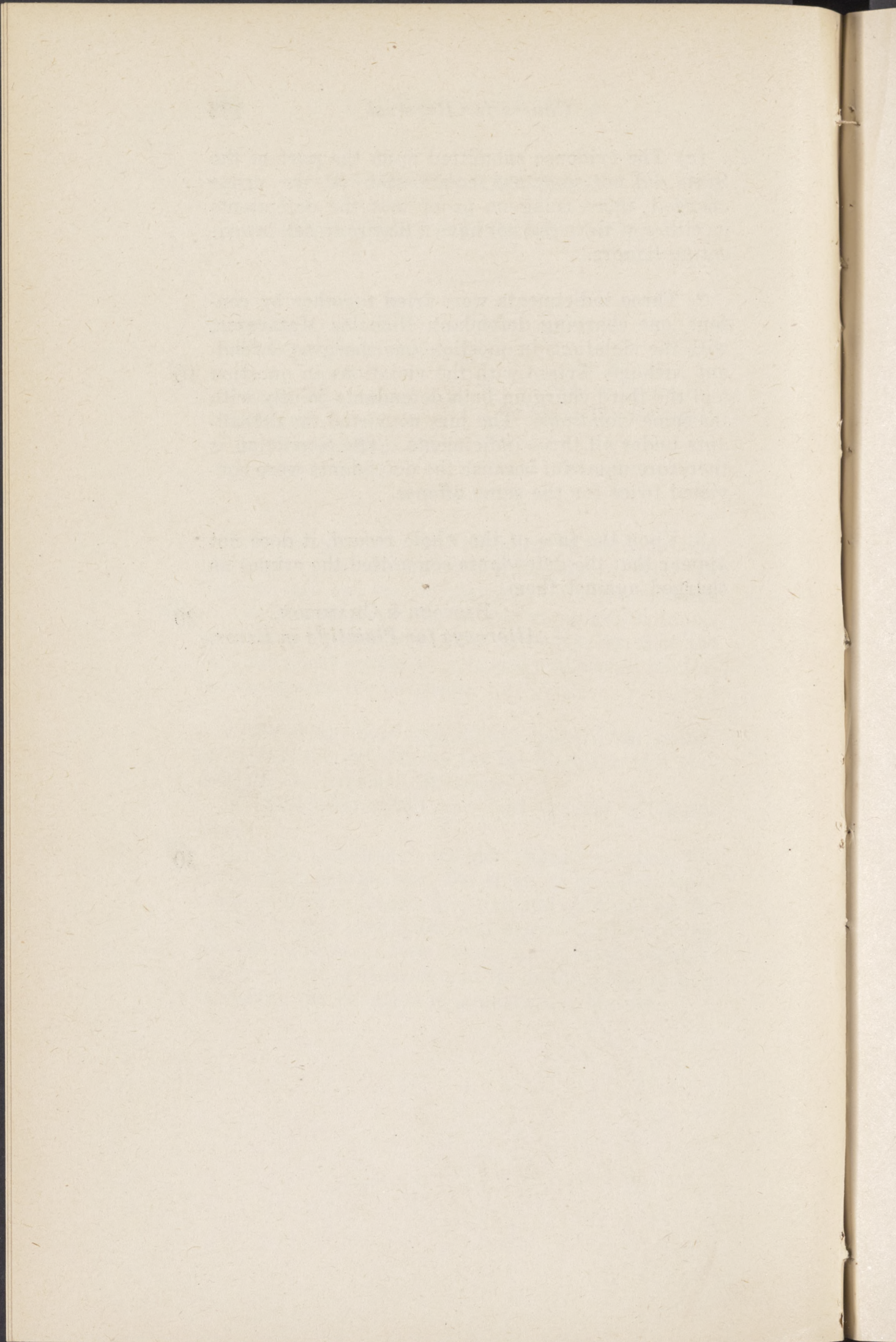
1. The trial Court should have granted the motion of counsel for defendants for the direction of a verdict for the reasons following:
  - (a) The indictments are void because of duplicity.
  - 30 (b) The indictments do not charge a crime, because they charge that the sales in question were made without a license, first had and obtained by the statute in that case made and provided, there being several statutes in New Jersey unrepealed, regulating the grant of licenses and the indictments failing to charge the violation of a particular statute.

(c) The evidence submitted upon the part of the State did not show the commission of the crime charged, there being no proof that the defendants or either of them did not have a license to sell intoxicating liquors.

2. Three indictments were tried together by consent, one charging defendant, Nicholas Matarazza, with the violations in question, one charging defendant Nicholas Artese with the violations in question and the third charging both defendants jointly with the same violations. The jury convicted the defendants under all three indictments. The conviction is therefore unlawful because the defendants were convicted twice for the same offense. 10

3. Upon the face of the whole record, it does not appear that the defendants committed the crimes as charged against them.

BABCOCK & CHAMPION, 20  
*Attorneys for Plaintiffs in Error.*



NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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State,  
Defendant in Error, ) ON ERROR. 10  
vs. ) (THREE CASES).  
Nicholas Matarazza and ) STIPULATION.  
Nicholas Artese, )  
Plaintiffs in Error. )

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It is hereby stipulated and agreed between Edmund C. Gaskill, Jr., Prosecutor of the Pleas, representing the State, and Babcock & Champion, representing the defendants, that the three convictions may be printed in one book and argued together before the Court of Errors and Appeals. 20

EDMUND C. GASKILL, JR.,  
Prosecutor of the Pleas.

BABCOCK & CHAMPION,  
Attorneys for Plaintiffs in Error.

## WRIT OF ERROR.

NEW JERSEY, SS.

THE STATE OF NEW JERSEY TO THE CHIEF JUSTICE AND OTHER JUSTICES OF OUR SUPREME COURT OF JUDICATURE, GREETING:

- 10 For as much as in the record and proceedings and also in the giving of judgment (SEAL) upon the record of a certain indictment against Nicholas Matarazza of the City of Atlantic City, in the county of Atlantic, for that the said Nicholas Matarazza did on the nineteenth day of August, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid, and within the jurisdiction of this court, unlawfully sell and knowingly permit to be sold to Ralph J. Serretella and Edmund Perere and certain other persons whose names are unknown to this Grand Inquest, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded or intended to be used as medicine), by less measure than one quart, to wit, beer, wine and whiskey, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided; that Nicholas Matarazza, late of the City of Atlantic City, in the said County of Atlantic, on the twenty-sixth day of August, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid, and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be
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- 30

sold to one Ralph J. Serretella and Edmund Perere and certain other persons whose names are to this Grand Inquest unknown, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded or intended to be used as medicine) by less measure than one quart, to wit, wine and beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made 10  
and provided; that Nicholas Matarazza, late of the City of Atlantic City in the said County of Atlantic, on the second day of September, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be sold to one Ralph J. Sarretella and Edmund Perere and certain other persons whose names are unknown to 20  
this Grand Inquest, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded and intended to be used as medicine) by less measure than one quart to wit, wine and beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided; that Nicholas Matarazza, late of the City of Atlantic City, in the said County of Atlantic, on the first day of December, in the year of our Lord one thousand nine hundred and fifteen, and on divers 30  
other days and times between that day and the first day of November, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in the City of Atlantic City aforesaid, in the county aforesaid, and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be sold

to one Ralph J. Serretella and Edmund Perere and certain other persons whose names are unknown to this Grand Inquest, certain vinous, spirituous and malt liquors, wine, gin, rum, brandy and other ardent spirits (the same not being compounded and intended to be used as medicine) by less measure than one quart, to wit, wine and beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided, whereof before the Court of Quarter Sessions of the County of Atlantic, he was convicted upon said indictment by a certain Jury of the County taken between the State of New Jersey and the said Nicholas Matarazza, as it is said, manifest error hath intervened to the great damage of the said Nicholas Matarazza as by his complaint we have received information we being willing that the error, if any there be, should in due manner be corrected and full and speedy justice be done to him, the said

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Nicholas Matarazza, do command you that if judgment be thereupon given, then you distinctly and openly send under your seal the record and proceedings aforesaid with all things touching and concerning the same to our Court of Errors and Appeals, before the Judges thereof on the fourth day of October, nineteen hundred and nineteen and this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon what of right and according to the laws of New Jersey ought to be done.

WITNESS our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton aforesaid, the seventeenth day of September, in the year of our Lord, one thousand nine hundred and nineteen.

THOMAS F. MARTIN,  
Clerk.

BABCOCK & CHAMPION,  
Attorneys.

RETURN TO WRIT OF ERROR

(NICHOLAS MATARAZZA)

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State in a certain schedule to this Writ annexed, as within we are commanded. 10

WILLIAM S. GUMMERE, C. J.

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NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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10	State, Defendant in Error, vs. Nicholas Matarazza, Plaintiff in Error.	}	ON ERROR. JOINDER IN ERROR.
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Hereupon the State of New Jersey, by Edmund C. Gaskill, Jr., Prosecutor of the Pleas of Atlantic County, comes into Court and says that there is no error either in the record of proceedings aforesaid or in the giving of judgment aforesaid and he prays that the Court may proceed to examine as well the record and proceedings aforesaid and the matters assigned for error and that judgment aforesaid in the manner aforesaid may in all things be affirmed.

EDMUND C. GASKILL, JR.,  
Prosecutor of the Pleas of Atlantic County.

WRIT OF ERROR.

NEW JERSEY, SS.

THE STATE OF NEW JERSEY TO THE CHIEF JUSTICE AND OTHER JUSTICES OF OUR SUPREME COURT OF JUDICATURE, GREETING:

For as much as in the record and proceedings and also in the giving of judgment (SEAL) upon the record of a certain indictment against Nicholas Artese of the City of Atlantic City, in the county of Atlantic, for that the said Nicholas Artese did on the nineteenth day of August, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid, and within the jurisdiction of this court, unlawfully sell and knowingly permit to be sold to Ralph J. Serretella and Edmund Perere and certain other persons whose names are unknown to this Grand Inquest, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded or intended to be used as medicine), by less measure than one quart, to wit, beer, wine and whiskey, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided; that Nicholas Artese, late of the City of Atlantic City, in the said County of Atlantic, on the twenty-sixth day of August, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid, and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be

sold to one Ralph J. Serretella and Edmund Perere and certain other persons whose names are to this Grand Inquest unknown, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded or intended to be used as medicine) by less measure than one quart, to wit, wine and beer, without license for that purpose first had and obtained in the

10 manner prescribed by the statute in that case made and provided; that Nicholas Artese, late of the City of Atlantic City in the said County of Atlantic, on the second day of September, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be sold

20 to one Ralph J. Sarretella and Edmund Perere and certain other persons whose names are unknown to this Grand Inquest, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded and intended to be used as medicine) by less measure than one quart, to wit, wine and beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided; that Nicholas Artese, late of the City of Atlantic City, in the said County of Atlantic, on the

30 first day of December, in the year of our Lord one thousand nine hundred and fifteen, and on divers other days and times between that day and the first day of November, in the year of our Lord, one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in the City of Atlantic City aforesaid, in the county aforesaid, and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be sold

to one Ralph J. Serretella and Edmund Perere and certain other persons whose names are unknown to this Grand Inquest, certain vinous, spirituous and malt liquors, wine, gin, rum, brandy and other ardent spirits (the same not being compounded and intended to be used as medicine) by less measure than one quart, to wit, wine or beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided, whereof before the Court of Quarter Sessions of the County of Atlantic, he was convicted upon said indictment by a certain Jury of the County taken between the State of New Jersey and the said Nicholas Artese, as it is said, manifest error hath intervened to the great damage of the said Nicholas Artese as by his complaint we have received information, we being willing that the error, if any there be, should in due manner be corrected and full and speedy justice be done to him, the said Nicholas Artese, do command you that if judgment be thereupon given, then you distinctly and openly send under your seal the record and proceedings aforesaid with all things touching and concerning the same to our Court of Errors and Appeals, before the Judges thereof on the fourth day of October, nineteen hundred and nineteen and this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon what of right and according to the laws of New Jersey ought to be done.

