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*Writ of Error.*

**WRIT OF ERROR.**

## New Jersey Supreme Court

<p style="text-align: center;">THE STATE OF NEW JERSEY</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">FRANK MATTEO.</p>	}	<p><i>Illegal Possession of Liquor.</i></p> <p><i>Writ of Error.</i></p>	10
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NEW JERSEY, ss.

To the Honorable C. Franklin Wilson, Judge of the Court of Quarter

(SEAL) Sessions of the County of Morris:

Because in the record and proceedings and also in giving of judgment upon a certain indictment against Frank Matteo, late of the City of Dover, County of Morris, aforesaid, for illegal possession of intoxicating liquor for beverage purposes. 20

*Pro ut* the said indictment and the several counts therein whereof, before you, he had been indicted, and is thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said Frank Matteo, as it is said manifest error hath intervened to the great damage of the said Frank Matteo, as from this 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 Frank Matteo, 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 40

*Return to Writ.*

our Justices of our Supreme Court of the State of New Jersey, on the 28th day of January next 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 law ought to be done.

10 WITNESS, WILLIAM S. GUMMERE, Esq., our Chief Justice at Trenton, aforesaid, on the 8th day of January, 1926.

EDWARD J. KELLEHER,  
Clerk.

G. M. BELFATTO,  
Attorney.

**RETURN.**

20 To the Hon. Chief Justice and Associate Justices of the Supreme Court of Judicature at Trenton:

The record and proceedings in the case of the State vs. Frank Matteo, with all things touching and concerning the same, as before the Court of Quarter Sessions of the County of Morris, they remain, or are in the custody or control of the Clerk of said Court, whereof mention is within made, we do hereby certify and send under the seal of said Court as within we are commanded.

30

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the (SEAL) seal of said County at Morristown, this Fifteenth day of January, A. D. Nineteen Hundred and Twenty-six.

C. WILSON,  
Judge.

40

*Return to Writ.*

STATE OF NEW JERSEY }  
COUNTY OF MORRIS, to wit: } ss.

Be it remembered, that at a Court of Oyer and Terminer holden at Morristown, and in said County of Morris, on the Second Tuesday in May, in the year of our Lord Nineteen Hundred and Twenty-five, by the Honorable Charles W. Parker, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and C. Franklin Wilson, Esquire, Judge of the Court of Common Pleas, in and for the County of Morris, by the oath of Wm. G. Hurtzig, Martin B. Carrell, Newton B. Lundy, Raymond Peer, Alonzo P. Green, Arthur T. Paquette, William H. Duckham, Wm. S. White, Bertha Pierson, John H. Miller, Hattie Berry, Fletcher H. Sillick, Warren Bostedo, August F. Moller, Jr., Harvey W. Shephard, Frank Hammond, George Shaw, Catherine Gill, George H. Maxfield, George F. Crater, Thomas H. Rhoda, Maude Moore, and Gilbert T. Welsh, good and lawful men of the said County of Morris, duly summoned, and then and there duly sworn, and charged to enquire in behalf of the State of New Jersey, in and for said County of Morris, it is presented in manner and form following to wit:

Filed May 12, 1925. 30

E. BERTRAM MOTT,  
Clerk.

MORRIS OYER AND TERMINER.

MAY TERM, 1925.

Morris County, to wit:

The grand inquest for the State of New Jersey, and for the body of the County of Morris, upon 40

*Return to Writ.*

10 their oath Present: That Frank Matteo, late of  
 the Town of Dover, in the said County of Morris,  
 on the twenty-ninth day of December, in the year  
 of our Lord One Thousand Nine Hundred and  
 Twenty-four and from thence hitherto, with  
 force and arms, at the Town aforesaid, in the  
 County aforesaid, and within the jurisdiction of  
 this Court, did possess intoxicating liquor con-  
 20 taining one-half of one per centum or more of  
 alcohol by volume, used or to be used for beve-  
 rage purposes, said act of possessing intoxicating  
 liquor containing one-half of one per centum or  
 more of alcohol by volume, used or to be used for  
 beverage purposes being then and there pro-  
 hibited and unlawful, contrary to the form of  
 the Statute in such case made and provided, and  
 against the peace of this State, and government  
 and dignity of the same.

WILFRED H. JAYNE, JR.,  
 Assistant Attorney General of New Jersey.

At a Court of Quarter Sessions, holden at the  
 Court House, in Morristown, in and for the  
 County of Morris, on Friday, the 4th day of De-  
 cember, A. D., Nineteen Hundred and Twenty-  
 five.

30 Present, Hon. C. F. Wilson, Judge &c.

The State	}	No. 88 May Term, 1925.
vs.		On Indictment for
Frank Matteo, Defendant.		Illegal Possession of Liquor.

40 The defendant, Frank Matteo, being set to the  
 bar, and charged on this indictment, pleads there-  
 to not guilty.

*Return to Writ.*

At a Court of Quarter Sessions, holden at the  
 Court House, in Morristown, in and for the  
 County of Morris, on Friday, the 4th day of  
 December, A. D., Nineteen Hundred and Twenty-  
 five.

Present, Hon. C. F. Wilson, Judge &c.

The State	}	No. 88 May Term, 1925.	10
vs.		Illegal Possession of	
Frank Matteo, Defendant.		Liquor.	
		Plea Not Guilty.	

It is ordered by the Court that the motion  
 made to quash the above entitled indictment is  
 hereby denied.

The State,	}	On Recognizance,	20
vs.		\$1,000.	
Frank Matteo, Defendant.		Illegal Possession of	
Frank Nazzaro, Surety.		Liquor.	

30 Be it remembered that on this 4th day of De-  
 cember, A. D. Nineteen Hundred and Twenty-  
 five, personally appeared before the Court of  
 Quarter Sessions, Frank Matteo and Frank Naz-  
 zaro and acknowledged themselves to be indebted  
 unto the State of New Jersey in the sum of One  
 Thousand Dollars to be made and levied of their  
 respective goods and chattels, lands and tene-  
 ments, if default be made in the following con-  
 ditions:

40

Return to Writ.

The conditions of the above recognizance are such that if the above bounden Frank Matteo shall personally be and appear before the said Court of Quarter Sessions, to be holden at Morristown, in and for the county of Morris, on the 11th day of December, Nineteen Hundred and Twenty-five, at ten o'clock in the forenoon of said day, then and there to traverse to effect a certain indictment lately found in said Court against him for illegal possession of liquor, and from day to day thereafter during the present term and from term to term thereafter, until the said indictment is finally disposed of and shall not depart the said Court without leave, then the above recognizance to be void, otherwise to remain in full force and virtue.

At a Court of Quarter Sessions, holden at the Court House in Morristown, in and for the County of Morris, on Tuesday, the 29th day of December, A. D. Nineteen Hundred and Twenty-five.

Present, Hon. C. F. Wilson, Judge &c.

The State,	}	No. 88 May Term, 1925.
vs.		On Indictment.
Frank Matteo, Defendant.		Illegal Poss. of Liquor. Plea of Not Guilty.

Attorney for State, Albert H. Holland.  
Attorney for Defendant, G. M. Belfatto.

This Indictment being moved, the following jury was called and sworn:

Return to Writ.

- |                       |                     |
|-----------------------|---------------------|
| 1. Stephen E. Babbitt | 7. John Hays        |
| 2. Wm. R. Hamma       | 8. Samuel Sankin    |
| 3. Alfred Sinkins     | 9. Peter McDermott  |
| 4. Austin Harman      | 10. Marcus L. Mead  |
| 5. J. Smith Guenther  | 11. Ella De Groot   |
| 6. Barbara Lindabury  | 12. William Walters |

WITNESSES.

- |                     |                     |
|---------------------|---------------------|
| 1. Harry Flanger    | 1. Frank Matteo     |
| 2. Chas. E. Esthler | 2. Joseph De Santes |
| 3. Eugene Valerio   | 3. Maria Matteo     |
| 4. Samuel Gould     | 4. Mary Matteo      |
| 5. Andrew McDonough |                     |

The evidence in this case being closed, the jury, after argument of counsel, and a charge from the Court, retired to a private room to consider their verdict, with a constable sworn to attend them. After being out three hours and five minutes, they returned into Court, saying they have agreed upon their verdict, and by their foreman say they find the defendant guilty in manner and form as he stands charged in the indictment. And so say they all.

*Return to Writ.*

At a Court of Quarter Sessions holden at the Court House in Morristown, in and for the County of Morris, on Friday the eighth day of January, A. D. Nineteen Hundred and Twenty-six.

Present, Hon. C. Franklin Wilson, Presiding Judge. 10

The State vs. Frank Matteo, Defendant.	}	No. 88 May Term, 1925.  Sur. Indictment for Illegal Possession of Liquor.  Plea of Not Guilty— Conviction.
---	---	--

20 The prisoner, Frank Matteo, being set to the Bar, the Court, on motion of Albert H. Holland, Esq., Prosecutor of the Pleas, order judgment and sentence the Defendant, Frank Matteo, to pay a fine of Five Hundred Dollars, and further that he stands committed until the fine and costs of prosecution are paid.

30

40

*Return to Writ.*

The State vs. Frank Matteo, Frank Nazzaro.	}	On recognizance, \$1,000 for appear- ance of Frank Mat- teo to traverse In- dictment.
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On Motion of the Prosecutor of the Pleas, it is ordered by the Court that an exoneretur of bail be and the same is hereby entered in the above entitled case. 10

Done in open Court this 8th day of January, A. D. 1926.

RECOGNIZANCE.

State of New Jersey, }  
County of Morris. } ss.

Be it remembered that on this 8th day of January 1926, Frank Matteo, Frank Ciardi and Frank Nazzaro of the city of Dover, county and State aforesaid, personally appeared before me, Joshua R. Salmon, a Supreme Court Commissioner of the City of Morristown, in said County of Morris and severally acknowledged themselves to be indebted to the State of New Jersey in the sum of One Thousand Dollars, each to be levied of their several goods and chattels, lands and tenements, hereditaments and real estate upon condition that the said Frank Matteo shall prosecute with effect a writ of error sued out of the Supreme Court of Judicature of the State of New Jersey to remove into said Court the record of the proceedings and judgment under an indictment found against said Frank Matteo for unlawful possession of liquors. 20 30

Now therefore, the condition of this recognizance is such that if the said Frank Matteo

40

*Return to Writ.*

shall prosecute said writ of error with effect and shall not depart the said Supreme Court until discharged by the same and pay costs, if said conviction is affirmed, and also upon the further condition that if the Supreme Court shall so order the said Frank Matteo shall appear in the Court of Quarter Session of the County of Morris at any time which the Supreme Court shall order and abide the judgment of the court, then this recognizance to be void, otherwise to remain in full force and virtue.

10

his  
FRANK X MATTEO (seal)  
mark  
FARNK CIARDI (seal)  
FRANK NAZZARO (seal)

20

Taken and acknowledged this 8th day of January, 1926, before me.

JOSHUA R. SALMON,  
Supreme Court Commissioner of New Jersey.

State of New Jersey, }  
County of Morris. } ss.

30

Frank Ciardi and Frank Nazzaro being duly sworn on their oath severally depose and say that are free holders of the County of Morris and each worth the sum of Four Thousand Dollars in real estate in fee and in their own name over and above all encumbrances and liabilities.