WITNESS our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton aforesaid, the seventeenth day of September, in the year of our Lord, one thousand nine hundred and nineteen.

THOMAS F. MARTIN,  
Clerk.

BAIBCOCK & CHAMPION,  
Attorneys.

## RETURN TO WRIT OF ERROR

(NICHOLAS ARTESE).

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of  
10 said State in a certain schedule to this Writ annexed, as within we are commanded.

WILLIAM S. GUMMERE, C. J.

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NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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State,  
Defendant in Error, )  
vs. ) ON ERROR. 10  
Nicholas Artese, )  
Plaintiff in Error. ) JOINDER IN ERROR.

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Hereupon the State of New Jersey, by Edmund C. Gaskill, Jr., Prosecutor of the Pleas of Atlantic County, comes into Court and says that there is no error either in the record of proceedings aforesaid or in the giving of judgment aforesaid and he prays that the Court may proceed to examine as well the record and proceedings aforesaid and the matters assigned for error and that judgment aforesaid in the manner aforesaid may in all things be affirmed. 20

EDMUND C. GASKILL, JR.,  
Prosecutor of the Pleas of Atlantic County.

WRIT OF ERROR.

NEW JERSEY, SS.

THE STATE OF NEW JERSEY TO THE CHIEF JUSTICE AND OTHER JUSTICES OF OUR SUPREME COURT OF JUDICATURE, GREETING:

10                    For as much as in the record and proceedings and also in the giving of judgment (SEAL) upon the record of a certain indictment against Nicholas Matarazza and Nicholas Artese, of the City of Atlantic City, in the County of Atlantic, for that the said Nicholas Matarazza did on the nineteenth day of August, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic

20 City, in the County aforesaid, and within the jurisdiction of this Court, unlawfully sell and knowingly permit to be sold to Ralph J. Serretella and Edmund Perere and certain other persons whose names are unknown to this Grand Inquest, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded or intended to be used as medicine), by less measure than one quart, to wit, beer, wine and whiskey without license for that purpose first had and obtained

30 in the manner prescribed by the statute in that case made and provided; that Nicholas Matarazza and Nicholas Artese, late of the City of Atlantic City, in the said County of Atlantic, on the twenty-sixth day of August, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the County aforesaid and within the jurisdiction of this Court, unlawfully did

sell and knowingly permit to be sold to one Ralph J. Serretella and Edmund Perere and certain other persons whose names are to this Grand Inquest unknown, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded or intended to be used as medicine) by less measure than one quart, to wit, wine and beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided; that Nicholas Matarazza and Nicholas Artese, late of the City of Atlantic City, in the said County of Atlantic, on the second day of September, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in said City of Atlantic City, in the county aforesaid, and within the jurisdiction of this court unlawfully did sell and knowingly permit to be sold to one Ralph J. Serretella and Edmund Perere and certain other persons whose names are unknown to this Grand Inquest, certain vinous, spirituous and malt liquors, wine, rum, gin, brandy and other ardent spirits (the same not being compounded and intended to be used as medicine) by less measure than one quart, to wit, wine and beer, without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided; that Nicholas Matarazza and Nicholas Artese, late of the City of Atlantic City, in the said County of Atlantic, on the first day of December, in the year of our Lord one thousand nine hundred and fifteen and on divers other days and times between that day and the first day of November, in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number fourteen South Mississippi Avenue, in the City of Atlantic City aforesaid, in the county

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aforesaid, and within the jurisdiction of this court, unlawfully did sell and knowingly permit to be sold to one Ralph J. Serretella and Edmund Perere and certain other persons whose names are unknown to this Grand Inquest, certain vinous, spirituous and malt liquors, wine, gin, rum, brandy and other ardent spirits (the same not being compounded and intended to be used as medicine) by less measure than one quart, to wit, wine and beer, without license for that purpose first had and obtained in the manner  
10 prescribed by the statute in that case made and provided, whereof before the Court of Quarter Sessions of the County of Atlantic they were convicted upon said indictment by a certain Jury of the County taken between the State of New Jersey and the said Nicholas Matarazza and Nicholas Artese, as it is said, manifest error hath intervened to the great damage of the said Nicholas Matarazza and Nicholas Artese as by their complaint we have received information, we being willing that the error, if any there be, should in due manner be corrected and full and speedy justice be done to them, the said Nicholas  
20 Matarazza and Nicholas Artese, do command you that if judgment be thereupon given, then you distinctly and openly send under your seal the record and proceedings aforesaid with all things touching and concerning the same to our Court of Errors and Appeals, before the Judges thereof on the fourth day of October, nineteen hundred and nineteen and this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon what of right and according to the laws of New Jersey ought to be done.

30 WITNESS our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton aforesaid, the seventeenth day of September, in the year of our Lord, one thousand nine hundred and nineteen.

THOMAS F. MARTIN,  
Clerk.

BABCOCK & CHAMPION,  
Attorneys.

RETURN TO WRIT OF ERROR

(NICHOLAS MATTARAZZA AND  
NICHOLAS ARTESE).

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, 10 we do certify to the Court of Errors and Appeals of said State in a certain schedule to this Writ annexed, as within we are commanded.

WILLIAM S. GUMMERE, C. J.

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NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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10	State, Defendant in Error, vs. Nicholas Matarazza and Nicholas Artese, Plaintiffs in Error.	}	ON ERROR. JOINDER IN ERROR.
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Hereupon the State of New Jersey, by Edmund C. Gaskill, Jr., Prosecutor of the Pleas of Atlantic County, comes into Court and says that there is no error either in the record of proceedings aforesaid or in the giving of judgment aforesaid and he prays that the Court may proceed to examine as well the record and proceedings aforesaid and the matters assigned for error and that judgment aforesaid in the manner aforesaid may in all things be affirmed.

EDMUND C. GASKILL, JR.,  
Prosecutor of the Pleas of Atlantic County.

NEW JERSEY SUPREME COURT.

FEBRUARY TERM, 1919.

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State of New Jersey,  
 Defendant in Error,  
 vs.  
 Nicholas Matarazza and  
 Nicholas Artese,  
 Plaintiffs in Error.

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Argued February 18, 1919; Decided June 18, 1919.

SYLLABUS.

1. A writ of error will not lie in a criminal case until sentence has been pronounced. 20
2. The action of the trial judge upon a motion to quash an indictment is discretionary, and will not be reviewed on strict writ of error.
3. When the facts set forth in an indictment clearly charge in substance and effect the habitual sale of intoxicating liquors contrary to law, it is valid under Par. 74 of the Criminal Procedure Act (C. S. p. 1884) even though the word "habitual" is not employed therein. 30
4. A judgment upon a general verdict of guilty will not be reversed because of a bad count in an indictment where the indictment contains a good count, and the penalty imposed is authorized by law for conviction upon the good count.
5. The fact that an indictment for the habitual

sale of intoxicating liquors contrary to law charged that the sales were made "without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided" does not render it invalid, even though there is more than one statute by virtue of which a license to sell intoxicating liquors may be granted in the municipality where the sales in question were made.

- 10 6. The admission of illegal evidence will not avoid a judgment in a criminal case on error if it plainly appears that such evidence could not have injuriously affected the defendant on the merits of the case.

On Writs of Error to the Atlantic Quarter Sessions Court.

Before Gummere, Chief Justice, and Justices Swayze and Trenchard.

- 20 For the plaintiffs in error, Babcock & Champion.

For the defendant in error, Edmund C. Gaskill, Jr., Prosecutor of the Pleas, and Charles S. Moore.

The opinion of the Court was delivered by  
TRENCHARD, J.:

- 30 Three indictments are sent up with writs of error in these cases, each one of which is based on the sale of intoxicating liquor without a license. One indictment is against Matarazza alone; another against Artese alone; and the third against the two jointly. By consent they were tried and have been argued here together.

As to the conviction on the third indictment it appears that no sentence has as yet been pronounced and, consequently, there is nothing before us for review.

In the remaining cases error is assigned because the trial judge refused to grant a motion to quash; but the action of the trial judge upon a motion to quash an indictment is discretionary and will not be reviewed on strict writ of error. See cases collected in *State vs. Riggs*, 106 Atl. 467.

The next ground upon which we are asked to reverse these convictions is that the indictments are void because of duplicity, the pith of the contention being that the various counts each charge separate sales to different individuals on different occasions. 10

It is not clear that the motion in arrest of judgment, under which this question is sought to be raised, is properly before us; but we will assume for the purposes of this decision that it is. We further assume, without deciding, that the three first counts in the indictments under review are bad; but even so, the fourth count in each is good under Par. 74 of our Criminal Procedure Act (C. S., p. 1844) prescribing the form of an indictment for the offense of maintaining a common law nuisance or keeping a disorderly house, where the offense sought to be punished consists wholly in the unlawful sale of spirituous, vinous, malt or brewed liquors. It is true that the word "habitual" was not employed in this count, but it is charged that the defendant in Atlantic City **on December 1, 1915, and on divers other days and times between that day and November 1, 1917, in a certain designated house unlawfully did sell and knowingly permit to be sold to certain designated persons certain designated vinous, spirituous and malt liquors** (the same not being compounded and intended to be used as medicine) by less measure than a quart, **without license** for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided, to 20 30

the evil example of all others in like case offending, **contrary to the statute in such case made and provided.** We therefore think the facts set forth in this count clearly charge in substance and effect the habitual sale of intoxicating liquor contrary to law, and that it is valid. *State vs. Reily*, 66 N. J. L. 399.

- 10 That being so, the presence of the bad counts will not result in reversal of the judgment upon the general verdict of guilty, because the rule is that such judgment will not be reversed because of a bad count in the indictment where the indictment contains a good count, and the penalty imposed is (as here) authorized by law for conviction upon the good count. *State vs. Mount*, 72, N. J. L. 365.

- 20 The fact that the indictments charged that the sales were made "without license for that purpose first had and obtained in the manner **prescribed by the statute** in that case made and provided," does not render them invalid even though there is more than one statute by virtue of which a license to sell intoxicating liquors may be granted in the municipality where the sales in question were made.

- 30 The last point is that the trial judge improperly admitted in evidence a card from the office of the Mercantile Appraiser, purporting to show that a mercantile license was granted to the defendant to conduct a boarding house at the place where the intoxicating liquors were sold.

This evidence was offered by the State to show that the defendants conducted the place in question and was objected to as not competent for that purpose. We incline to think it was admissible; but if it was not, its admission will not avoid these judgments because it plainly appears that it could not

have injuriously affected the defendants on the merits of the case, since the fact that the defendants conducted the place was otherwise conclusively established, and indeed was not disputed.

The foregoing observations in effect dispose of every question properly raised and argued.

The writ of error bringing up the indictment upon which no sentence was passed will be dismissed, and 10  
the judgments upon the two remaining indictments will be affirmed.

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NEW JERSEY SUPREME COURT.

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The State of New Jersey, Defendant in Error, vs. Nicholas Artese, Plaintiff in Error.	}	On Error to Atlantic Quarter Sessions Court.  Rule on Affirmance.	10
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This cause having been argued at the February Term 1919 of this Court by Babcock and Champion, of counsel for the defendant in error, and the Court having considered the same and finding no error in the record of proceedings of the Atlantic County Quarter Sessions Court: 20

It is thereupon ordered and adjudged that the judgment of the Atlantic County Quarter Sessions Court, removed by the writ of error in this cause, be affirmed with costs and that the record be and hereby is remitted to the Atlantic County Quarter Sessions Court, there to be proceeded upon according to law and the practice of the said Court.

Entered July 30, 1919,

On motion of

EDMUND C. GASKILL, JR., 30  
 Attorney of Deft.-in-Error.

A true copy,  
 Enoch L. Johnson, Clerk.

NEW JERSEY SUPREME COURT.

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The State of New Jersey,  
Defendant in Error, )  
vs. ) On Error to Atlantic  
Nicholas Matarazza and ) Quarter Sessions Court.  
10 Nicholas Artese, )  
Plaintiffs in Error. ) Rule of Dismissal.

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20 This cause having been argued at the February Term 1919 of this Court by Babcock and Champion, of counsel for the plaintiffs in error, and Edmund C. Gaskill, Jr., of counsel for the defendant in error and the court having considered the same, and being of the opinion that the writ of error in the above case should be dismissed because judgment was not entered in said case,

It is thereupon ordered and adjudged that the writ of error in this cause, be dismissed with costs and that the record be and hereby is remitted to the Atlantic County Quarter Sessions Court, there to be proceeded upon according to law and the practice of the said Court.

Entered July 30, 1919,

.30 On motion of

EDMUND C. GASKILL, JR.,  
Attorney of Deft.-in-Error.

A true copy,

Enoch L. Johnson, Clerk.

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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State,	}	ON ERROR. (THREE CASES). Assignments of Error.	10
Defendant in Error,			
vs.			
Nicholas Matarazza and Nicholas Artese, Plaintiffs in Error.			

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Now comes the said Nicholas Matarazza and Nicholas Artese, by Babcock and Champion, their attorneys, and say that in the record and proceedings aforesaid and also in the giving of the judgment aforesaid, there is manifest error and they say that the said judgment should be reversed and assign the following assignments of error: 20

1. The trial Court should have granted the defendants' motion to quash the indictments upon which the defendants were convicted for the following reasons:

(a) The indictments are void because of duplicity.

(b) The indictments do not charge a crime, because they charge that the sales in question were made without a license, first had and obtained by the statute in that case made and provided, there being several statutes in New Jersey unrepealed, regulating the grant of licenses and the indictments failing to charge the violation of a particular statute, and the Supreme Court should have so held. 30

2. Because the trial Court erred in permitting, over objection, the State's witness, Serretella, to tes-

tify as to offenses not set forth in the indictments, and the Supreme Court should have so held.

3. The trial Court improperly admitted in evidence, a card from the office of the mercantile appraiser of the City of Atlantic purporting to show the issuance of a mercantile license for premises, 14 South Mississippi Avenue, known as the Presser Hotel, Atlantic City, New Jersey, dated June first, to  
10 "Matazza & Artisi," said card not being an original record and having no probative force, and the Supreme Court should have so held.

4. The trial Court should have granted the motion of counsel for defendants for the direction of a verdict for the reasons following:

(a) The indictments are void because of duplicity.

(b) The indictments do not charge a crime, because they charge that the sales in question were  
20 made without a license, first had and obtained by the statute in that case made and provided, there being several statutes in New Jersey unrepealed regulating the grant of licenses and the indictments failing to charge the violation of a particular statute.

(c) The evidence submitted upon the part of the State, did not show the commission of the crime charged, there being no proof that the defendants or either of them did not have a license to sell intoxicating liquors, and the Supreme Court should have  
30 so held.

5. Because the trial Court charged the jury as follows:

"In substantiation of the allegation of ownership the State has produced before you the card or record from the mercantile appraiser's office by Mr. Baitzell, who says the license was granted, a

license to keep a boarding house was granted to Matarazza and Artese, the names, however, being misspelled in each case, Matazza and Artisi, respectively."

and the Supreme Court should have held that said charge was error and harmful to defendants.

6. Because the trial Court erred in refusing the motion made by counsel for defendants in arrest of judgment, and the Supreme Court should have so held. 10

7. Upon the face of the whole record it does not appear that the defendants were charged with the commission of any crime and the Supreme Court should have so held.

BABCOCK & CHAMPION,  
Attorneys for Plaintiff in Error.

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NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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	State,	} ON ERROR. (THREE CASES). Causes for Reversal.
	Defendant in Error,	
	vs.	
10	Nicholas Matarazza and Nicholas Artese, Plaintiffs in Error.	

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Now comes the said Nicholas Matarazza and Nicholas Artese, by Babcock & Champion, their attorneys, and say that in the record and proceedings aforesaid and also in the giving of judgment aforesaid, there is manifest error and they say that the  
20 said judgment should be reversed and assign the following causes for reversal.

1. The trial Court should have granted the motion of counsel for defendants for the direction of a verdict for the reasons following:

(a) The indictments are void because of duplicity.

(b) The indictments do not charge a crime, because they charge that the sales in question were made without a license, first had and obtained by the  
30 statute in that case made and provided, there being several statutes in New Jersey unrepealed, regulating the grant of licenses and the indictments failing to charge the violation of a particular statute, and the Supreme Court should have so held.

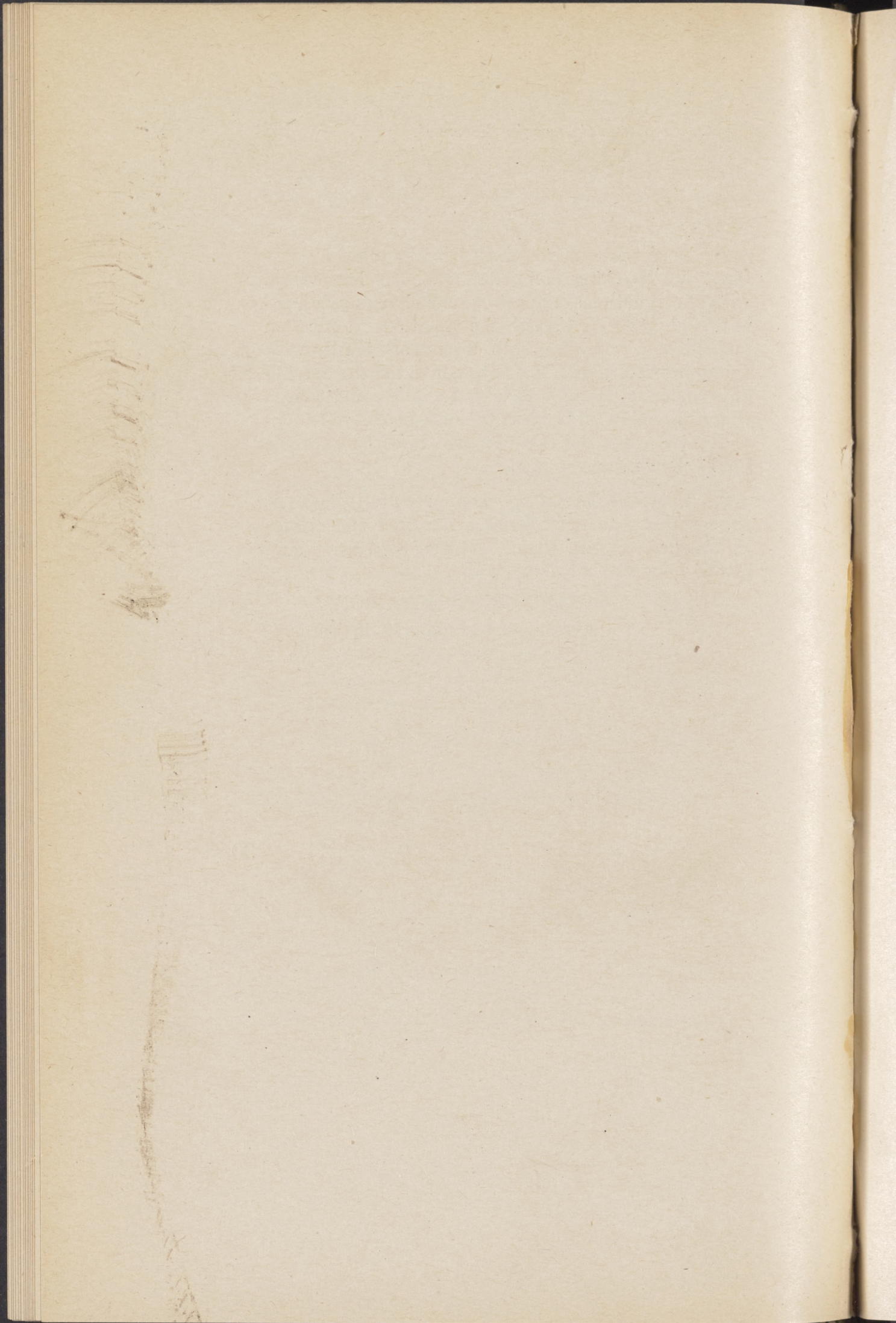
(c) The evidence submitted upon the part of the State did not show the commission of the crime charged, there being no proof that the defendants or

either of them did not have a license to sell intoxicating liquors, and the Supreme Court should have so held.

2. Three indictments were tried together by consent, one charging defendant, Nicholas Matarazza, with the violations in question, one charging defendant, Nicholas Artese, with the violations in question and the third charging both defendants jointly with the same violations. The jury convicted the defendants under all three indictments. The conviction is therefore unlawful because the defendants were convicted twice for the same offense, and the Supreme Court should have so held. 10

3. Upon the face of the whole record, it does not appear that the defendants committed the crimes as charged against them, and the Supreme Court should have so held.

BABCOCK & CHAMPION, 20  
Attorneys for Plaintiff in Error.



NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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State,  
Defendant in Error, }  
vs. } ON ERROR.  
Nicholas Matarazza and } (THREE CASES). 10  
Nicholas Artese, }  
Plaintiffs in Error. }

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BRIEF FOR PLAINTIFFS IN ERROR.

The defendants were proprietors of a boarding house in Atlantic City, New Jersey, and were tried and convicted of the unlawful sale of intoxicating liquors. 20

There are three separate cases and three Writs of Error. The cases were tried together (48) and, by agreement, the three Writs will be argued as one case.

One indictment is against both defendants (18). Count one charges sales to two persons on August 19, 1917, Count two charges sales to the same persons on August 26, 1917; Count three charges sales to same persons on September 2, 1917, and count four charges various sales between specified dates, covering a period of two years, to the same persons and others unknown. 30

Another of the indictments is against the defendant Artese. The indictment covers the same dates, the same transactions and is identical with the joint

indictment except that it is against Artese individually (19). The remaining indictment is against the defendant Matarazza and covers the same alleged sales (31). In other words the defendants were jointly and severally indicted for the same offenses.

There are assignments of error (159) and also causes for reversal (162).

1.

10       **The Trial Court should have granted the defendants' motion to quash the indictments upon which the defendants were convicted for the following reasons:**

(a) **The indictments are void because of duplicity.**

20       (b) **The indictments do not charge a crime, because they charge that the sales in question were made without a license, first had and obtained by the statute in that case made and provided, there being several statutes in New Jersey unrepealed, regulating the grant of licenses and the indictments failing to charge the violation of a particular statute.**

(a) **THE INDICTMENTS ARE VOID BECAUSE OF DUPLICITY.**

30       Motion was made to quash the indictments (39); motion was made for direction (109) and another motion was made in arrest of judgment (117). The three motions are covered by assignments of error, numbers 1 (159), 4 (160) and number 6 (161). The same objection is also presented by number 1 of causes for reversal.

Counts 1, 2 and 3 of the indictments are the same except as to the date of the sales and count 4 is the same as the others except that it is an omnibus count.

Each count charges sales to more than one person. The pertinent language of each count is "unlawfully

did sell and knowingly permit to be sold to one Ralph L. Serretella and Edmund Perere and certain other persons, whose names are unknown to this grand inquest vinous\*\*\*without license\*\*\*\*," etc.

The testimony shows that the sales to the two persons named in the indictments were made August 25th (p. 65), August 26th (p. 67) and September 2nd (p. 69), and that the sales on each day were entirely unrelated. Serretella and Perere went to the premises at different times, they did not come in contact with each other and each ordered his drinks independently of the other. See testimony of Serretella, 65 to 69. The testimony shows that the sales, if made, were separate and distinct transactions and offenses. 10

"An indictment under the liquor laws is duplicitous if it charges two or more distinct offenses in the same count." 28 Cyc. 218.

The indictments as to sales to unknown persons are not in the form required by section 74 of the Criminal Procedure Act (Vol. 2 C. S. of N. J. 1844) to charge the keeping of a disorderly house. 20

Rogers vs. State, 58 L. 220; 33 A. 283.

The attempt was to indict the defendants under section 66 of the Crimes Act, making it unlawful to sell liquor without a license. Under that section each sale is an offense by itself and must be charged in a separate count. 30

In the case of State vs. Delancey, 76 L. 462, 69 A. 958, the indictment charged sales of liquor without license "to one, John Doe and divers other persons." Motion to quash was made on the ground that the indictment alleged in one count more than one offense and did not set out the names of persons to whom sales were made or in the absence of that that the names were unknown. Mr. Justice Minturn

then said: "The correct practice in such cases is undoubtedly to charge the distinct offenses in separate and distinct counts, and an indictment such as is presented by this Writ for that reason has been the subject of judicial criticism."

Farrell vs. State, 54 Law, 416. 24 Atl. 723.

10 The 1st, 2nd and 3rd counts charge separate offenses on the same dates and the 4th count alleged a great number of offenses on the same date and other dates covering a period of two years.

In State vs. Clement, 80 L. p. 671, <sup>the</sup>~~this~~ Court considered a count charging that the defendant sold a pier ticket for twenty-five cents and converted the money and also was guilty of other conversions on other days, and it was held: "The count is undoubtedly faulty for duplicity."

**(a) THE INDICTMENTS DO NOT CHARGE A CRIME, ETC.**

20 The indictments charge that the sales were made "without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided."

The right to license in Atlantic City is derived from several statutes. The "Werts Act" (P. L. 1889, p. 77), "Bishops Act" (1906, p. 203) and the Act of 1902 (P. L. 1902, p. 284) have application.

30 The Court of Errors and Appeals in Leeds vs. Altreuter, 84 L. p. 722, 87 Atl. 637, after referring to the "Werts Act" and "Bishops Act" held: "Quite manifestly, therefore, this legislation concedes to the City the power to pass the ordinance in question or, if the public needs in the judgment of the Council required it, to so mould the ordinance as to make it conform to the provisions of the Inns and Taverns Act.

Atlantic City has provided for the granting of li-

censes by ordinance. Exhibits D 1 (118), D 2 (125).

Under the act of 1902, "The power of the City Council to license is in abeyance until it has adopted an ordinance to regulate and prescribe the terms and conditions upon which license can be granted."

Leeds vs. Atlantic City, 81 L. 231, 80 A. 23.

Section 21 of the Act of 1902 provides that the form of the application and mode of procedure now or hereafter prescribed for the granting of licenses to sell liquors, etc., by the general laws of this State when not inconsistent with the provisions of this Act, shall be observed. 10

The authority for the present ordinance is the act of 1902, and the power conceded by the Werts Act and Bishops Act.

Leeds vs. Altreuter, Supra.

In State vs. Webster, 10 N. J. Law, <sup>349</sup>~~298~~, the indictment charged the sale of liquor "not having first obtained a license for that purpose, from the Court of General Quarter Sessions of the Peace of said County of Somerset, in the manner directed by the act concerning inns and taverns, nor from the corporate authority of any City or Borough, in which he resided, contrary to the form of the statute in such case made and provided,\*\*\*." 20

The Court held: "This indictment alleges that the defendant did not obtain 'a license in the manner directed by the act concerning inns and taverns.' To say that he had not obtained a license according to the act concerning inns and taverns, (which is the act of 1797) is not sufficient; for that act does not alone prescribe the mode of obtaining license. It is in part prescribed by the act of 1820. Therefore to negative the former act only, is not sufficient." 30

There are several statutes and an ordinance appli-

cable to Atlantic City and the charge in the indictment that the defendants did not have a license "obtained in the manner prescribed by the statute" is insufficient.

2.

10        Because the trial Court, over the objection of counsel for defendants, permitted the State's witness, Serretella, to testify as to offenses not set forth in the indictments.

It has already been pointed out that the "Omnibus" counts in the indictments are insufficient. They do not allege the dates of the sales charged, nor to whom they were made. The offenses charged should be separately pleaded, especially in cases, like the one in hand, where time is of the essence of the offense.

20        The Court, over objection, permitted said witness to testify to sales to him on August 25th, 1917 (p. 51) and on August 27th, 1917, (p. 57), which were not specifically charged in the indictments. This was clearly error.

In *Bullock vs. State*, 65 L. 557, 47 A. 62, decided in the Court of Appeals, Mr. Justice Depue, said, at page 68:

30        "On the trial of an accused for a crime, it is not competent to prove that he committed other crimes of a like nature, for the purpose of showing that the accused would be likely to commit the crime charged in the indictment." (citing cases.)

While there are exceptions to the above rule, this case is not within any of them.

*State vs. Delancey*, supra.

**The trial Court improperly admitted in evidence a card from the office of the Mercantile Appraiser,**

**purporting to show mercantile licenses to the defendants.**

The card was admitted over objection (72, 73 and 74) and was copied in the record, (74). The card was introduced for the purpose of showing that the Boarding House, where the liquors were sold, was conducted by the defendants. The method of issuing mercantile licenses, as appears by the testimony of William Baitzell, assistant appraiser, is to make the license certificate out in duplicate. The original is given to the licensee and the carbon copy is deposited with the City Comptroller (72, 73). The carbon copy, in the possession of the Comptroller, is a complete record. At the time the license is issued a card is supposed to be made out similar to the one in evidence (bottom of p. 72). The card offered in evidence is not filled out. The names inserted are not the same as the defendants and there is nothing in the card to show when and for how long a time the license was granted. The witness had no recollection of the persons he saw at the time of his canvass in May (73) and there is nothing in the case to connect either the card or the alleged license with the defendants.

4.

**The trial Court should have granted the motion of counsel for defendants for the direction of a verdict for the reasons following:**

- a. The indictments are void because of duplicity.
- b. The indictments do not charge a crime, etc.
- c. The evidence submitted upon the part of the State, did not show the commission of the crime charged, there being no proof that the defendants, or either of them, did not have a license to sell intoxicating liquors.

A and b have been argued under assignment 1.

c. NO PROOF THAT DEFENDANTS OR EITHER OF THEM DID NOT HAVE A LICENSE, ETC.

This reason is not pressed.

5.

Because the trial Court charged the jury as follows:

10 "In substantiation of the allegation of ownership the State has produced before you the card or record from the mercantile appraiser's office by Mr. Baitzell, who says the license was granted, a license to keep a boarding house was granted to Matarazza and Artese, the names, however, being misspelled in each case, Matazza and Artisi respectively."

The question of the admission in evidence of the card from the mercantile appraiser's office has been argued under assignment 3.

20 The trial Judge clearly misstated the evidence and its effect. There was no evidence in the case to support the excepted language. It was important to the case of the State to show that the defendants were the proprietors of the property in question. Mr. Baitzell testified that he had made an appraisal of the place 14 S. Mississippi Avenue, known as the Presser Hotel and that a license had issued from his office in that case (71). He did not remember whom he saw when he made the canvas in May (p. 73) and there was no evidence to show to whom the license was issued except the card (p. 74). There was no testimony that the defendants were the owners of the property and Mr. Baitzell did not testify that a license to keep a boarding house had been granted to "Matarazza and Artese." There was no testimony to support the statement by the Judge that the names had been misspelled in each case, "Matazza and Artisi respectively."

*State v Lowell, 88 L. 354.*

The instruction of the Court concerned a fact tending to show the connection of the defendants with the alleged crime and it is reasonable to presume that the jury was influenced by this emphatic and unjustified statement by the Court.

16 Corpus Juris, p. 949.

In the case of Smith vs. Bennett, in this Court, 44 L. 370, the late Chief Justice Beasely, said, at page 374:

“The instance thus referred to is of vital importance, on account of its close connection with the merits of the case, and of the effect the judicial remarks in question may reasonably be presumed to have had on the minds of the jury.”

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6.

**Because the trial Court refused the motion made by counsel for defendants in arrest of judgment.**

The reasons urged upon the motion in arrest of judgment (p. 117) were urged upon motion to quash (p. 39) and motion for direction (p. 109) and have been fully argued.

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7.