Deponents further say that they reside in the Town of Dover and that their real property is situated in said Town.

40

*Return to Writ.*

Subscribed and sworn to before me  
this Eighth day of January, 1926,  
at Morristown, N. J.

Frank Ciardi.  
Frank Nazzarro.

JOSHUA R. SALMON,  
Supreme Court Commissioner of New Jersey.

10

New Jersey Supreme Court.

The State of New Jersey

vs.

Frank Matteo.

20

Recognizance.

G. M. Belfatto, Atty. for Deft.,  
194 Market St., Newark, N. J.

Filed Jan. 8th, 1926.

E. Bertram Mott,  
Clerk.

30

40

*Return to Writ.*

State of New Jersey, }  
County Morris. } ss.

I, E. BERTRAM MOTT, Clerk of the County of Morris and also clerk of the Court of Quarter Sessions, holden at Morristown, in and for the County of Morris, do hereby certify that the  
10 foregoing are full, true and correct copies of the indictment, and caption thereto, Plea, Motion to Quash Indictment, Recognizance, Trial and Conviction, Sentence, Exonerator, and Recognizance to prosecute Writ of Error, in the case of the State vs. Frank Matteo, as fully and entirely as the same remain on file in my office and of record on the minutes of said court.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the  
20 (SEAL) seal of said Court and County at Morristown, this Fifteenth day of January, A. D. Nineteen Hundred and Twenty-six.

E. BERTRAM MOTT,  
Clerk.

30

40

*Motion.*

MORRIS COUNTY COURT OF QUARTER SESSIONS.

THE STATE  
vs.  
FRANK MATTEO,  
Defendant. } *Illegal Possession and Sale.* 10

Morristown, New Jersey, December 29, 1925.

Before Hon. C. Franklin Wilson, Judge, and a jury.

Appearances:

Albert H. Holland, Esq., for the State.  
Gaetano Belfatto, Esq., for the defendant. 20

Thereupon a jury was drawn.

Mr. Belfatto: If your Honor please, I wish to make a motion.

The Court: Let it be noted that the motion is made after the jury was in the box and before they were sworn.

Mr. Belfatto: I desire to withdraw the plea of not guilty for the purpose of the motion.

The Court: That will be done. 30

Mr. Belfatto: The indictment is objected to on the following grounds: First, it does not set forth the precision, the character of the act that constitutes the offence. Second, it fails to specify the character of the place in which the defendant kept liquor. Third, it fails to allege which section of the act was violated. Fourth, said indictment is illegal, defective and unjust. These are four grounds on which the indictment is objected to. 40

*Harry Flanger, direct.*

The Court: The motion is denied.  
(Exception allowed and sealed.)

C. WILSON,  
Judge.

(SEAL)

Mr. Belfatto: The plea of not guilty is entered.

10 The Court: It is so entered.

Thereupon the jury were duly sworn.

Thereupon Mr. Holland opened to the jury in behalf of the State.

HARRY FLANGER, sworn on behalf of the State, testifies as follows:

*Direct examination by Mr. Holland.*

20 Q Mr. Flanger, did you occupy any official position in December, 1924, in the County of Morris? A I did.

Q What? A Special deputy sheriff.

Q Under Sheriff Estler? A Under Sheriff Estler and supervision of George Claypool.

Q And as such, did you engage in the business of investigating the violation of the prohibition act? A I did.

30 Q Was your attention directed to selling by Frank Matteo?

Mr. Belfatto: That is objected to.

Q Was your attention directed to Frank Matteo? A It was.

Q By whom? A Peter Delimpio.

Q And what did he say?

Mr. Belfatto: I object to that; any conversation with this Delimpio is irrelevant.

40

*Harry Flanger, direct.*

The Court: There is no conversation to be told.

Q Under what circumstances did Delimpio direct your attention to Frank Matteo?

Mr. Belfatto: Objected to on the same ground unless this defendant was present. 10

The Court: I don't know yet.

Q Were you given any information by Delimpio concerning Matteo?

Mr. Belfatto: Objected to.

Mr. Holland: That call for yes or no.

The Court: Objection overruled.

(Exception allowed and sealed.)

C. WILSON,  
Judge.

(SEAL)

Q (Question read.)

The Court: The answer is yes or no.

A Yes.

Q Concerning what was the information?

Mr. Belfatto: If he says this defendant that's all he can say; he cannot give the substance of the conversation. 30

The Court: No; he is not going to tell the conversation with Delimpio.

Mr. Holland: I am not asking for any conversation. I want to know what the subject was.

A The illegal selling of liquor from Matteo's residence. 40

*Harry Flanger, direct.*

Mr. Belfatto: Object to this testimony on the ground it is a statement obtained in the absence of this defendant.

The Court: Well, you object to the answer.

10 Mr. Belfatto: I object to the answer and move it be stricken out.

The Court: Motion denied.

(Exception allowed and sealed.)

C. WILSON,

(SEAL)

Judge.

20 Q Now, as the result of the information that you received from Delimpio concerning Matteo, what did you do as a special deputy sheriff? A I accompanied Frank Salvi, one of the sheriff's operators, to the home or in the neighborhood of the home of Frank Matteo and was in that neighborhood for different days. I did see people coming from the Matteo home and going into it, sometimes under the influence of liquor, it would seem to me, and on those grounds—

30 Mr. Belfatto: Object to that, because the question requires the answer, the explicit answer and no more. Now, he is going into a different issue.

The Court: Now he is going to tell you what he did.

Mr. Belfatto: The question did not ask what he did.

The Court: What did you then do?

40 The Witness: I went to the vicinity of Mr. Matteo's home to investigate conditions and on the conditions I found I went to Boonton and made out a complaint.

*Harry Flanger, direct.*

Q Before whom? A Before Judge Rolston.

Q And as a result of that proceeding, was there a raid made upon Frank Matteo's place?

Mr. Belfatto: Object to that.

The Court: Objection overruled.

Mr. Belfatto: That is leading, was the 10 raid made.

A There was a raid made.

Q Do you remember the date? A It was sometime the latter part of December, probably the twenty-ninth; I could not be positive.

Q Were you one of the raiding party? A I was.

Q Who else was there? A I am wrong about it; I was one of the raiding party; there were two men went to Matteo's home and one 20 was Eugene Valerio and Frank Salvi as special deputy sheriffs. At that time I was in another place and arrived there after they entered that house.

Q Who was at the house besides you and Salvi and Valerio? A Sam Gould.

Q Was McDonough there or was he not there? A I don't remember.

Q Was Matteo there? A No, sir; I don't 30 believe he was.

Q What did you find; what was found? A We found different size barrels of wine, the exact quantity of which I can't say. I know there was one fifteen gallons and two fifty-gallon barrels. I believe one twenty-five-gallon barrel. There was two cases of Vermouth. Some of the bottles were filled with wine, some bottles partly filled with wine. I think there was one bottle—there was one bottle there that had contained liquor at one time. 40

*Harry Flanger, direct.*

Q Who made the inventory? A I believe Eugene Valerio made it.

Mr. Belfatto: I object to that and move the answer be stricken out.

Mr. Holland: I consent.

10 Q Were you there when the inventory was made? A I was, but I don't remember who made it.

Q I show you an inventory with affidavit made by Eugene Valerio and ask you if you were there when this inventory was made and subsequently sworn to before Judge Rolston? A Yes, I was there.

Mr. Holland: I offer it.

20 Mr. Belfatto: If your Honor please, this document is not admissible in evidence unless the information which it contains was given to this defendant at the time. The document cannot be connected with the case unless the defendant is aware of it. There is no evidence that the defendant was informed or saw the inventory. The service of it is the only thing that proves it.

30 Mr. Holland: I withdraw the offer until Valerio gets on the stand.

The Court: On the ground offered the inventory will be admitted.

(Inventory marked as Exhibit S. 1.)

Q Now, was Matteo taken before Judge Rolston? A I don't remember whether he was taken that day or not.

40 Q Just step down here. Do you recognize the fifteen-gallon barrel of wine? A I do.

*Harry Flanger, direct.*

Q Do you recognize the case of Vermouth? A It looks about the same and I imagine the case looks like the case.

Q Do you recognize the case with only five bottles in and the other extra bottles that have now been piled in it? A I do.

Mr. Holland: I offer those in evidence.

Q What happened to the liquor you confiscated? A I called George Peer, a truck driver, in to transport this liquor to the Boonton warehouse of Sheriff Estler.

Q And you turned it over to whose possession? A The sheriff's possession.

Q And so far as you know it has been in the possession of the sheriff ever since until it was 20 turned over to me as prosecutor? A It has.

The Court: Any object to the offer?

Mr. Belfatto: No objection excepting the one case of Vermouth which he does not remember, which this witness does not know.

The Court: It will be marked in evidence.

(Marked as Exhibit S. 2.)

Mr. Holland: In addition to this, if your Honor please, I also have downstairs in the county vault a twenty-five-gallon barrel full of wine which it is impossible to move up here excepting in a regular moving fashion, and two fifty-gallon barrels of wine, all three of which are in my possession and all three of which I ask to be marked in evidence and would ask to have the jury view them instead of moving them up here.

*Harry Flanger, cross.*

Mr. Belfatto: I will be glad to admit the existence of the two barrels without bothering the jury to look.

The Court: It is admitted, prosecutor.

Mr. Holland: That is all.

10 *Cross examination* by Mr. Belfatto.

Q At what time did you go there, Mr. Flanger, to the raid; morning or afternoon or middle of the day? A I could not just say whether morning or afternoon.

Q Did you find anybody in the house? A I did.

Q Did you see the house? A I did.

20 Q What kind of a house is it? A I could not just say now.

Q It is a private dwelling? A It was a private dwelling from outside appearances.

Q No store? A No.

Q You did not find anybody in the house at that time except a little girl? A When I got there I found Mr. Valerio and Salvi there.

Q Your helpers were there? A They were.

30 Q Well, did you see anybody else besides the helpers and this defendant and wife? A I did not see the defendant at all; I saw the wife.

Q And the little girl? A I believe she was there; I believe there was a daughter.

Q Did you speak to the wife? A No.

Q You did not speak to the wife? A No.

Q And did the wife speak to you? A She tried to.

Q Did you understand her? A I did not.

40 Q Did she speak to the officer? A As far as I remember, I believe she did.

*Harry Flanger, cross.*

Q Were you there when the wine was removed from the cellar? A I was.

Q You were there personally? A I was there personally when the wine was removed.

Q When the barrels were taken out of the cellar? A Yes.

10 Q And you saw there was a case here in the cellar? Did you see this case here of Vermouth? A I did.

Q Do you know what Vermouth is? A I am not a chemist or anything; I don't know just exactly about it.

Q You say you found a bottle with some liquid in it? A I did.

Q Whiskey? A I did.

20 Q How much whiskey? A Very little.

Q Well, how high was that whiskey in the bottle in reference to inches? A I don't believe there was any inches in it; just enough to know there was liquor in it.

Q Only sign of the liquor? A That's all.

Q Did you drink any of it? A I did not.

Q Would you drink any of it? A I would not.

Q Did you try to drink it? A I did not.

30 Q Could you see it? A Saw it was in the bottle, yes.

Q Who had the bottle in his possession, did the wife? Was the bottle on the floor or where? Where did you find the bottle? A I don't remember; I believe that was found in the kitchen.