**Upon the face of the whole record it does not appear that the defendants were charged with the commission of any crime.**

This assignment is urged and is covered by the argument under assignment 1.

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#### CAUSES FOR REVERSAL.

1.

**The trial Court should have granted the motion of counsel for defendants for the direction of a verdict for the reasons following:**

a. **The indictments are void because of duplicity.**

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b. The indictments do not charge a crime, because they charge that the sales in question were made without a license, first had and obtained by the statute in that case made and provided, there being several statutes in New Jersey unrepealed, regulating the grant of licenses and the indictments failing to charge the violation of a particular statute.

10 c. The evidence submitted upon the part of the State did not show the commission of the crime charged, there being no proof that the defendants or either of them did not have a license to sell intoxicating liquors.

A and b have been fully argued under assignment 1.

C is not pressed.

2.

20 Three indictments were tried together by consent, one charging defendant, Nicholas Matarazza, with the violations in question, one charging defendant Nicholas Artese with the violations in question and the third charging both defendants jointly with the same violations. The jury convicted the defendants under all three indictments. The conviction is therefore unlawful because the defendants were convicted twice for the same offense.

30 This cause is discussed in cause 3.

3.

Upon the face of the whole record, it does not appear that the defendants committed the crimes as charged against them.

Motion for direction was made, upon the ground, among others, that there was no proof to show that Mr. Matarazza and Mr. Artese had committed the

offenses charged (pp. 111 and 112) and that ground was also urged upon the motion in arrest of judgment (p. 117).

The indictments charge the offense jointly and severally against both defendants. The proof is not sufficient to warrant convictions under all three indictments. Manifestly, the defendants could not be guilty as individuals and as partners under proof of the commission of offenses charged and testified to have been committed by them individually and as partners at the same times and places. 10

A general verdict of guilty amounts to a conviction of each separate offense.

State v. Huggins, 84 L., 254; 87 A. 631.

The Supreme Court held that the writ as to the joint indictment should be dismissed because there had been no final judgment. The record shows that sentence was pronounced against both defendants upon the several indictments, and that sentence was not passed upon the joint indictment. It is submitted that the Court gave final judgment upon all three indictments. The language of the Court was not that sentence was suspended but that sentence was not passed, indicating the final disposition of the matter. 20

The Supreme Court, in *Blazier v. Keffer*, 79 Law, 252, 75 Atl., 439, held that "where there has been a conviction for violation of a city ordinance before a magistrate, and the record contains the entry, "Sentence suspended" a writ of certiorari will lie to review the proceedings." In that case the Court held that the words "sentence suspended" amounted to a declaration that no punishment ought to be inflicted. It is contended in the case before the Court that the Trial Court, having imposed sentence upon the several indictments, by the record of "sentence not 30

passed" declared, in effect, that no punishment upon the joint indictment should be inflicted.

It is respectfully submitted that the convictions should be reversed and set aside for the reasons aforesaid.

BABCOCK & CHAMPION,  
Attorneys for Plaintiff-in-Error.

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# New Jersey Court of Errors and Appeals

STATE,

Defendant in Error,

vs.

NICHOLAS MATARAZZA  
and NICHOLAS ARTESE,

Plaintiffs in Error.

ON ERROR TO THE  
SUPREME COURT.

Three Writs argued to-  
gether by consent.

BRIEF FOR DEFENDANTS IN ERROR.

10

## STATEMENT OF FACTS.

The two defendants, Nicholas Matarazza and Nicholas Artese, were convicted of selling intoxicating liquor without a license at the premises known as the Presser Hotel, number 14 South Mississippi Avenue, in the City of Atlantic City, County of Atlantic. The indictments were based upon Section 66 of the Crimes Act, which reads as follows:

“It shall not be lawful for any person, without license for that purpose first had and obtained, to sell or permit to be sold any vinous, spirituous or malt liquors, wine, rum, gin, brandy or other ardent spirits, or any composition of which any of the said liquors shall form the chief ingredient, except such as shall be compounded and intended to be used as medicine, by less measure than one quart, or any mixed liquors by less measure than five gallons; and any person so offending shall be guilty of a misdemeanor.”

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There were three indictments and all three were tried together by consent. See State of the Case p. 39, lines 26 and 27, where Mr. Babcock, Counsel for Defendant at the time of trial said, "I assume for the purposes of this motion that they (referring to the three indictments) will be tried together." See again State of the Case, top of p. 48, where the State of the Case shows "Mr. Babcock: Try them all. The Court: I understand that indictments 4081, 4082 and 10 4084 are moved. Mr. Brown: (Assistant Prosecutor), Yes, tried as one transaction. The Court: By consent of counsel for the defence are tried together.

Jury empanelled and sworn."

There were three writs of error taken out and a return of the record with each writ. Indictment number 4081 according to the Clerk's file, is a joint indictment against both defendants, Matarazza and Artese. Indictment number 4082 is a separate indictment against the defendant, Artese. Indictment 20 number 4084 is a separate indictment against the defendant, Matarazza. It appears also from the record returned with each writ that the three indictments were tried jointly, by agreement of counsel. See State of the Case p. 11, lines 28 to 32. Again State of the Case p. 23, lines 18 to 22 and State of the Case p. 35 lines 15 to 20. It seems that Matarazza and Artese ran the Presser Hotel at number 14 South Mississippi Avenue in the City of Atlantic City during the summer and fall of the year 1917. 30 They had no license to sell intoxicating liquors. It appeared from the State's evidence that during the latter part of the summer months in 1917 the Prosecutor's office employed one Serretella and one Perere to investigate the character of this place along with some other places. Serretella and Perere bought liquor in this place when both Matarazza and Artese were there and in one or two instances Serretella or Perere purchased direct from Artese, one of the proprietors. Some officers from the Prosecutor's office arrested the two defendants on Sunday, September 2, 1917, and when the officers went to the premises to make the arrests, Serretella and Perere were both in the premises drinking intoxicating liquors and there were others in there at the time who were un-

known to the officers. They found both Matarazza and Artese there in the premises and they were placed under arrest. The officers searched the premises and found enormous quantities of intoxicating liquor secreted in the basement and cellar and various other parts of the premises. They found large quantities of empty bottles of beer and wine and other kinds of intoxicating liquor on the premises. Some of this intoxicating liquor was taken away from the premises by the officers and produced in Court against the defendants at the time of their trial. It was also shown that expressmen had delivered considerable quantities of intoxicating liquor to the premises not a great while before the arrests were made. In one shipment there were as many as ten cases of wine. Serretella also testified to seeing other people whose names were unknown to him purchase intoxicating liquor in the premises while he was there. There was also admitted in evidence certain slips showing the sales of wine and beer in the premises to guests, which slips were on a file in front of Artese at the time the arrests were made. Serretella testified that he had seen the waiter hand these slips to guests who had purchased wine or beer and then the slips were handed to Artese when they paid their bill to Artese as they would go out. It appears that when the defendants, Matarazza and Artese, were arrested, that County Detective Baker, who made the arrest, found about one hundred and sixteen of these slips on a file in front of where the defendant, Artese, was sitting at the desk. The contents of these slips that were admitted in evidence are set forth on p. 83 State of the Case, lines 10 to 20. It seems that each slip had on it "Presser Hotel, 14 South Mississippi Avenue", and the names of the proprietors, "N. Matarazza and N. Artese", together with certain printing on them in the Italian language and pencil writing. According to the evidence of Baker and others, these slips had written on them the quantity and kind of intoxicating liquor that had been sold to the patrons of the Presser Hotel, and the price of same. There were also two books admitted in evidence, see p. 83 State of the Case, at the bottom of the page. These two books contained yellow sheets of paper upon which there were apparently markings in carbon. These yellow

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10 sheets had on them "Presser Hotel" and the two defendants' names, "N. Matarazza and N. Artese". It also appears on the same page, namely 83, State of the Case, lines 20 to 25, that a freight bill for ten cases of wine, consigned to the Hotel Matarazza, 14 South Mississippi Avenue, was admitted in evidence and an expressman named Joseph Pock testified to delivering the wine referred to in this freight bill to the Presser Hotel. Some of the boxes containing the intoxicating liquor, that were produced in Court, had on the boxes the names "N. Matarazza and N. Artese, Presser Hotel, Atlantic City." It also appears from the testimony of witness Baker and some of the other County officers, that the place was elaborately fitted up in the basement for secreting large quantities of liquor, in fact, the whole establishment was fitted up in a manner that indicated that the defendants were doing a "land-office" business in the illegal sale of liquor. The defendants offered no evidence in their own behalf except through their counsel an ordinance of Atlantic City and supplement to same were introduced prescribing the regulations upon which licenses to sell intoxicating liquors shall be granted in Atlantic City.

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30 The defendants were tried and the jury returned a verdict of guilty on February 13, 1918. On February 26, 1918, the Court pronounced sentence upon the defendants, Matarazza and Artese, upon the separate indictments against each, namely, 4082 and 4084. The sentence imposed upon Artese under 4082 is found in the judgment record, State of the Case, top of p. 24, lines 15 to 25. Matarazza's sentence under 4084 took place on February 26, 1918, and is found State of the Case p. 36, lines 13 to 22. They were each committed to the care and custody of the Probation Officer for a term of three years and pay the sum of three hundred and fifty dollars within one week from the date of sentence. No sentence was imposed under the joint indictment against both defendants, number 4081, as appears from the judgment record and return to the writ, State of the Case, p. 12, line 26, where it says, "Sentence not passed."

The Supreme Court affirmed the judgments of

conviction under the two cases against Matarazza and Artese separately and dismissed the writ as to the joint indictment against the two defendants. See opinion of Justice Trenchard in the Supreme Court, last paragraph State of the Case 155. The defendants seek a reversal of the judgments entered in the Supreme Court and have assigned error on a strict bill of exceptions and also specified causes of reversal on the whole record under the 136th section, the assignments of error appearing on page 159 State of the Case and the causes for reversal page 162 State of the Case. The assignments of error and the causes for reversal will now be considered in the order in which they occur in the State of the Case. 10

## ARGUMENT.

### I.

#### THE COURT SHOULD HAVE GRANTED THE DEFENDANTS' MOTION TO QUASH THE INDICTMENTS.

The first assignment of error relates to the refusal of the trial Court to quash the indictment on motion of the defendants. This matter is dealt with in the State of the Case beginning top of page 39 and ending at the bottom of page 47. Whatever may have been the law under the practice heretofore, it is certainly forever set at rest now in this state that a motion to quash an indictment is not reviewable on writ of error because a motion to quash is directed to the discretion of the lower Court and matters arising in discretion are not reviewable on writ of error in the absence of an abuse of same. It will only be necessary to cite a recent decision in this Court to settle this matter. State vs. Riggs and State vs. Johnson, 92 N. J. L. 575, 106 Atlantic 467 (E. & A. 1919). Justice Parker, in the Riggs case, has thoroughly reviewed all of the law relating to this practice and has distinguished, criticised and classified all of the authorities on this point. No writ of error will, therefore, lie for the denial of the motion to quash in this case as it does not appear 20 30

that there was any abuse of the discretion of the trial Court. Further citation of authority is unnecessary.

II.

AS TO THE WITNESS, SERRETELLA, TESTIFYING TO OFFENCES NOT SET FORTH IN THE INDICTMENTS.

10 This is the second assignment of error which charges that Serretella testified to offences not set forth in the indictments. Each indictment contained four counts. They were all similar in character in that they charged a violation of Section 66 of the Crimes Act, which is the section which prohibits the sale of intoxicating liquor without a license. The particular exception upon which this assignment of error is based is found in the record, State of the Case, p. 51. The first count in each indictment charged the sale of intoxicating liquor on August 19, 1917. The  
20 second count charged the illegal sale of liquor on August 26, 1917. The third count charged the illegal sale of liquor on September 2, 1917. The fourth count was a blanket count which charged continuous sales from December 1, 1915, and on divers other days and times between that day and November 1, 1917. This fourth count charged, in effect, habitual sales of liquor without a license, and, of course, in substance, would charge the defendants with the common-law offence of disorderly house were it not that Section 74 of the Criminal Procedure Act for-  
30 bade the form of indictment for disorderly house where the disorderly character is based solely upon the illegal sale of liquor. Serretella offered to testify to purchasing liquor there on August 25, 1917, and did so testify, likewise that he purchased liquor there on August 26, 1917, and August 27, of the same year. He also testified that he purchased liquor there on September 2, 1917, and that Perere also purchased intoxicating liquor there on those dates. He also testified to seeing other persons whose names he did not know purchase intoxicating liquors in there on some or all of these dates. This evidence was clearly admissible under the fourth count of the

indictment if it was not admissible under the other three, so that, therefore, the evidence was properly received by the Court and there was no error in admitting it.

### III.

#### AS TO THE ADMISSIBILITY OF THE CARD OF THE LICENSE FROM THE MERCANTILE APPRAISER'S OFFICE.

This point relates to the third assignment of error. This exception appears in the record State of the Case, page 73, and the contents of the card were read into the record on page 74 and marked Exhibit S1. This record was the official record of the Mercantile Appraiser's office. It was made up at the time the license was issued by the Mercantile Appraiser. The license itself and the carbon copy or duplicate were made simultaneously. The license, of course, was given to the defendants, Matarazza and Artese, or their representative. At the same time the license was made up the Mercantile Appraiser's office made up their official card which was introduced in evidence as Exhibit S1 in this case. The official card made up and filed in the Mercantile Appraiser's office contained the data set forth on page 74. It contained the names of the defendants, although spelled a little differently, the amount of fee paid, the address, 14 South Mississippi Avenue, the business, Presser House, twenty-five rooms, etc. According to the testimony of Baitzell, the Assistant Mercantile Appraiser, this card had to balance every night in their office with the carbon copy or duplicate of the original license. The carbon copy or duplicate was then turned over each day, together with all of the fees received on that day, to the City Comptroller. The cards, therefore, that were filed in the Mercantile Appraiser's office, it seems, were the official record of that office of the licenses issued and the only record of the licenses kept in that office. It was certainly entirely competent and proper to introduce it in evidence for whatever it might be

worth to show in whose name the mercantile license had been issued for these premises. The evidence tended to show that the mercantile license for the premises had been taken out, evidently, in the names or what was intended for the names of the two defendants. It was, therefore, entirely competent to admit this record in evidence. Counsel for defendants demanded when the Assistant Mercantile Appraiser was put on the stand to testify as to who the license had been issued to that the card itself be produced, claiming that that was the best evidence. See State of the Case page 71. It is not correct to say, as defendants' counsel has done, that the card in the Mercantile Appraiser's office was not an original record. It appears from the evidence that the card admitted was made up at the time of the original transaction as the official record for the Mercantile Appraiser's office and it is the only record on file in that official's office showing the transaction. In any event, its admission did no harm to the defendants and therefore is not sufficient to reverse the judgment of conviction. There is plenty of evidence in this case without this card to show the proprietorship of the defendants in the conduct of the premises. To briefly enumerate this evidence: there are the one hundred and sixteen slips already referred to that were admitted in evidence with the names of the two defendants on as proprietors of the place and showing on the face of the slips sales of intoxicating liquor to guests, and the cost of same. These slips were taken from in front of Artese, one of the defendants, where he stood at a desk at the time he was arrested. He was acting as cashier at the time, and the slips had been given to him from time to time by guests as they paid their bill before leaving the premises. The witness, Serretella, testified to seeing guests hand Artese these slips when they paid their bills. On one or two occasions, the witness Serretella says, Artese waited on guests and sold them intoxicating liquor. On one occasion Artese waited on Serretella himself and sold him intoxicating liquor. Serretella, the first time he went to the property, met Matarazza, the other defendant, apparently on guard outside in front of the premises. He asked Serretella what he wanted. To quote Serretella's own words: "Well, when I went up the steps

there Mr. Matarazza, this here fellow at the end asked me what I wanted. I says, 'You serve spaghetti here?' He says, 'Sure.' I says, 'I would like to have a dish of it.' So I went inside and Mr. Matarazza called a waiter, kind of a tall fellow, and I was served spaghetti." See State of the Case page 51, last question and answer at the bottom of the page. On the next page, 52, it appears that on this occasion the witness Serretella bought beer in there and that both defendants were present on the occasion of his purchasing the beer. See State of the Case page 52. Both Matarazza and Artese were seen exercising other acts of proprietorship in and about the premises at various times when Serretella and others were there. There were two books taken out of the premises and introduced in evidence that had to do with the conduct of the place and which had the words "Presser Hotel, N. Matarazza and N. Artese" on same. It also appeared that large quantities of intoxicating liquor were delivered at the premises from time to time and that some of the boxes that were introduced into evidence in Court, containing this intoxicating liquor, had on same the names of the two defendants. It further appears from the testimony of the witness, Baker, County Detective, at the time of the arrest on September 2, 1917, that both defendants were there in the premises acting as though they were the proprietors of the place. Artese was acting as cashier at the desk and Matarazza was talking with some guests of the place at a table. He tried to make it appear that he was only a guest, sat down at a table and grabbed some of the food of his guests and began eating it. This was after Baker had placed him under arrest, however, and charged him with selling liquor illegally at the place. While Baker was examining the basement of the premises and seeing how elaborately it was fitted up and where the large quantities of intoxicating liquor were stored, Matarazza disappeared. He was later discovered by Baker hiding in one of the rooms upstairs, having gotten into bed with his clothes on. Baker saw him over the transom and threatened to break the door in unless he came out. Matarazza then got up and unlocked the door and pretended to be asleep. See State of the Case pages 87 and 88. The whole

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premises were elaborately fitted out for the conduct of a "speak-easy" and there was plenty of evidence to show that these two defendants were the proprietors of the place without the card from the Mercantile Appraiser's office. In the first place, the State contends that it was perfectly admissible and competent legal evidence, and in the second place, if it wasn't admissible its admission certainly did no harm to the defendants.

#### IV.

10      **THE REFUSAL OF THE TRIAL COURT TO  
DIRECT A VERDICT.**

This relates to the fourth assignment of error. A motion to direct a verdict is not reviewable upon a strict bill of exceptions. It is addressed to the discretion of the trial Court. The fourth assignment of error, therefore, upon a strict bill of exceptions, cannot be taken advantage of by the defendants. This is well settled in New Jersey, *State vs. Metzger*, 82 N. J. L. 749. (E. & A. 1912.)

#### V.

20      **THIS EXCEPTION RELATES TO THE CHARGE  
OF THE COURT WITH RESPECT TO THE  
CARD FROM THE MERCANTILE  
30      APPRAISER'S OFFICE.**

This is the fifth assignment of error. The Court's charge is found on pages 114 to 116 State of the Case. The principal part of the charge excepted to occurs on page 115 in the first paragraph on that page. It must be borne in mind that there was no evidence put in for the defense except the two ordinances of Atlantic City relating to the sale of intoxicating liquors in said City. The Court undertook, however, to briefly rehearse to the Jury the facts that had been produced by the State. The entire paragraph containing the language excepted to is as follows: "It is also uncontradicted, gentlemen,

that on the occasion of the raid that these packages, boxes and bottles and whatever you see in the baskets, and so on, were seized and removed from the premises conducted, as it is alleged, by the State, by these defendants. In substantiation of the allegation of ownership the State has produced before you the card or record from the mercantile appraiser's office by Mr. Baitzell, who says the license was granted, a license to keep a boarding house was granted to Matarazza and Artese, the names, however, being misspelled in each case, Matazza and Artisi, respectively. The State has further produced the expressman who delivered the goods, the ten cases of wine, and also the slips which were taken from the premises of these two defendants, if you find that the premises were actually conducted by them." The Court was here undertaking to state the evidence that had been produced. There is absolutely no mis-statement of fact here so far as the Court's rehash of the evidence is concerned. The Court begins in this paragraph by saying that it is uncontradicted that on the occasion of the raid certain packages, boxes, bottles and so forth, which were there in Court in front of the Court and Jury, were seized and taken from the premises at that time. The next sentence in this paragraph is the one excepted to and refers to the card from the Mercantile Appraiser's office. Now, as already argued in this brief, the State insists that this card was properly admitted in evidence. The Court merely said that the State had produced this card through Mr. Baitzell, the deputy appraiser, and that Mr. Baitzell said a license to keep a boarding house was granted to Matarazza and Artese. Now the Court did not say that Baitzell said a license was granted to the defendants as was insisted by counsel for the defendants at the time of oral argument. All the Court said was that Baitzell said that a license to keep a boarding house was granted to Matarazza and Artese, whoever they may be. The Court, however, stated the fact that the names were not spelled Matarazza and Artese. The Court did not undertake to say that that mercantile license was granted to the two defendants who were on trial. All that the Court said was that a mercantile license to keep a boarding house was granted to a Matarazza and an

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Artese but the names on the card were differently spelled from that, although practically the same. To illustrate how difficult it is to spell the names Matarazza and Artese correctly, all one has to do is to shut the book containing the spelling of the names and it will be all the person undertaking to spell the names can do to get the names spelled correctly. The Court was simply stating what were the facts according to the evidence. The Court did not say that these two defendants on trial were the two men to whom Baitzell issued the license. The Court went on further in this same paragraph and stated that there was other evidence that the State had produced in substantiation of the ownership or proprietorship of the premises, namely, that the expressman who delivered the ten cases of wine, the one hundred and sixteen slips that had the names of Matarazza and Artese were produced and identified and qualified all of the comment in this paragraph by saying "If you find that the premises were actually conducted by them." Now, it is insisted that this paragraph taken as a whole, and the charge taken as a whole, and that is the way that the charge should be considered in the light of this exception, is a perfectly fair charge on the facts in the case. In the paragraph immediately succeeding the one just quoted, the Court clearly left all of the evidence to the Jury to decide for itself and to give the defendants the benefit of any reasonable doubt in their minds about the evidence. The Court did not misstate any fact that was in evidence and the Court left the evidence to the Jury to decide upon same. Certainly it was within the knowledge and the power of the defendants to deny that they were the proprietors of this place and also to deny that they had sold liquor there contrary to law or had permitted it to be sold with their knowledge or consent. They sat in Court and heard all of the testimony and they did not go on the stand in their own defense and deny this evidence. The card from the Mercantile Appraiser's office was in evidence and the Court had a right to state the facts with respect to it as it did, and even if the card itself was not admissible, still the statement of the facts with respect to it by the Court was harmless error because there was abundant other evidence from which the proprietorship of

the defendants in these premises could be established to the satisfaction of the Jury. One of the one hundred and sixteen slips already referred to, instead of being a bill-head for wines and liquor and other edibles sold to the patrons of the place, was a letter-head of the Presser Hotel. This letter-head likewise had the names N. Matarazza and N. Artese on same. There was plenty of other documentary evidence without the card from the Mercantile Appraiser's office from which the proprietorship of the defendants in the premises could be established. Then, too, there was the testimony of the witnesses themselves as to the defendants' acts of proprietorship in and about the premises. There is no merit in this assignment. 10