Q Is it true that the bottle was in the hands of one of your helpers? A I don't remember that; I know the bottle was there; I saw it there.

40 Q But you don't know who had the bottle? A No, I don't.

Harry Flanger, cross.

Q How long after the officers went on the premises was it that you went there? A Probably half an hour.

Q Were the officers doing anything when you came on the premises? A They were searching the house.

10 Q How many officers altogether were searching the house? A When I got there?

Q Yes. A Two is all I recollect.

Q And you went there after you received the information that this defendant was selling liquor? A I did.

Q And the information was given to you by whom? A Peter Delimpio.

Q He runs a store? A At 272 Richards avenue.

20 Q He is one of the men who appeared here this morning? A He was.

Q Did you at any time know or ascertain that this defendant was selling liquor? A Not before I received the information from Delimpio.

Q So that the raid was made on that information?

Mr. Holland: Object to that.

30

Q You did not see any *corpus delecti* in possession of any other person, did you?

Mr. Holland: Object to the *corpus delecti* or any reference to any dead man.

The Court: It seems to me we have about three questions to this witness. Which one do you want to rely upon?

Mr. Belfatto: The last question.

40

Harry Flanger, cross.

The Court: Everything withdrawn but the last question. What is it, Mr. Wheaton?

Q (Question read.)

Mr. Belfatto: I withdraw that.

The Court: Everything has been with- 10  
drawn.

Q Did you see any liquor, whiskey in possession of any person before you made the raid, which had been sold to him or her by this defendant?

Mr. Holland: I object to this question; it calls for an illogical conclusion. He cannot possibly see two fifty-gallon barrels of liquor 20  
in somebody's arms in these quantities; what does he mean by possession. If he means in possession of this man's house, why, then, I have no objection. If he means that somebody was hauling or driving fifty-gallon barrels of wine—

Q I mean to say the bottle containing whiskey; I am not arguing about the wine.

30

Mr. Holland: I want to object to the form of the question because he said liquor.

Q Did you see any liquor in possession of any person before you made the raid?

Mr. Holland: Object to that. It is immaterial and it doesn't make any difference whether he did or didn't. The question is, what was in this man's possession at the 40

Harry Flanger, cross.

time the raid was made; we are not going into preliminary propositions at all.

The Court: Objection sustained. (Exception allowed and sealed.)

C. WILSON, Judge.

(SEAL)

10

Q Did you see any wine?

Mr. Holland: Object.

Q (Continued.) In the possession of any person, sold by this defendant?

Mr. Belfatto? Same objection?

20

Mr. Holland: No, I object to this unless he qualifies as to the time and possessions; this witness is at a serious disadvantage in answering. He can answer both ways and be wrong. He can answer yes and be wrong and he can answer no and be wrong, because he wasn't in the household.

The Court: Objection sustained. (Exception allowed and sealed.)

C. WILSON, Judge.

30

Q Do you know whether this defendant at any time prior to your raiding his private home has sold to any person any whiskey or wine?

Mr. Holland: Object to the question, because it incorporates in it whiskey and that this is a private home, and there is nothing here to prove that it is such at all.

The Court: Objection sustained.

40

Charles E. Estler, direct.

Mr. Belfatto: Now, if your Honor is going to sustain every objection, I don't know what we are going to try here. I am simply cross examining this witness.

The Court: Put your question.

Mr. Belfatto: Cross examination permits great latitude to be given and I am not going to be curtailed at this phase; I want my rights. I have the right to put a question.

10

The Court: And I have the right to rule on it.

Mr. Belfatto: Then it would be a farce, with all due respect to the Court.

Mr. Holland: I object to the characterization of anything in this Court as a farce. I think Mr. Belfatto should restrain himself.

20

Mr. Belfatto: There is nothing to restrain. I have been trying cases for thirty years and I have a record of being fair.

The Court: Repeat your question.

Mr. Belfatto: I put the question to him and your Honor has not seen fit to allow it. I am through with the witness.

30

(Witness excused.)

CHARLES E. ESTLER, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q You are the sheriff of this county? A Yes.

40

Eugene Valerio, direct.

Q And in December, 1924, were you such sheriff? A I was.

Q And as such, did you engage and hire and direct men in enforcing the prohibition act? A I did.

10 Q And under your direct authority and by your direction was Constable George Claypool so engaged? A He was.

Q And were Mr. Flanger and Mr. Valerio and Mr. McDonough and Gould working under your authority and under your direction? A They were.

Q And as sheriff, did you have a warehouse and storehouse in Boonton under your authority and under the personal supervision of Mr. Claypool? A I did.

20 Mr. Holland: Cross examine.

Mr. Belfatto: No questions.  
(Witness excused.)

EUGENE VALERIO, sworn on behalf of the State, testifies as follows:

30 Direct examination by Mr. Holland.

Q Mr. Valerio, in December, 1924, did you occupy any position in the County of Morris? A I did.

Q What was it? A Constable, Morris County.

Q As such were you engaged under the direct authority of the sheriff in enforcing the prohibition act? A I was.

40 Q Did you attend the raid upon Frank Matteo's place? A I did.

Eugene Valerio, direct.

Q Do you recall when that was? A I think it's after Christmas.

Q 1924, in December? A Yes.

Q Did you make an inventory of the liquor?

Mr. Belfatto: That's objected to on account of being leading. 10

Mr. Holland: It certainly isn't the slightest bit leading; the only thing I asked was did he make an inventory.

The Court: Put your question.

Q Did you make an inventory of the liquor found?

Mr. Belfatto: Object to that; the question should be, what did you do, if anything. I wish to make that correction. 20

Mr. Holland: That might be Mr. Belfatto's way of proving it.

Mr. Belfatto: That's the way we have been trying it—

Mr. Holland: Withdraw it.

Q Was there any liquor found? A Yes.

Q Did you make an inventory? A I did. 30

Mr. Belfatto: Object to the question and move it be stricken out. It is both leading and there was no liquor found.

The Court: Objection overruled.  
(Exception allowed and sealed.)

C. WILSON,  
Judge.

(SEAL)

Q Is this the inventory which you made and later swore to before Judge Rolston? A It is. 40

*Eugene Valerio, direct.*

Mr. Belfatto: Object to the introduction of that evidence on the ground it is not in accordance with the law.

Mr. Holland: It has already been offered and marked in evidence.

10 Q Now, what did you—when did you make this inventory in connection with the time of your finding the liquor; how soon after? A Ten minutes.

Q Referring to the inventory, will you tell the Court and jury, please, exactly what you did find? A One twenty-five-gallon barrel full of wine, two fifty-gallon barrels full of wine, one fifteen-gallon barrel full of wine, one case of Vermouth, one case of Vermouth with five quarts in, five quarts of wine, three quarts partly filled and one empty bottle which had liquor in it.

20 Q Will you step down here—are these the cases and bottles which you found? A Yes, they are.

Q Just stand around the other way so the jury can see what you are doing and separate the cases and bottles in the condition in which you found them. In other words, they have been put together? A Yes.

30 Q Just take the bottles out of the case in which they don't belong. You can refer to the inventory if necessary. A (Witness does so.)

Q Now, what's in there now (indicating)? A Supposed to be Vermouth; I don't know whether it is or not.

Q Is this the case of Vermouth full? A It is.

Q And this is the case of Vermouth with how many bottles in it? A Five quarts.

40 Q Where are the five quarts? A That's the way I found it.

*Eugene Valerio, cross.*

Q Now we have that right, what else did you find? A Four quarts of wine.

Q Where are the four quarts of wine? A That I don't know.

Q Where are they, are they there? A No.

Q How many quarts are there here? A There are three quarts partly full and the fourth 10 quart is not here.

Q There are the four quarts partly full? A Yes.

Q What's that (indicating)? A That's marked wine.

Q Your handwriting, is that? A No.

Q These are the five that were there? A Yes.

Q And these are the four full bottles that you found? A They are.

Q And these are the three that are partly full or two of them? A Two partly full, that 20 is the one with liquor in.

Q Who attended you at the raid? A Salvi.

Q Who else? A Gould, Flanger and McDonough came over later.

Q They came over in time to move the liquor? A They did.

Q Who took charge of the liquor and moved it to the warehouse? A I did.

Q Mr. Flanger there? A He was. 30

Mr. Holland: Cross examine.

*Cross examination by Mr. Belfatto.*

Q You are the gentleman who went there first? A I am.

Q Before Mr. Flanger came? A Yes.

Q Now, you say you made an inventory? A I did. 40

*Eugene Valerio, cross.*

Q And the inventory is now in your hands; written by you; did you write this inventory? A I did.

Q Read the number 29; 29th of December. Did you make that correction in that number? A I did not.

10 Q When did you make that correction? A Never did.

Q Is that corrected? A I don't know.

Q Don't remember whether you did nor not? A I didn't have anything to do with that part of the inventory.

Q Isn't this in your handwriting? A I am not the Judge, the Judge signed that.

Q Oh, the Judge did, what Judge? A Judge Rolston.

20 Q So you did not make the inventory then and there, did you? A I did.

Q Now, got a copy of it? A You got it there.

Q You say this was made by the Judge? A Sworn to by the Judge.

Q Was the inventory made at the time of the visit to the place or afterwards? A (No response.)

30 Q Can you answer that question? A After we visited the place, of course.

Q Did you take this wine and bottles with you and then went to the Judge and had the inventory made, is that right? Answer that question. A Read it, please.

Q (Question read) A No.

Q You are just testifying that the Judge made the inventory?

40 Mr. Holland: Object to that.

*Eugene Valerio, cross.*

Q Of this liquor which you took away from the defendant's place?

Mr. Holland: Objected to.

The Court: I did not understand the testimony that way. He says he took it and swore to it before the Judge. 10

Mr. Belfatto: Yes, I want to know if this was done after he took the wine away.

Mr. Holland: Object to the question.

Mr. Belfatto: If you will object I also will object and we will object all the time.

Mr. Holland: I want to object to this question because I don't know whether his "this" refers to the inventory or refers to the figure nine which is changed in the Judge's handwriting by the Judge. If he will specify which particular part he refers to, why I have no objection. 20

The Court: Read the question, Mr. Wheaton.

(Question read.)

The Court: Objection sustained.

Q After you took the wine away?

The Court: Put your next question. 30

Q You have testified that you took a quantity of wine, three barrels of wine, is that so? A I did.

Q Two barrels of fifty gallons each? A I did.

Q Was that fifty? A Fifty.

Q And one barrel of ten gallons here in Court? 40

*Eugene Valerio, cross.*

Mr. Holland: That is not the testimony; the testimony is fifteen-gallon barrel.

Q Tell me, how much wine did you remove from the cellar? A Two fifty-gallon barrels.

Q That's a hundred gallons? A Yes.

10 Q And what else? A One fifteen, at least I think it was fifteen.

Q That's a hundred and fifteen? A Yes.

Q What else? A I am not sure if there was another one, twenty-five gallon.

Q You are not sure about the twenty-five-gallon barrels? A No, I am not.

Q And you say that you took these two boxes containing Vermouth? A I did.

Q Anything else? A And this bottle here.

20 Q This bottle here? A I did.

Q Is that the liquor that you found? A Looks like it.

Q Don't know it, do you; you don't know whether that's the liquor or not? A I don't know what is in that bottle now.