## VI.

### THE TRIAL COURT REFUSED THE MOTION MADE BY COUNSEL FOR DEFENDANTS IN ARREST OF JUDGMENT.

This assignment can be of no avail to defendants because it is not properly before this Court of Review. A motion in arrest of judgment can only be properly reviewed in this Court on writ of error by its being set forth in the judgment record returned with the writ. It appears that the trial was had on February 13th, 1918. See State of the Case page 38. It likewise appears from the three judgment records returned with the writ. Sentence was imposed on February 26th, 1918. This appears by a transcript of the stenographer's notes that is printed on page 117 State of the Case. It also appears at the end of each judgment record returned with the two writs against Matarazza and Artese singly. From the return of the joint indictment against them it appears that there was no sentence imposed in that case. From the transcript of the stenographer's notes on page 117 of the State of the Case it might appear that a motion in arrest of judgment was made. The judgment records themselves, however, are silent as to this motion. There is no power, however, in the trial Court to certify a motion in arrest of judgment and an exception thereto in such 20 30

an informal manner. The certificate of the Trial Judge as to the transcript of the stenographer's notes and the exceptions and proceedings had upon the trial of the indictments does not include matters arising subsequent to the trial such as a motion in arrest of judgment. The judgment is no part of the trial. The judgment, in actual practice is the sentence that is formally imposed by the Court and is entered by the Clerk in the judgment record of such proceedings. There is no statutory authority and no practice in common law whereby the stenographer's notes of such a proceeding at the time the sentence is imposed can be transcribed and certified to by the Court as a proper method of reviewing the proceedings below, by an appellate tribunal. The 135th Section of the Criminal Procedure Act, which relates to bills of exceptions, confines itself to matters connected with the trial of any indictment. It makes no reference to the review of exceptions taken to matters outside of the trial. We are, therefore, referred to the ancient common-law practice of reviewing the refusal of a motion in arrest of judgment duly made and due exception taken thereto. The common-law practice was to have such a motion, its refusal and its exception thereto made a part of the judgment record and returned with the writ of error. The exception was then properly before the appellate tribunal for a review and not otherwise. After diligent search, we can find no statutory authority which changes this ancient and salutary practice. Assignment VI is therefore of no avail to the defendants in the case at Bar.

## VII.

### UPON THE FACE OF THE WHOLE RECORD IT DOES NOT APPEAR THAT THE DEFEND- ANTS WERE CHARGED WITH THE COMMISSION OF ANY CRIME.

This is the exact wording of the seventh assignment of error. Defendants' counsel claims that this assignment entitles them to raise the question as to the validity of the indictment. Where the validity

of an indictment is apparent upon matters appearing on the face of the record, error can be assigned challenging the validity of the indictment for matters that appear upon the face of the record. This is undoubtedly what counsel for the defendants undertook to do in the cases at Bar. He has failed to do so, however. It is of no avail to defendants now, because it is too general in character. See State against Mor 85 N. J. L. 558 (Sup. 1914) and authority therein cited. The assignment does not point out specifically the matter complained of. It should specifically specify that the indictments were illegal because so and so and so and so. Such assignments of error as this have been repeatedly held bad in various decisions of this State. 10

But assuming for the sake of the argument that the questions as to the validity of the indictments are properly before this Court for review, it is still insisted by the State that the indictments are perfectly good and valid in law. We do not concede that their validity is properly raised and challenged according to the practice in this Court. The State, however, is willing to argue the questions as though they had been properly raised. 20

The first point they make is that the indictments are void because of duplicity. They argue that there are several distinct offences charged in each count of the indictments. It is necessary to bear in mind that Section 74 of the Criminal Procedure Act prohibits an indictment for a disorderly house where the offence consists solely of repeated sales of intoxicating liquor without a license. Section 74 further provides that the indictment in such a case must be in form for the sale of intoxicating liquor without a license although the punishment should be the same as that for a disorderly house which is now an ordinary misdemeanor, the same as the sale of liquor without a license is. Now, the State first insists that the first three counts of this indictment charging the sale of intoxicating liquor to one Serretella and one Perere and to various other persons whose names were to the Grand Inquest unknown, are perfectly good counts. It is well settled in this state that a person could be convicted before the passage 30

of Section 74 of the Criminal Procedure Act when it was originally enacted into law in this state of keeping a disorderly house even though the proof showed nothing but several sales of intoxicating liquor by the defendant on a single day, and where it further appeared from the evidence that the defendant was really and in fact conducting a disorderly house. Now, it is exactly the situation so far as the proof is concerned in the case at Bar. For instance, take the third count of each indictment which charges the defendants with selling as stated aforesaid upon September 2nd, 1917. Now, the proof showed that on that day they sold intoxicating liquor to Serretella and Perere and to various other persons whose names were unknown. The proof further showed that on that day the place was fitted up in an elaborate manner for the sale of intoxicating liquor without a license. The proof further showed that this thing was going on continually and all the time, even if the proof were confined to that particular day of September 2nd, 1917. Under the common law, before the enactment of Section 74 of the Criminal Procedure Act in its original form on an indictment for disorderly house this proof, even if confined to September 2, 1917, would have been sufficient to have convicted defendants of the charge of disorderly house. Since the enactment of Section 74, however, the State is not permitted to indict defendants for keeping a disorderly house where the sole proof is the repeated sales of intoxicating liquor without a license. Now count three of each indictment properly charges these defendants with a number of sales of intoxicating liquor on a single day without a license. Why, it is a perfectly valid count in conformity with said Section 74 and in accordance with the law and practice and evidence in the cases at Bar. If count three is good, then counts one and two are good because they are exactly like it. But even assuming for the sake of further argument and in order to simplify the same and to save the multiplication of words, that the first three counts of the indictment are bad, (the State does not concede this but it will save time to do so and get at the meat of the controversy), the fourth count of the indictment is a perfectly valid count. There was a general verdict of guilty in the cases at Bar. It is well set-

tled in such a situation that if there is one good count in an indictment which will support a conviction, the conviction will not be reversed. This really is so well settled in this State that it does not require the citation of authority. Counsel for the defendants almost conceded that the fourth count was good at the time of oral argument but he did insist that it was bad because the word "habitual" had not been used by the pleader. The indictment begins, near the first part of same, with a *continuando* in which it is charged that "on the first day of December in the year of our Lord one thousand nine hundred and fifteen and on divers other days and times between that day and the first day of November in the year of our Lord one thousand nine hundred and seventeen, at the Presser Hotel, number 14 South Mississippi Avenue in the City of Atlantic City aforesaid, and so forth" then follows the general charge against the defendants of selling intoxicating liquor without a license, in detail. This count charged in legal effect the habitual sale of intoxicating liquor between the dates mentioned. This *continuando* is the form of *continuando* that has been used in this State for charging the common-law offence of keeping a disorderly house, from the very beginning of the criminal annals of this State. The practice is too well settled and too firmly fixed to be challenged at this late day. It is the form for properly charging a defendant where the crime is a continuing one in its character. The word "habitual" is not absolutely essential in an indictment for the continual sale of intoxicating liquor without a license. Any appropriate language that would properly inform the defendants of what they were charged would be sufficient. Some of the synonyms of the word "habitual" are constant, frequent, repeated. Certainly the language of the pleader in the fourth count of the indictment in the cases at Bar was amply sufficient to inform the defendants that they were charged with the habitual sale of intoxicating liquor without a license. A slight citation of authority will be sufficient to convince this Court as to the soundness of the views here urged. The first case to which we call the attention of the Court is *State vs. Reily*, 66 N. J. L. 399 (Sup. 1901). This was a writ of error to the Camden Quarter Sessions.

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The indictment is almost identical with that in the case at Bar. It commenced with a *continuando* and charged the illegal sale of liquors on the days and times mentioned, showing in form a charge for selling intoxicating liquor without a license. Justice Dixon, speaking for the Supreme Court on p. 401, said: "Taken in its entirety, the indictment clearly charged and with sufficient particularity, the sale of intoxicating liquors under such circumstances as would, at common law, have constituted the offence of keeping a disorderly house. This fulfills the requirements of our statutes." Then again, the Supreme Court in *State vs. Wahle*, 82 N. J. L. 184 (Sup. 1912) sustained another count in an indictment similar to that in the case at Bar. In the *Wahle* case there was a *continuando* and the balance of the indictment was in form that of selling intoxicating liquor without a license. On p. 186 of this opinion Chief Justice Gummere said, "It is not necessary that these violations shall, each of them, be the personal act of the defendant; some of them may be his own acts; some of them may be acts done by his agents or employees under his authority or by his permission. Taken together, they constitute the habitual violation struck at by the statutory provision which has been cited." The doctrine enunciated by this Court in the *Wahle* case has received the approval of the Court of Errors and Appeals of this State. In *State vs. Siciliano*, 85 N. J. L. 380, the *per curiam* opinion of the Court of Errors and Appeals cites with approval the *per curiam* opinion of the same case in the Supreme Court. On p. 389 it states as follows: "In the second place, the assertion that the indictment is faulty for duplicity is not justified by the fact. It is drawn in conformity with the seventy-fourth section of the Criminal Procedure Act of 1898, and is similar to that which received the approval of this Court in *State vs. Wahle*, 53 Vroom 184. The *Siciliano* case was likewise an indictment for selling intoxicating liquors without a license and a motion to quash the indictment on the ground of duplicity. The fourth count is certainly not duplicious in the face of such authority.