Q Did you ever taste it? A No.

Q Did anybody else ever taste that in your presence, if you know? A No.

30 Q Do you know what Vermouth is? A I think I do.

Q You have been drinking Vermouth? A Several times.

Q Did you ever get drunk on it? A No, I don't get drunk.

Q Now, you said that the inventory was made after you took the wine away? A While I was taking it away.

Q Did you give a copy of the inventory to the defendant? A I did—not to the defendant, no.

40

*Eugene Valerio, cross.*

Q To whom did you give it? A To the wife.

Q When did you give the inventory to the wife? A As I was leaving the place.

Q Then you drew the inventory? A That's what I said I did.

Q And that was not a sworn copy, was it? A 10 That copy there we had sworn to by Judge Rolston.

Q The copy you gave the defendant was not sworn to? A No, that was a receipt that we took the stuff away.

Q So you gave a rough inventory, the best you gave?

Mr. Holland: Object, there's nothing here to show it was a rough inventory. 20

Q Well, it was not sworn to before a justice? A No justice around the house.

Q Was the inventory which you delivered to this defendant duly sworn before a justice? A It was not.

Q You spoke to the wife of this defendant at the time you went there? A I think we did.

Q Didn't you say to her that she need not fear about the wine, that you won't take the wine away? A I generally tell them that. 30

Q You told her that, did you? A I don't know what I told her.

Q Did you or did you not? A I think I did; I told her not to worry about her wine. She said she had not sold it. She told me it was wine and I told her I was going to take that away; and she said I did not sell it and I told her I was sorry, I am here to take and I am going to take it. 40

*Eugene Valerio, re-direct.*

Q You did not know of any sale of wine? A No.

Q Or any sale of whiskey? A No.

Q Before you went there, did you have any warrant with you? A I did.

Q What paper? A A search warrant.

10 Q Where did you get it from, A Sam Gould.

Q Did you read the search warrant to this defendant? A She did not understand English.

Q Did you read it? A I did not.

Q Did you read it to somebody who understood English in her presence? A No one there, I did not.

Q Well, you did read the warrant; that's true? A Wasn't necessary to read it, I told her what I was there for.

20 Q Did you speak to this defendant at any time? A I did.

Q How long did it take you to remove that wine from the cellar? A I didn't remove it.

Q Who did? A The men.

Q Give me the names of the men? A McDonough, Salvi, Flanger and Gould; may have been more, but I don't remember.

Q And where was the defendant's wife at the time? A Upstairs and downstairs both.

30 Q Did you tell her to go upstairs? A I told her to cool down, she was a little excited.

Mr. Belfatto: That is all.

*Re-direct examination by Mr. Holland.*

40 Q Is this the search warrant that you had? I show you a search warrant by Judge Rolston, Police Justice, dated December 29th, 1924, and ask you if that is the search warrant you had? A It is.

*Eugene Valerio, re-cross.*

Q You did not read it but did you tell her what it was about? A I explained it to her in my own language.

Mr. Holland: I offer it.

*Re-cross examination by Mr. Belfatto.*

10

Q Are you positive this is the paper you had in your possession when you went there?

A It's a year ago, you know; I don't know whether that's the same one.

Q Now, try and read it and see whether that helps you out? A Read it?

Q No, look at it without telling us the contents. A It looks like the same one I had that day.

20 Q Well, you are not sure that is the paper which you had in your possession? Are you sure you had this very paper with you then? A I don't know how many hands it changed in a year's time. I tell you it looks like it.

Mr. Belfatto: Object to the admission of that paper under the circumstances.

30 Mr. Holland: I offer it. There is no question but what it is the warrant to search the premises of Frank Matteo.

Mr. Belfatto: That might be.

The Court: Mr. Belfatto brought out on cross examination the matter of the search warrant you produced it by reason of his cross examination. Have you offered it?

Mr. Holland: Yes.

The Court: It is admitted.

40 Mr. Belfatto: I object to the admission on the ground it has not been proven it is

*Samuel Gould, direct.*

the warrant this witness had in his possession at the time he raided the defendant's place.

(Exception allowed and sealed.)

C. WILSON,

(SEAL)

Judge.

10 Mr. Holland: That is all.  
(Witness excused.)

SAMUEL GOULD, sworn on behalf of the State, testifies as follows:

*Direct examination by Mr. Holland.*

20 Q Mr. Gould, in December, 1924, did you occupy any official position in the County of Morris? A Yes.

Q And what? A Constable.

Q Under whose direction and authority were you working? A Sheriff Estler and George Claypool.

30 Q As such did you participate in the raid on the premises of Frank Matteo in December, 1924? A Well, it happened I was raiding a place across the street and when I got through I went over to help Mr. Valerio.

Q Who was there besides you and Valerio?

A Mr. McDonough, Mr. Flanger and Mr. Salvi.

Q And yourself? A Yes.

Q Do you recognize this liquor container as the container in which the liquor was when it was taken? A Yes, sir.

40 Q In addition to this, there is also in my possession two fifty-gallon barrels and a twenty-five-gallon barrel? A Yes.

*Andrew McDonough, direct.*

Q Of wine? A Should be.

Q All three of them full? A Yes.

Mr. Holland: Cross examine.

Mr. Belfatto: No questions.

(Witness excused.)

10

ANDREW McDONOUGH, sworn on behalf of the State, testifies as follows:

*Direct examination by Mr. Holland.*

Q Mr. McDonough, in December, 1924, did you occupy any official position in the County of Morris? A I did.

Q What? A Constable.

20

Q Under whose direction and authority were you working? A Sheriff Estler.

Q In prohibition enforcement? A Yes.

Q As such did you attend the raid on the premises of Frank Matteo some time in December, 1924? A Yes, sir.

Q Who else was there besides you? A Sam Gould, Frank Salvi and Harry Flanger and Gene Valerio.

30

Q Did you come there after Salvi and Valerio had negotiated the raid? A Yes, I was at another raid with Sam Gould across the street.

Q Do you recognize this container as the container in which the liquor was taken from that place? Just look at it. You can't look at your book; look at this. A Yes, sir.

Q In addition to that was there a twenty-five-gallon barrel and two fifty-gallon barrels, both of which are down in my vault? A Yes, sir.

40

*Andrew McDonough, direct.*

Mr. Holland: Cross examine.

Mr. Belfatto: No questions.

(Witness excused.)

10 Mr. Holland: I have only one other witness; that is my lieutenant, to show that this has been in our possession ever since.

Mr. Belfatto: Oh, that is not necessary.

Mr. Holland: With that reservation the State rests.

Thereupon Mr. Belfatto opened to the jury in behalf of the defense.

The Court: Do you admit in your opening to the jury that this defendant had wine?

20 Mr. Belfatto: Yes, absolutely. My defense is that the wine was kept in a private dwelling under permission of the Federal authorities.

The Court: There is nothing in the New Jersey Act that gives you the right to possess.

Mr. Belfatto: But they had it under the Federal Act.

30 The Court: We are not under the Federal Act; we are trying it under the New Jersey Prohibition Enforcement Act.

Mr. Belfatto: But Section 15 of the Act says that a private dwelling cannot be raided unless the wine is sold.

The Court: Section 15 says it shall be unlawful to keep, occupy or maintain, and so forth.

40 Mr. Belfatto: Yes, but the proviso says that your Honor—

*Frank Matteo, direct.*

The Court: There is no proviso in Section 15.

Thereupon Mr. Belfatto reads Section 15 of the Prohibition Enforcement Act.

The Court: Proceed; I don't know any defense to this jury when you start, I am telling you that now. 10

Mr. Belfatto: I also take exception to your Honor's remarks in reference to my standing in this case.

(Exception allowed and sealed.)

C. WILSON,

(SEAL)

Judge.

FRANK MATTEO, sworn on his own behalf as 20  
defendant, testifies as follows through the official court interpreter, Dominick Bontempo:

*Direct examination by Mr. Belfatto.*

Q What is your full name? A Frank Matteo.

Q What is your business? A I am a digger.

Q Digger? How long have you been a digger? A Since I was born. 30

Q Are you married? A Yes, sir.

Q Have you your wife living? A Yes.

Q How many children have you? A Two are dead and three are living.

Q Where did you live during the month of December, 1924? A At Dover.

Q What was the number of the house in which you lived at the time? A Twenty-five.

Q What street? A Perry street. 40

*Frank Matteo, direct.*

Q And for how long have you been living in Dover? A Fourteen years.

Q Now, what kind of a house did you occupy at that time; how many rooms has this house? A Six.

Q How many on the first floor? A Three.

10 Q How many on the second floor? A Three.

Q Did you have a cellar under the house? A Yes, sir.

Q Did you keep any booze in your house? A No, sir.

Q How many gallons of wine did you have on December 29th, 1924? A I had one barrel which was full and another barrel, twenty-five gallon, that was partly full, and I had made this wine on the fifteenth of the same month.

20 Q Was that wine fully fermented? A No, sir.

Q How long does it take for the wine to ferment?

Mr. Holland: Object; this man cannot pose as a winemaker.

Mr. Belfatto: Well, he is making wine.

The Court: Objection sustained.

30 Q How long is necessary to pass before the wine can be drunk?

Mr. Holland: Object.

The Court: Objection sustained.

Q Could that wine be drunk or used at the time on December 29th, 1924? A No, still fermenting.

40 Q When could you drink it? A About three more weeks.

*Frank Matteo, direct.*

Q Now, there is a case here of Vermouth; what kind of a beverage do you call this Vermouth; what is it made of? A From grass, herbs; that's used for medicine purposes.

Q What is the purpose of drinking that; why do you drink that? A Didn't have anything to drink, so I used that; bought that in the store. 10

Q Did you ever keep any whiskey in the place? A Never in my house.

Q Here is a bottle containing something that looks like whiskey; did you ever see that before? A No, sir.

Q Did you ever at any time have any whiskey in your house? A No, sir.

Q Did you at any time sell any wine to any person or persons? A Never.

Q Did you ever sell any whiskey to any person or persons? A Never. 20

Q When the people came to your house to raid the place, where was this wine? A I was working.

Q Yes, but where did you keep the wine at the time? A Down in the cellar.

Q Did you see any of the raiders that came to your place to take the wine away? A No, I didn't see.

Q You were not there? A No, I was working. 30

Q Now, before you made that wine did you file with the Federal authorities in Newark a notice of intention that you would manufacture two hundred gallons of wine?

Mr. Holland: Objected to; I don't care what he filed.

Mr. Belfatto: I have the right to ask that question and have the Court rule on it. 40

*Frank Matteo, direct.*

The Court: Objection overruled; the question may be answered.

Q Answer that. A I do not remember.

Q I show you a paper and ask you whether that is not the paper that you presented to the Federal authorities in Newark showing your intention?

Mr. Holland: I object; I object to his quoting the contents of the paper. That is not the way to prove a legal instrument in the first place and in the second place we are not trying this under the Federal statute and the Federal statute has absolutely no concern whatever with the enforcement of the Hobart Act in New Jersey.

The Court: I am satisfied it is irrelevant and immaterial. If you object on that ground I sustain it.

Mr. Holland: I object on that ground.

The Court: Objection sustained.

(Exception allowed and sealed.)

C. WILSON,

(SEAL)

Judge.

Q Why did you make this hundred and fifty gallons of wine? A For family use.

Q Who told you to make it?

Mr. Holland: Object to this as hearsay.

Q Why did you make it?

Mr. Holland: I submit he has answered that.

Q Did you get any permission to make it?

*Frank Matteo, direct.*

Mr. Holland: Object to that. That is the same question in a different form.

The Court: Did you get permission?

Mr. Holland: Suppose he got permission, that's irrelevant and immaterial.

The Court: It is irrelevant and immaterial and I sustain the objection.

(Exception allowed and sealed.)

Mr. Belfatto: The prosecutor talks about the Federal law, are we going to talk and argue before this Court about that law?

The Court: No, the objection is sustained.

Mr. Belfatto: We have so much law in our brains, we can easily tell it—

The Court: We have one law before us now. Have you any further question.

Mr. Belfatto: Yes, sir.

Q You manufactured wine in your private dwelling, did you not?

Mr. Holland: Object to that as leading.

The Court: Objection overruled.

A Yes.

Q And before doing that, did you see any person with reference to your rights to make that wine?

Mr. Holland: Objected to.

The Court: Objection sustained.

(Exception allowed and sealed.)

C. WILSON,

(SEAL)

Judge.

Q I show you a notice of intention to manufacture two hundred gallons of wine and ask you

*Frank Matteo, cross.*

whether you filed this notice with the Federal authorities in Newark?

Mr. Holland: Objected to.

The Court: Objection sustained.

(Exception allowed and sealed.)

10

C. WILSON,

(SEAL)

Judge.

Mr. Belfatto: That is all.

*Cross examination by Mr. Holland.*

Q What store did you buy that Vermouth in; I want to know? A This here wine—

20

Mr. Holland: Just give the answer as he gives it.

A This here Vermouth was taken from the store of my brother-in-law and another fellow was in business and they brought this over to my house.

Q Now, when was that; when did they bring it to your house? A The 23rd or 24th of December of last year.

30

Q And who owned the store?

Mr. Belfatto: That's immaterial, your Honor, immaterial and irrelevant.

The Court: Do you object to it for that reason.

Mr. Belfatto: Yes.

The Court: Objection sustained.

40

Mr. Holland: May I make this statement; my reason for believing it is not immaterial and not irrelevant—

*Frank Matteo, cross.*

The Court: Do you mean it's his store?

Mr. Holland: I don't know, in the first place; in the second place I have the right to cross examine, this being the defendant, and testing his veracity, and if I can from this witness gain who else is violating the law and who sold him that—it may be this man is a perjurer. 10

The Court: In other words, the answer may indicate he owned it himself.

Mr. Belfatto: He could go to the Register's office and find out who was the owner of the property.

Mr. Holland: Mr. Belfatto knows ownership of a store is in a different class than ownership of the real estate.

The Court: Put your question. 20

Q (Question read.) A It wasn't a store; it was a stable, sort of garage they had, butcher shop and so forth.

Q Who brought this Vermouth to your house, who transported it? A I told my brother because he had a truck to bring it over because I didn't have anything to drink.

Q What's your brother's name? A My brother-in-law. 30

Q What is your brother-in-law's name? A Giuseppi Desanti; if you want to call him he is here.

Q Where does he live? A Dover.

Q Street, please? A Where he live, he lives with me.

Q And who did he get the Vermouth from? A At the store because he was in business with someone else. 40

*Frank Matteo, cross.*

Q Yes, who is the other person he was in business with? A Now, he has sold the store and he is bricklayer and works in New York.

Q Yes, what's his name? A Frank.

Q Frank what? A Frank Dowdy.

Q Is he an Italian? A Yes.

10 Q And do you know what his address in New York is? A No.

Q Is your brother-in-law, Giuseppe Desanti, married? A Yes.

Q Has he got any children?

Mr. Belfatto: Objected to; this latitude is going too far.

The Court: Objection sustained.

20 Mr. Belfatto: Where did he live at that time, I have no objection to that.

Q Where did he live in December, 1924, where did Giuseppe Desanti live in December, 1924?

A With me, he always live with me.

Q And did he have his wife? A His wife is in Italy.

Q Who else lives in your house besides your brother-in-law? A Only he.

Q Did he pay you board? A Sure.

30 Q Did you have any other boarders? A No.

Q At no time? A No.

Q Now, you say you got this Vermouth on December 23rd, is that right? A 23rd or 24th, I don't remember.

Q Yes, and your wine had been in the barrels since when? A It was still fermenting.

Q When did you put it in? A About a week.

Q You said November fifteenth in answer to Mr. Belfatto's question, didn't you? A Yes.

40 Q You said November fifteenth? A Yes, I put it in the barrels.

*Frank Matteo, cross.*

Q Did you say December 15th or November 15th? A Yes, this month, December 15th.

Q Well, what were you drinking before December 15th and December 23rd, anything? A Water.

Q How many fifty-gallon barrels did you have? A One, and one was filled, one twenty-five-gallon barrel, and I told you that. 10

Q How many barrels did you have altogether, no matter what their size? A There were three barrels altogether.

Q Where did the other fifty-gallon barrel come from? There were two fifty-gallon barrels, were there not? A One was full and the other was empty.

Q Was it empty? A Yes.

Q So there were two fifty-gallon barrels, is that right? A One was empty and the other was twenty-five-gallon barrel but was not full. 20

Q Well, didn't you have two fifty-gallon barrels, one twenty-five-gallon barrel and a fifteen-gallon barrel? A No.

Q What did you have? A I had the one fifty gallon and one twenty-five that wasn't full and a small barrel of ten gallons.

Q And you did not have another fifty-gallon barrel, did you? A Yes, it was empty, they take it away. 30

Mr. Holland: That is all.

(Witness excused.)

*Joseph Desanti, direct.*

JOSEPH DESANTI, sworn on behalf of the defendant, testifies as follows:

*Direct examination by Mr. Belfatto.*

Q Desanti, what is your business? A I am a fireman.

10 Q Where do you live? A Dover.

Q How long have you been a fireman? A Since 1914.

Q How long have you been living in Dover? A Since 1908.

Q For whom do you work? A I work for Hercules Power Company.

Q Where did you live in December, 1924? A In 25 Perry street.

Q Who owns the place? A Frank Matteo.

20 Q The defendant in this case? A Yes.

Q Your brother-in-law? A Yes.

Q For how long have you lived with him? A Oh, since 1911.

Q Now, do you remember the time when the house was raided? A Yes, sir.

Q What time was it? A Was around half-past four; it was the time I get home, I found them in the house.

30 Q How many persons were in the house? A Was four.

Q Well, where were these persons? A In the kitchen, two down cellar.

Q What were they doing? A Raiding the place.

Q Now, did you or anybody go in the cellar? A Yes, sir.

Q How many persons did you see go in there? A Three.

40 Q What did they do? A They did not let me go down cellar.

*Joseph Desanti, cross.*

Q Did you have any conversation with any of them? A No, sir.

Q Did you speak to anybody? A No, they don't want me to talk.

Q They won't let you talk? A No.

Q Then you did not talk to anybody? A Only one man asked me for seventy-five dollars; he said if you give me seventy-five dollars I won't take the wine away. 10

Q Who is the man? A He was here; the little daughter, she said to me—

Q The man who asked for money testified in the case? A Yes.

Q What did you tell him? A I said I ain't got no seventy-five dollars to give you, you will have to take the wine away.

Q And what else was said or done? A That's all, only a ring was missing in the house too. 20

Q Whose ring was it? A My sister's.

Q Matteo's wife is your sister? A Yes.

Q Did you ask anybody for the ring? A I didn't know anything about it then.

Q Well, did you see the ring before these people came in the house? A No, I did not see it. 30

*Cross examination by Mr. Holland.*

Q Where is your wife? A When?

Q Where is your wife? A On the other side.

Q How long has she been over there? A 1920.

Q Did she go back in 1920? A She go back 1920.

Q She went back to Italy in 1920? Yes. 40

*Joseph Desanti, cross.*

Q She was over here in this country? A Yes.

Q And has she come back from Italy's since 1920? A She come back since then, yes.

Q Now, did she ever come back to this country? A I going to bring her back as soon as I can. 10

Q You have not brought her back yet? A No.

Q So that she has been away from here since 1920? A Yes, sir.

Q Well, didn't she take all her rings with her? A That was not my wife's ring.

Q Whose ring was it? A My sister's.

Q That is, Frank Matteo's wife, that right? A Yes, sir.

Q Did you see the men in the house? A Well, I just come home, I find the men in the house. The little daughter was in the house and would not let them in because there was nobody in the house. She said, wait, I go call my mother. They went in just the same. 20

Q When did you find out the ring was stolen? A Same day, after they went.

Q What kind of a ring was it? A I don't know what ring it was, it was a gold ring; that's all I know. 30

Q You did not see it stolen? A No.

Q You did not know that your sister owned such a ring? A The ring was missing.

Q You did not miss it, did you? A No, my sister says my ring was gone.

Q Did she say, my ring was gone, and point to her finger? A There was none in the dining room.

Q Well, did you make any complaint against anybody? A No. 40

*Joseph Desanti, cross.*

Q Now, who is the man that wanted some money from you? A Harry Flanger.

Q Just point him out; show me where he is; which is Harry Flanger? A He was here a while ago.

Q What kind of a looking man is Harry Flanger? A As tall as I am, round face. 10

Q Got a round face? A Yes.

Q Did you see him today? A I saw him today, the first one you called up.

Q Is there anything about his appearance which would attract your attention? A Well, no.

Q Are there any marks on him? A Yes.

Q What? A On the face, here (indicating).

Q Is that the man standing in the back? A Yes, sir. 20

Q And he said what? A He says, give me seventy-five dollars and I ain't going to take the wine away.

Q Who else was there? A Three or four other guys, I don't know the names.

Q Was he with them? A All in the house.

Q They all stood there and heard him say that? A No, the other guys was searching down cellar all over.

Q They were searching down cellar? A Yes. 30

Q He did not come there until the wine had been found, did he? Who were the first people in the house? A I wasn't there when they went in; I just got home there.

Q When you got there how many people in the house? A I don't know how many people there was, I did not count them.

Q How many do you think were there? A Four or five in the cellar taking the wine out when I came. 40

*Joseph Desanti, cross.*

Q Where was Frank Matteo? A Frank was working.

Q Where was Mrs. Matteo? A Mrs. Matteo was over to the next house.

Q Well, you see Valerio is an Italian too, isn't he? Did you talk to Eugene Valerio? A  
10 No.

Q Didn't you see him there? A Nobody spoke to me in Italian.

Q Wasn't there anybody there talking Italian? A I didn't see nobody and heard nobody.

Q Didn't you talk with Eugene Valerio in Italian? A No.

Q Didn't you hear him read—didn't you hear him tell your sister there was a warrant?  
20 A Never heard anything.

Q Your sister wasn't there, was she? A Wasn't there.

Q Not at all? A Well, she came after.

Q Well, had the men left or were they still there when she came? A The men was there?

Q Now, did your sister come home before or after the men went away? A Before they went away.

Q Well then, didn't Eugene Valerio tell her,  
30 speak with her in Italian? A I did not hear.

Q Where were you if you did not hear; where were you? A I was there; the men were down cellar, my sister went down cellar; maybe they speak Italian down cellar; they would not let me move, I was there standing by the window.