The next point made by counsel for defendants with respect to the validity of the indictments is that

they were faulty because the following language appears therein, "without license for that purpose first had and obtained in the manner prescribed by the statute in that case made and provided". Counsel for defendants will probably make an elaborate argument on this point. The State can see no merit in their argument. Their argument is that the language "in the manner prescribed by the statute in that case made and provided" makes the indictment defective because there is more than one statute prescribing the method of getting a valid license to sell intoxicating liquor. It is undoubtedly true that there are a number of acts on the statute books which prescribe the method for getting a license to sell intoxicating liquor. The old Inns and Taverns Act is one and there are doubtless others that relate to it. The charter of Atlantic City, Act of 1902, Pamphlet Laws of that year, p. 284, gave the City Council of Atlantic City the power to license for the sale of intoxicating liquor in the City. Counsel for defendants even went so far as to introduce in evidence the ordinance of Atlantic City pertaining to this subject. Counsel for the State think that this particular language, to wit, "in the manner prescribed by the statute in that case made and provided", can be considered as mere surplusage. If the pleader had left that language out entirely the indictment would be perfectly good. He was merely introducing a little of the ancient phraseology which is usually tacked on to indictments of this character. The pleader did not specify any particular statute or statutes that pertain to the subject. The defendants were fully informed as to what they were charged with and by being referred to the statute or statutes relating to the subject the pleader may have conferred a benefit instead of a detriment upon them. It certainly did them no harm to add these words and they were not in any way misled thereby. The State was not required to point out to them the particular statute which provided for the license to sell intoxicating liquors in Atlantic City. It was all a matter of statutory regulation one way or another and the State insists that the indictment is perfectly good with the language as it stood. While the word used is "statute" instead of "statutes" it would cer-

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tainly appear from the context that they were being referred to the statutory law upon this subject and that very statutory law that they refer to in their brief. Particularly the charter of Atlantic City of 1902 would put them upon notice that there might be ordinances of Atlantic City which regulated the subject. They were certainly amply and sufficiently informed as to what they were charged with and the language complained of benefitted or helped  
10 them in preparing their defense and was really more than the pleader needed to have alleged. There is no merit in defendants' contention.

The next point made under the motion for direction was that the evidence submitted upon the part of the State did not show the commission of the crime charged, there being no proof that the defendants or either of them did not have a license to sell intoxicating liquors. This was a negative averment in the indictment which it was not incumbent upon  
20 the State to prove. It was one of those negative averments that are peculiarly within the knowledge of the defendants and which it was necessary for them to set up as a defense in case they cared to take advantage of it. This is so well settled by authority in this State that further argument is deemed unnecessary. *Jackson vs. City of Camden*, 48 N. J. L. 89 (Sup. 1886). *Parker vs State*, 61 N. J. L. 308 (Sup. 1898). *Parker vs. State* was a case of an indictment for selling intoxicating liquor  
30 without a license. Chief Justice Magie, speaking for this Court on p. 312 of the opinion said: "Moreover, it is entirely settled that such a negative averment is not required to be proved by the state. *Greeley vs. Passaic*, 13 Vroom, 87; *Jackson vs. Camden*, 19 Id. 89; *Plainfield vs. Watson*, 28 Id. 525; *Whart. Cr. L.*, par. 614." Further citation of authority is deemed unnecessary.

This disposes of all of the assignments of error. We will next consider in their order the causes specified for reversal under the 136th Section.

VIII.

**THE COURT'S REFUSAL TO DIRECT A  
VERDICT FOR THE DEFENDANTS.**

This motion for a direction appears in the State of the Case, pages 109 to 113 inclusive. Most of the motion for a direction relates to the points raised challenging the validity of the indictments. It is insisted that the motion for a direction of a verdict of acquittal at the close of the State's case or at the close of the entire case, as was done in the case at Bar, could not properly raise questions testing the validity of an indictment. It is well settled that it could not be done in assignment of error upon a strict bill of exceptions as already heretofore argued under IV. It likewise cannot be done under the 136th Section. This section, however, does permit all matters to be reviewed where the defendants suffer manifest injury by denial of any motion by the Court which was a matter of discretion. The motion to direct a verdict, however, upon the ground that the indictments are invalid is a motion that is not directed to the discretion of the trial Court. In a criminal trial it is the function of the Court to decide matters that are solely questions of law. It is the function of the Jury solely to decide the questions that are entirely of fact. Neither, under the Criminal practice, have been permitted to infringe upon the sole function of the other. The trial Court had no discretion to direct a verdict on the grounds that the indictments were illegal. If the Court had thought the indictments illegal in the cases at Bar, the Court should have granted the defendants' motion to quash the indictments. There was no power in the Court as a matter of discretion to direct the Jury to return a verdict of not guilty because the indictments were illegal. This would be transferring the sole function of the Court as to a matter of law testing the validity of the indictments to the Jury and making the Jury responsible so that they would say by their verdict that the indictments were illegal. This cannot be done. *State against Plough* 88 N. J. L. 428 (Sup. 1916). Chief Justice Gummere, speaking for the Supreme Court in the *Plough*

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case just cited, page 431, says: "Second, as to the motion to direct a verdict upon the ground that the indictment fails to set out a criminal offence. In our opinion, this motion is not directed to the discretion of the court. In the trial of criminal cases the respective functions of the court and the jury are sharply differentiated in this state. As was said by Mr. Justice Depue, in *Roesel v. State*, 62 N. J. L. 216, 253: "By the consensus of the bar and the judiciary, it has been recognized as the established law in this state that in the trial of criminal cases questions of law were for the court and questions of fact for the jury, saving only the right of the jury to render a general verdict where questions of law and fact were combined in the issue." In the present case, the question of fact for the jury to determine was whether the evidence showed beyond a reasonable doubt that the defendant had been guilty of the acts charged against him in the indictment; the fundamental question of law was whether the acts set forth in the indictment constituted a criminal offence. With this latter question the jury had nothing to do, nor could their verdict determine it. This being so, it was not within the discretion of the trial court to avoid the responsibility which the law placed upon it, of determining the validity of the indictment, and to place that responsibility upon the jury. Consequently, its refusal to take this course upon the application of the petitioner cannot be justly considered as "the denial of a matter by the court which was a matter of discretion." It might be well to add that Chief Justice Gummere, in the foregoing decision in the *Plough* case points out exactly the proper method to attack the validity of an indictment on the ground of fundamental defects alleged to exist therein. Then too, this Court has questioned the right of defendants in a criminal case to raise the validity of indictments upon motion for the direction of a verdict at the close of the case. *State against Pisaniello* 88 N. J. L. 262 (E. & A. 1915). It was not necessary in the *Pisaniello* case to decide the point as to whether the validity of the indictments could be reviewed for the denial of a motion to direct a verdict. Mr. Justice Parker, in his opinion in the *Pisaniello* case says: "So we need not stop to consider whether it is proper practice to move for

the direction of an acquittal at the close of the evidence on the ground that the indictment fails to charge a crime." It would seem, however, that the reasoning of Chief Justice Gummere in the Plough case cited above is unanswerable as to the proper practice on this point.

But even should it be decided that defendants can raise the validity of the indictments for the denial of their motion to direct a verdict, still the indictments are perfectly good as already argued under VII of this brief. 10

The only other point made in a direction for a verdict was the point that there was no proof that the defendants did not have a license to sell intoxicating liquor. According to the brief of counsel for defendants, just above the middle of page 10 of said brief, it appears that this point is not pressed. It is therefore unnecessary to argue it. It is already argued, however, heretofore in this brief under VII.

#### IX.

#### **THE CONVICTION IS THEREFORE UNLAWFUL BECAUSE THE DEFENDANTS WERE TWICE TRIED FOR THE SAME OFFENCE.** 20

Counsel for defendants has always insisted that he did not mean in this specification to raise the so-called twice jeopardy clause of the Constitution of New Jersey and of the United States. If that is not his point we do not know what it is. A careful reading of the second cause for reversal will fail to disclose any other specification than the twice jeopardy proposition. Neither in his brief nor at the time of oral argument did he make any point different from this. We are quite astonished that counsel on the other side would raise such a point as this. In the first place, the three indictments were tried together by consent of the defendants, as has already been set out heretofore in the Statement of Facts. The Constitutional provision on this point is found in New Jersey, Section 10 of Article 1, the pertinent part of which reads as follows: "No person shall, after acquittal, be tried for the same offence"; and 30

the pertinent part of the Federal Constitution is found in the Fifth Amendment, the pertinent part of which reads as follows: "Nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb." The language of both of these Constitutions just quoted presupposes successive acts. It means that after an acquittal or a conviction, no person shall be tried or again put in jeopardy for the same offence. That is not the situation, however, in the cases at Bar. In the cases at Bar, the trials were simultaneous acts. The prohibition in the two Constitutions aimed at is a second trial for the same offence and that is not what happened in the cases at Bar. The provisions, however, are of no avail to defendants in these cases. In these cases it was insisted that even though defendants might be entitled to the benefit of these provisions they waived them when they consented that all three indictments be tried together. The Constitutional provisions just quoted are such as a defendant might waive if it was desired. They are intended entirely for the benefit of the defendant. If he does not take advantage of them and in fact consents to what the State did, it is too late to complain now. It would seem, however, that what counsel for the defendants has in mind is that it was not proper for the Court to impose more than one sentence in the cases at Bar. It is difficult to see how the defendants can now complain that the Jury rendered a general verdict of guilty against them in all the indictments when they agreed to confer that power upon the Jury. The Court very properly sentenced them on one indictment and did not impose any sentence on the other. Counsel for defendants, however, argued that the expression in the judgment record in the joint indictment to the effect that "Sentence not passed" was an imposition of sentence, and cited *Blazier v. Keffer*, 79 N. J. L. 252 (Sup. 1910) in support of this contention. In the *Blazier* case, however, the Supreme Court was reviewing the proceeding before the recorder of Atlantic City under a City ordinance. Justice Swayze, speaking for the Supreme Court in the *Blazier* case clearly distinguishes between such a proceeding under a municipal ordinance and a criminal case founded upon an indictment. He says, speaking of a criminal case

where there is an indictment, "There is no final judgment until the court pronounces sentence upon the verdict of the Jury." What the Court undertook to do in the case at Bar as to the joint indictment was not to impose any sentence at all, which was entirely just and proper in view of the fact that the Court had imposed sentence on the other indictments in each case. The clerk, therefore, properly made the return in the judgment record of the joint indictment that sentence was not passed by the Court in this case. The language used was appropriate and there is certainly no conviction and no final judgment imposed under the joint indictment. The word "conviction" is sometimes erroneously used in a criminal case in referring to the verdict of the Jury. Properly speaking, there is no conviction in a criminal case until the Court imposes sentence, which is the final judgment in a criminal case. In this case, defendants were not convicted twice for the same offence. There is no merit in this specification.

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#### X.

UPON THE FACE OF THE WHOLE RECORD IT DOES NOT APPEAR THAT THE DEFENDANTS COMMITTED THE CRIMES AS CHARGED AGAINST THEM.

This specification is almost too general to be of any avail. However, a careful reading of the evidence will show that there was ample proof that the defendants did commit the crimes charged against them. It appeared the defendants were doing a big business in the sale of intoxicating liquor without a license. At the time they were arrested they were engaged in this illegal practice. They were caught red-handed. The punishment inflicted upon them was small and they have absolutely no right to complain. The writs of error for the reasons given should therefore be dismissed.

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Respectfully submitted,

EDMUND C. GASKILL, JR.,  
Prosecutor of the Pleas.



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