Q Now, as a matter of fact, didn't you come in and offer them some money if they left your wine alone? A I had no money.

Q And didn't Eugene Valerio tell your sister  
40 not to worry about her wine? A No, because

*Joseph Desanti, cross.*

my sister was weeping; he was trying to speak to her in Italian.

Q Did you offer them some money to leave that wine alone so your sister would not cry? A I did not have to offer any money.

Q Did you make any complaint about these officers trying to get money from you? A I  
10 never make complaint.

Q Did you ever tell anybody they wanted seventy-five dollars from you? A Yes.

Q Who did you tell? A The fellow right there, Nazzaro.

Q When? A The same day, the same day they went away, they had to go down to Boonton.

Q What's his name? A Frank Nazzaro?

Q Does Frank Nazzaro deal in liquor? 20

Mr. Belfatto: Objected to.

A I don't know anything about him at all.

Q Did you ever tell anybody else? A No, sir, I told him.

Q You never told anybody else? A What you say?

Q I am asking you, did you tell anybody else? A I don't remember that, it's too long,  
30 one year ago.

Q Don't you know whether you told anybody else? A Don't know, I don't remember anything.

Q Didn't you think that was pretty serious? A I don't remember anything.

Q Don't you think—that was graft, wasn't it?

Mr. Belfatto: Objected to.

40

*Joseph Desanti, cross.*

The Court: He is asking the witness. The witness can answer, if he can.

Q If he asked you for seventy-five dollars and you paid it, that would be a bribe, graft?

10 Mr. Belfatto: Objected to.

Mr. Holland: I withdraw it.

A I could not understand that.

The Court: On what ground do you object.

20 Mr. Belfatto: I object on the ground that the word speaks for itself, asking for money has many meanings. It may be bribery, it may be obtaining money under false pretenses.

The Court: On the ground stated, the objection is overruled.

(Exception allowed and sealed.)

C. WILSON,

(SEAL)

Judge.

Q Did you ever make any complaint? A No.

30 Q Did you ever tell anybody else but Frank Nazzaro? A I don't remember. Don't ask me any more questions, I don't know anything more at all.

Q You don't want me to ask you anything else. Now, how many barrels did they take out? A I did not see, because I don't own the house, I don't know.

Q How long have you lived there? A Since I came here.

40 Q How long is that? A Well, since 1911.

*Joseph Desanti, re-direct.*

Q Well, how many barrels of wine were there down in the cellar? A I don't know; I don't own the house.

Q Didn't you help make it? A No.

Q You don't know how many barrels were down there? A No.

Q Down in the cellar, I mean? A I never 10 been down cellar; I ain't got any business to go down cellar anyway.

Q Did you ever bring any liquor in the house?

A The case of Vermouth right there.

Mr. Belfatto: That is an incriminating question; did you ever bring any liquor in the house. That is not proper cross examination and on that ground alone, I object.

The Court: Isn't he the man they testified brought the stuff there? 20

Mr. Belfatto: Oh yes, but is that liquor; Vermouth is not liquor.

The Court: What is it.

Mr. Belfatto: Everything but liquor.

Q What is Vermouth? A There's a bottle right there (indicating). 30

Mr. Belfatto: Sit down there, don't get excited.

Q Do you drink it? A Sure I drink.

Mr. Holland: That is all.

*Re-direct examination by Mr. Belfatto.*

Q You said you can't remember about the barrels in the cellar? A No. 40

*Maria Matteo, direct.*

Q And you were not there; do you know how long before the raid the wine was made?

The Court: How can he tell if he didn't know it was there?

10 Mr. Belfatto: If your Honor wishes to rule the question out, I cannot help it. Your Honor will rule on it.

The Court: Yes, I rule on it.

Q Do you know when that wine was made? A Somewhere around the 15th of December, something like that, I don't remember, because I never help him make it.

Q You did not see the barrels being taken out from the cellar? A I see them be taken out but I don't know how many be taken out.

20

Mr. Belfatto: That is all.  
(Witness excused.)

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MARIA MATTEO, sworn on behalf of the defendant, testifies as follows through the Official Court Interpreter, Dominick Bontempo.

30 *Direct examination* by Mr. Belfatto.

Q Mrs. Matteo, you are the wife of the defendant? A Yes, sir.

Q Do you remember when certain people came to your house in December, 1924; December 28th, 1924? A Yes, sir.

Q Well, that was the 29th, I would like to correct the time? A It was on the 29th, yes.

Q Were you in the house? A No.

40 Q Where were you? A At Mr. Hanson.

*Maria Matteo, direct.*

Q You were called by your daughter to the house, were you not? A Yes, sir.

Q And when you went there, what did you see? A I found the house all busted up.

Q How many rooms have you on the first floor? A I have three.

Q How many on the second floor? A Three. 10

Q Have you got any store in the house? A No, sir.

Q Have you got a cellar in the house? A Yes.

Q For how long have you been living in that house? A Fourteen years.

Q You own the house, do you not? A Sure.

Q Now, when you came to the house, where were these men that you testified about? A In the house. 20

Q Well, how many were on the first floor? A They were all there.

Q Doing what? A They were looking, searching the house.

Q Did you talk to them? A No.

Q Did they give you any paper? A No.

Q Did you talk at any time to any one of these raiders? A I did talk, but they did not answer me.

Q Now, it has been testified by a previous witness for the State that he gave you a list or inventory of all the wine that was taken away from the cellar; is that so? 30

Mr. Holland: I object, for the purpose of the record; perhaps the Court may rule against me. I am desiring that the Court rule for me. I want this objection on the record, that this is absolutely immaterial and irrelevant whether she got a copy of 40

*Maria Matteo, direct.*

the inventory or didn't. All these preliminary proceedings have no effect whatever when it is brought to court. It may be sufficient to keep them but it is not necessary when everything culminates in an indictment.

10 The Court: There was no duty on the part of these officers to give this woman any inventory.

A No, sir, they give me nothing.

Q Was any paper or warrant read to you by the Italian deputy that came there that could speak Italian, to you? A I do not know; I did not understand anything; I don't know what he said.

20 Q Now, did you miss anything from the house afterwards? A Yes.

Q What? A My ring.

Q Where was the ring? A On the bureau.

Q Where was the bureau? A In the dining-room.

Q Why didn't you put the ring on that day; why did you not wear the ring that day? A Because I washed the clothes and I take it off.

30 Q And you saw the wine being taken away from the cellar? A When I came there it was outside.

Q How much wine did you have in the cellar altogether; how many barrels? A I had a barrel and a half and a little more of the sort of water like.

Q Now, altogether, how many gallons? A About a hundred and twenty-five gallons.

40 Q And did you ever sell any wine to anybody? A No, sir.

*Maria Matteo, cross.*

Q Did you ever have any whiskey in the house? A No, sir.

Q Did you ever sell any whiskey to any person? A No, sir.

Q Do you know whether your husband obtained a permit to make the wine?

10

Mr. Holland: Objected to.

The Court: Objection sustained.

(Exception allowed and sealed.)

C. WILSON,

(SEAL)

Judge.

Q Now, did you speak to any of the five or six persons in English at any time while they were there? A They were talking in English; I didn't understand them.

20

*Cross examination by Mr. Holland.*

Q You did not talk to them in English because you can't talk English, can you? A No, sir.

Q Do you see Eugene Valerio there; do you see him (pointing to Valerio)? A Yes.

Q What did he say to you? A Nothing.

30

Q What did you say to him? A I didn't say anything to him.

Q You were not carrying on? A Well, I started to cry, but I did not say anything.

Q Well, didn't he try to calm you and pacify you and tell you your wine would come back? A No, sir.

Q Well, if he did not tell you that your wine would come back, how is it you told your attorney he said so?

40

*Maria Matteo, cross.*

Mr. Belfatto: Object to that because there is no evidence she ever spoke to me about that. In fact, I did not know the woman until yesterday.

Q What did you tell? Did you tell anybody that Valerio told you that it's all right, you will get your wine back again? A Yes, that's what they told me and that's what I said. 10

Q Oh, he told you that? A I mean, the people they said it, and so I said it.

Q You mean the people who were taking your wine? A Yes, the people who were taking wine.

Q So that you did understand some of the things they said? A My daughter understood.

Q Did you ever make any complaint about your stolen ring? A No, sir; I didn't make no complaint, that's all. 20

Q Did you ever tell anybody about it? A I said that the ring was missing in my house.

Q You don't accuse anybody of stealing that ring, do you? A I had found it missing when they came in.

Q Well, you found it missing the day before, too, didn't you? A No, sir. 30

Q When did you take it off? A I took it off when I washed the clothes.

Q When did you wash the clothes? A Monday.

Q What day did they come there? A Monday.

Q And what time in the morning did you wash the clothes? A At ten o'clock.

Q And what time did you leave the house? A I left the house at two o'clock. 40

*Mary Matteo, direct.*

Q What time did you finish your washing?

A At one-thirty.

Q Didn't you put your ring back on again then? A No.

Q You looked for it and could not find it, isn't that so? A When I came to the house, when I was looking for the ring, I could not find it any more. 10

Q Yes, but at one-thirty, when you quit your washing, you could not find it any more, could you? A No, when I went to John Hansen's house I did not put on my ring.

Q Because you could not find it, isn't that so? A No; I left it there.

Mr. Holland: That is all.

The Court: We will adjourn at this time until two o'clock. 20

—  
AFTER RECESS.

MARY MATTEO, sworn on behalf of the defendant, testifies as follows:

*Direct examination by Mr. Belfatto.* 30

Q Mary, how old are you? A Eleven years old.

Q Do you go to school? A Yes, sir.

Q Do you go to Sunday school? Talk loud so that lady there will hear. A Yes, ma'am.

Q What grade are you in? A Sixth A.

Q What school are you attending? A The East Side.

Q Now, were you in your house on December 29, 1924? A Yes, sir. 40

*Mary Matteo, direct.*

Q When certain people came there? A Yes.

Q What time of the day was it? A Around half-past four.

Q And where were you? A In the kitchen.

Q How many men came there? A Around four or five.

10 Q Did they talk to you? A No, they only asked me if this was Frank Matteo's house, and they said, "We have to search the house."

Q Did you see the men go in the rooms? A No, sir.

Q Where were you, in what part of the house were you at the time? A In the kitchen.

Q And where did the men go? A They stood in the kitchen and then afterwards they sent me to go call my mother, so I went and called her, and they went and searched all  
20 around.

Q Did you go call your mama? A Yes.

Q And your mama came back with you? A Yes.

Q When you came back with your mama, what were these men doing? A I don't know; I was afraid to go inside.

Q Did you talk to any of the men when your mother came back? A No, sir.

30 Q None at all? A No, sir.

Q Did not talk? A No, sir.

Q Did you see the men taking the wine away? A Only from the back cellar door.

Q Did you hear anybody speaking to you? A No.

Q And that's all you know about it? A Yes.

Q How many men were in the house at the time altogether? A Four or five.

40 Q Did you talk Italian to any one of these five men? A No, sir.

*Mary Matteo, cross.*

Q Did you hear any of the men speaking to your uncle? A Only when one man said, "If you give me seventy-five dollars I will leave the wine."

Q Who said that? A Flanger.

Q He is the same man who testified in this case this morning? A Yes. 10

Q Did you see the man on the witness stand this morning? A Yes.

Q And that is the man? A Yes.

Q How much money did he ask for? A Seventy-five.

Q Who did he ask that of? A My uncle.

Q What's your uncle's name? A Joseph Desanti.

Q What did he say in addition to money, anything else? A No, sir. 20

Q What did he want the money for? A He said he would leave the wine if he give him the money.

Q That's what he said? A Yes.

Q What did your uncle say? A He said he didn't have that much.

Q What did that man say then? A I don't know.

Q What did he do? A They took the wine  
30 out.

Q That's all you know about it? A Yes.

Mr. Belfatto: Take the witness.

*Cross examination by Mr. Holland.*

Q Mary, how many men came in the first time? A Four.

Q Four came in the first time? A Yes. 40

*Mary Matteo, cross.*

Q Now, didn't just two men come in first and afterwards some more men? A Two came in front and two around the back.

Q When they came around the back did they come the same time or after? A After.

Q How long afterwards? A Five minutes  
10 after.

Q Did Flanger come in the front or did he come in the back? A In the front.

Q But you were in the kitchen? A Yes, then after I went to call my mother and I stayed outside because I was afraid.

Q Well, now, did your mother come home first or your uncle? A My uncle.

Q And when this talk about money was going on, was that before your mother got back? A  
20 Yes.

Q And you were over trying to call your mother? A Yes.

Q Now, did you go before the talk about money or after the talk? A Before.

Q You went before the talk about the money? A Yes.

Q You are sure? A Yes.

Q You left the house before the talk about money? A Yes.

30 Q You are sure? A Yes.

Q And you have just said that this talk about money was before your mother came back? A Yes.

Q Now, you don't mean that; I don't want to twist you, Mary, but that can't be. A Yes, because I came back before my mother and then she came after me.

Q You got back before your mother; how much before your mother? A Around ten minutes.  
40

*Mary Matteo, cross.*

Q Did you know Flanger at that time? A No, sir.

Q Who was the man that spoke to your uncle? A Flanger.

Q Who told you what his name was? A My uncle.

Q Yes; when did he tell you that? A After  
10 they had gone.

Q How long after? A Around fifteen minutes after.

Q What did your uncle say to you fifteen minutes after? A He told me his name.

Q What did he tell you; what did he say; just use your uncle's words? A He said that the man that wanted the money, his name was Harry Flanger.

Q He said that out of a clear sky? A Yes.  
20

Q Nothing else besides that? A No.

Q Nothing else followed that? A No.

Q How do you know he wanted money? A Because I was right there.

Q You said you went outside? A After my mother came I went outside; when I came back I was inside.

Q What were you scared of? A I don't know.

Q Did you hear your mother cry? A Yes.  
30

Q She was talking to somebody in Italian? A I heard her talking, but I don't know who she was talking to.

Q You said just a while ago you did not hear anybody talking? A Yes, I did.

Q Well, didn't you say you did? A I don't know.

Q You have been telling this story because somebody told you to, haven't you? A Yes.

Q Who told you to tell it? A No one; I  
40 know it from last year.

*Mary Matteo, cross.*

Q Who have you been talking with about it?

A Nobody.

Q Nobody at all? A No.

Q Never said a word to anybody? A No, sir.

Q Well, didn't you talk with anybody about it? A No, sir.

Q You talked with your uncle about it? A Only to my uncle, but I did not talk to—

Q How many times did you talk to your uncle about it? A Once.

Q When was that? A When the men had left.

Q Did you talk to him about it yesterday? A No, sir.

Q Didn't you talk to him about it the first day you came to court? A No, I did not know anything about it yet.

Q Didn't you know why you were coming to court? A No, sir.

Q When did you find out what you were going to court for? A My father told me this morning.

Q What did he tell you? A He said we were going to have the trial.

Q What else did he tell you? A That's all. He said do you remember anything from last year and I told him yes.

Q What do you remember? A I told him.

Q What did you tell him you remembered? A Told him I remembered that they would not let me go call my mother and I wanted to call her and they said to my uncle if he give seventy-five dollars they would leave the wine.

Q You told that to your father? A Yes.

Q That was this morning? A Yes.

*Mary Matteo, cross.*

Q Well, you just said a while ago you did not talk to anybody at all about it. A I said I talked to him this morning.

Q Yes, but before you said you did not talk to anybody but your uncle fifteen minutes after they left? A Then you asked if I said anything this morning and I told you.

Q Now, who else did you talk with? A Nobody but my father and uncle.

Q Nobody else? A No, sir.

Q Didn't you even talk with your mother about it? A No, sir.

Q You talk Italian? A I don't talk much.

Q You can understand it? A Yes.

Q What was it Eugene Valerio told your mother about getting the wine back? A I don't know; I was in the house then.

Q Yes, but your mother testified you told her? A I didn't tell her.

Q And that was not true? That's all.

(Witness excused.)

Mr. Belfatto: We rest.

Mr. Holland: We rest.

Mr. Holland: In resting may I say, if your Honor please, that since there has been raised a controversy that one of the fifty-gallon barrels is empty when as a matter of fact the inventory shows it to be a full barrel, and as a matter of fact the barrel itself is full, I desire at this time to request of the Court permission for the jury to view it and if that request is denied then I desire the indulgence of about ten minutes so that I may be able to bring these and place them right here for the jury to see.

The Court: Have you any objection?

*Mary Matteo, cross.*

Mr. Belfatto: No, but we will agree about two barrels, but not three.

Mr. Holland: Not for three.

The Court: Is the sheriff here? In charge of the sheriff and you and the prosecutor, the jury, may be taken down.

10 Mr. Holland: With strict instructions that there be no discussion except to point out the barrels and have the jury test the barrels and see for themselves.

20 Mr. Belfatto: My objection is not to the inspection. I take exception to the two barrels of wine now to be examined by the jury. Now, it is three barrels instead of two. Now, in the change in the situation in such a case I ask the indulgence of the Court to have the wine identified as being the very barrels that were found in the possession of the defendant, which is impossible on the part of the prosecutor at this time.

Mr. Holland: May I have the indulgence of the Court and have the barrels brought up?

30 The Court: I will give you that indulgence or the jury may inspect it in the presence of yourself and Mr. Belfatto, and I will let Mr. Belfatto say which he wants.

Mr. Belfatto: I admit two barrels.

Mr. Holland: I will replace on the stand any of the people engaged in this raid, so that they can identify the barrels downstairs.

40 The Court: Sheriff, you will take the jury. Members of the jury, you will just view whatever is shown as exhibits in this case.

*Motion for Direction of a Verdict.*

Mr. Belfatto: May it please your Honor, at this time I wish to make a motion for direction of verdict on the following grounds: The indictment charges this defendant with keeping intoxicating liquor containing one-half of one per cent. or more of alcohol per volume used or to be used for beverage purposes, said act of possessing intoxicating liquor containing one-half of one per cent. or more of alcohol by volume used or to be used for beverage purposes being then and there prohibited and unlawful, contrary to the form of the statute in such case made and provided, and against the peace of this State and the government, and dignity of the same. Now, that's the contents of the indictment. Now, the burden is on the part of the prosecutor to prove all of the counts in the indictment. First, the unlawful possession. Second, he contends that the liquor contains more than one-half of one per cent. of alcohol. That proof is lacking. Also, that this was in a private dwelling. That this was a private dwelling, the evidence shows that conclusively. It should be shown by the prosecutor that this was not a private dwelling. And fourth, the evidence on the part of the State is not sufficient to make a prima facie case. We have introduced evidence for the purpose of showing that there was absolutely no violation of the law on the part of the defendant. Therefore under these conditions I don't see what the jury are to decide, there being no issue of facts for them to decide, and I ask your Honor to direct a verdict of acquittal in favor of this defendant.

10

20

30

40

*Motion for Direction of a Verdict.*

The Court: Motion denied.  
(Exception allowed and sealed.)

(SEAL) C. WILSON,  
Judge.

10 Thereupon Mr. Belfatto summed up to the jury in behalf of the defendant.

Thereupon Mr. Holland summed up to the jury in behalf of the State.

During the prosecutor's summation he stated to the effect that there is no such a thing as a Federal statute permitting the violation of the New Jersey law. Mr. Belfatto, on behalf of the defendant, took exception to the statement of the prosecutor.

20 (Exception allowed by the Court.)

(SEAL) C. WILSON,  
Judge.

Mr. Belfatto also took exception to the statement of the prosecutor that all cases similar to this had been affirmed by the Supreme Court or the Court of Errors.

30 Mr. Belfatto also took an exception to the statement to the jury by the prosecutor that he has no right to have liquor in his house.

Mr. Belfatto stated that the law says he can have 200 gallons of wine.

(Exception allowed by the Court.)

(SEAL) C. WILSON,  
Judge.

40

*Charge to Jury.*

Thereupon the Court charged the jury as follows:

**COURT'S CHARGE.**

10 WILSON, J.—Ladies and Gentlemen of the Jury: Frank Matteo is on trial before you on an indictment which charges him with the illegal possession of intoxicating liquor. This indictment is founded upon the law of the State of New Jersey, which is known as the Prohibition Enforcement Act, and some of its provisions read as follows:

20 Section 2. The word "liquor" and the word "intoxicating liquor" shall each be construed to mean and to include: (a) Alcohol and brandy, whiskey, rum, gin, beer, ale, porter, wine, and any other spirituous, vinous, malt, brewed or fermented liquor or mixed liquors which contain one-half of one per centum, or more, of alcohol by volume, and which are used or to be used for beverage purposes. All liquids, admixtures and compounds, whether medicated, proprietary, patented or not, and by whatever name called, which contain one-half of one per centum or more of alcohol by volume and which are fit for use for beverage purposes. (b) Section 10. On and after 30 the date when this act goes into effect, no person shall manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor, and all the provisions of this act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented. Section 15. It shall be unlawful to keep, occupy or maintain any room, house, building, vehicle or place whatsoever where liquor is manufactured, sold, kept, stored, transported, bartered or other- 40

*Charge to Jury.*

wise disposed of in violation of this act; which is part of Section 15; and Section 33; any person who manufactures or sells liquor in violation of this act shall be guilty of a misdemeanor. And another part of the same section: Any person who violates any of the provisions of this act  
 10 other than the manufacture or sale of liquor in violation thereof, shall be guilty of a misdemeanor; and Section 37: In any proceeding under this act or at the trial of any indictment or any violation of this act, the liquor or liquors mentioned in paragraph (a) of Section 2 shall be presumed to be for beverage purposes and to contain more than one-half of one per centum of alcohol by volume. And this act took effect, ladies and gentlemen, March 17th, 1922.

20 There are certain matters of law which I am compelled to charge you. In the first place, ladies and gentlemen, let me say to you that I am somewhat astonished at this late date for anybody to argue that there is a right in New Jersey at the present time to manufacture or make 200 gallons of wine, or any other quantity. There is no right and no law and no privilege for so doing. The manufacture of wine in New Jersey in any quantity is absolutely prohibited  
 30 by this law; and I want to tell you that, and I want to tell everybody else who is listening to it, that that is the law in New Jersey at the present time and there isn't any permit from any source whatever which can make the manufacture of wine or any other liquor in New Jersey at the present time or in the month of December, 1924, legal. It was absolutely prohibited by law on that date, and it is still so. That is the law in New Jersey and there isn't any such thing as a permit which makes it legal so to do; and I  
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*Charge to Jury.*

charge you that as a matter of law, which is my solemn obligation to do and which I took an oath to do when I became judge of this court, to tell you the law as I find it and then to have you, under my instruction as to what the law is, weigh the evidence in every case which may come before you and reach your verdict. 10

Another matter of law which I must charge you is this: That notwithstanding the finding of the indictment by the Grand Jury, this defendant, like all defendants, is presumed to be innocent, and this presumption of innocence, not that the man is innocent, but the presumption of innocence, notwithstanding the indictment, remains and continues until the State satisfies you from the evidence beyond a reasonable doubt of his guilt. I am compelled to charge you further, that the burden of proof is upon the State  
 20 and remains with the State, and that burden the State must maintain, and that burden is to satisfy you by the evidence of the guilt of the defendant beyond a reasonable doubt before you can convict. Now, these are three propositions of law which I charge you; and you now come to the consideration of the evidence in this case under the instruction I have given you as to the law which must govern you in considering the  
 30 evidence.

Now, the point at issue under this indictment is, did the defendant possess intoxicating liquor? The State has introduced evidence tending to show that the liquids offered in evidence were found in the house of the defendant at Dover, I believe, in this county; and that the liquors offered in evidence were taken from the home of this defendant on December 29th, 1924, or whatever date the testimony shows. As a matter of  
 40

*Charge to Jury.*

defense, as I understand it, but you are not  
 bound by my understanding, the defendant would  
 have you believe that he would have the right  
 and that he had the right on the 29th day of De-  
 cember, 1924, to manufacture and keep in his  
 possession 200 gallons of wine, or a quantity  
 10 not exceeding 200 gallons of wine. Now, you  
 see, ladies and gentlemen, as I have told you,  
 the law is quite to the contrary so far as the  
 wine is concerned. That is not a defense. As I  
 understand the testimony of the defendant, it  
 was an admission of manufacturing certain quan-  
 tities of wine in the month of December or No-  
 vember, 1924, and the denial that he had any  
 other or a greater quantity of this manufactured  
 wine than what he testified to. As I understand  
 20 his testimony, he admitted the possession of the  
 two cases of Vermouth, offered in evidence. I  
 may be mistaken about the testimony and you  
 are not to be in any wise bound by what I tell  
 you I understand the testimony to show, because  
 you are the sole and supreme judges of what  
 the testimony is. I am only giving you in this  
 brief narrative form what I recall about the  
 testimony and what you will decide from all of  
 the evidence in the case is this question: Did  
 30 or did not the defendant possess the intoxicating  
 liquor in question?

I am compelled to tell you, ladies and gentle-  
 men, one more thing; that so far as this case is  
 concerned, notwithstanding any label or any  
 other mark or question about the liquor offered  
 in evidence and which it is said was taken from  
 the defendant's house, it is presumed to be of a  
 greater alcoholic strength than one-half of one per  
 cent.; that is what the law says. Now, that pre-  
 40 sumption is before you and you cannot get away

*Charge to Jury.*

from that unless you find from evidence intro-  
 duced before you that the liquor was less than  
 one-half of one per cent. by volume. Now, I don't  
 recall any evidence in the case showing or tend-  
 ing to show that this liquor or any of it had less  
 than that amount of alcohol in it. If there is,  
 you will give it such consideration as to you may  
 deem proper, and of course your verdict will be  
 10 based upon all of the evidence in the case. Now,  
 if this evidence does satisfy you beyond a rea-  
 sonable doubt that this liquor or some of it or  
 all of it was found in the house and in the pos-  
 session of the defendant, then your verdict will  
 be guilty, and if you are not so satisfied, then  
 your verdict will be not guilty; and by reason-  
 able doubt, ladies and gentlemen, is meant not a  
 mere possible doubt, because everything relating  
 to human affairs and depending on moral evi-  
 20 dence is open to some possible or imaginary  
 doubt. It is that state of the case which after  
 the entire comparison and consideration of all  
 the evidence leaves the minds of jurors in that  
 condition that they cannot say they feel an  
 abiding conviction to a moral certainty of the  
 truth of the charge. The burden of proof is  
 on the prosecution; if upon such proof there be  
 reasonable doubt remaining, the accused is en-  
 30 titled to the benefit of it by an acquittal. The  
 evidence must establish the truth of the fact  
 to a reasonable and moral certainty, a certainty  
 that convinces and directs the understanding and  
 satisfies the reason and judgment of those who  
 are bound to act conscientiously upon it. This  
 we take to be proof beyond a reasonable doubt,  
 because if the law should go further than this  
 and require absolute certainty it would exclude  
 circumstantial evidence altogether. 40

*Charge to Jury.*

I have been requested to charge you, ladies and gentlemen, on behalf of the defendant, and as to those requests: No. 1 is denied other or further than I have already charged. No. 2 is denied other or further than I have already charged. No. 3 is denied other or further than I have already charged. No. 4 is denied other or further than I have already charged. No. 5 is denied other or further than I have already charged. Swear an officer.

By a Juror: Is it up to the defense or the prosecution to prove the alcoholic contents?

The Court: The prosecutor does not have to prove the alcoholic contents. The law, as I have read it to you, and I will read it again: In any proceeding under this act or at the trial of any indictment or any violation of this act, the liquor or liquors mentioned in paragraph (a) of Section 2 shall be presumed to be for beverage purposes and to contain more than one-half of one per cent. of alcohol by volume. That is what I tried to tell you. The presumption is that it is illegal and the State rests on that. If the defendant says it is not, then the defendant must show you. Now, it is for you to say whether the defendant did or did not show you the alcoholic contents; and I so charge you, ladies and gentlemen, that if that is a defense, the burden of proving the alcoholic contents, that being a defense, is put on the defendant. Is there any further question? Swear an officer.

(Thereupon the jury retired.)

*Exceptions—Requests to Charge.*

## EXCEPTIONS.

Mr. Belfatto: I take a general exception to the entire charge, if your Honor please. I respectfully take an exception to your Honor's charge, especially where your Honor reads Section 15 of the State Prohibition Act in parts and not in total.

The Court: I will recall them and read the entire section if you wish. The exceptions will be allowed. It was read this morning by you and me both; and your general exception.

Mr. Belfatto: I also take exception to the Court's refusal to charge my requests.

The Court: The exceptions will be allowed.

(SEAL) C. WILSON,  
Judge. 20

## REQUESTS TO CHARGE.

The Court is respectfully requested to charge the jury as follows:

1. Under the laws of this State a private dwelling cannot be searched unless it is used as a store, shop, saloon, restaurant, hotel or boarding house.

2. The evidence in this case shows that this defendant on December 23, 1924, filed with the Federal authorities at Newark, N. J., a notice of intention to manufacture in his private dwelling and for personal use two hundred gallons of wine.

3. That on December 29, 1924, this defendant kept in the cellar of his private dwelling less than

*Certificate of Stenographer.*

two hundred gallons of wine which he had the right to keep and that on said day the wine was taken away by a deputy sheriff of this county.

4. Under the law a warrant to search the defendant dwelling could not be issued unless there was probable cause supported by an affidavit setting forth the facts showing that this  
10 defendant had violated the law.

5. If the evidence satisfies you that the defendant had not sold any of said wine before it was taken away you should find him not guilty.

(Signed) G. M. BELFATTO,  
Attorney for Defendant.

20 THE STATE

vs.

FRANK MATTEO,  
Defendant.

I, GEORGE B. WHEATON, do hereby certify that the foregoing typewritten pages is a true and correct transcript of the testimony given at the  
30 trial of the above-named cause tried before the Honorable C. Franklin Wilson, Judge of the Morris County Court of Quarter Sessions, on the 29th day of December, 1925.

(Signed) GEORGE B. WHEATON.

*Certificate of Trial Judge.*

CERTIFICATE OF TRIAL JUDGE.

STATE OF NEW JERSEY,  
COUNTY OF MORRIS.

I, C. FRANKLIN WILSON, Presiding Judge of Morris County Court of Quarter Sessions and the Judge who presided over the aforesaid  
10 cause, certify that the foregoing printed book contains the entire record of the proceedings had upon the trial of the said cause and the same is returned by the plaintiff in error therein with the Writ of Errors bringing up the Bill of Exceptions signed and sealed in this cause.

Dated, ———.

(Signed) C. WILSON,  
Judge, 20  
Pres. Judge of Morris County  
Court of Quarter Sessions.

Notice of Argument.

NEW JERSEY SUPREME COURT.

	THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i>	} <i>On Error.</i> <i>Notice of</i> <i>Argument.</i>
	<i>vs.</i>	
10	FRANK MATTEO, <i>Plaintiff-in-Error.</i>	

To Albert H. Holland, Esq., Prosecutor of Morris County, N. J.

SIR:

PLEASE TAKE NOTICE that the defendant's appeal in the above-entitled action will be brought on for argument before the Supreme Court, of the State of New Jersey, at the March term of the said court, held at the State House in the City of Trenton, on the fourth day of May, 1926, at the hour of ten o'clock in the forenoon or as soon thereafter as counsel can be heard.

Dated, Newark, N. J., January 25, 1926.

Respectfully,

G. M. BELFATTO,  
Attorney for Plaintiff-in-Error.

Served February 3, 1926.

Reasons for Reversal.

NEW JERSEY SUPREME COURT.

	THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i>	} <i>Illegal</i> <i>possession of</i> <i>liquor.</i> <i>In Error.</i> <i>Reasons for</i> <i>Reversal.</i>
	<i>vs.</i>	
10	FRANK MATTEO, <i>Plaintiff-in-Error.</i>	

And now comes the said Frank Matteo, by G. M. Belfatto, his attorney, and says that in the record and proceedings aforesaid, and also in the giving of the judgment aforesaid, there is manifest error, and said defendant says that said judgment should be reversed and assigns the following reasons or causes.

1. Because said trial court refused to quash the indictment upon the motion of counsel for the plaintiff-in-error on the ground that it did not allege with precision the elements constituting the crime.

2. Because said trial court permitted Harry Flanger, a witness on behalf of the State, to be asked and answer the following questions:

“Was your attention directed to selling by Frank Matteo?”

“What did Delimpio say?”

“Were you given any information by Delimpio concerning Matteo?”

“I want to know what the subject was.”

3. Because the trial court permitted the following questions to be asked of and answered by said Harry Flanger:

“Was there any liquor?”

“Did you make an inventory?”

*Reasons for Reversal.*

4. Because the trial court admitted in evidence a paper alleged to be a search warrant without being identified as such.

5. Because the trial court permitted the State to show that the \$75 which Harry Flanger, Deputy Sheriff, demanded of Desanti, a witness  
10 for the defendant, as a consideration for not raiding the place was bribe or graft.

6. Because the trial court would not permit the following questions to be asked of and answered by said Harry Flanger on the cross examination:

“Did you see any liquor in possession of any person before you made the raid which had been sold by this defendant?”

7. Because the trial court refused to permit  
20 the proof of a notice of intention filed by the defendant with the Federal authorities at Newark to the effect that he would manufacture 200 gallons of wine for personal use.

8. Because the trial court refused to permit the following questions to be asked of and answered by the defendant:

“Did you get any permission to make the wine?”

30 “Before making the wine did you see any person with reference to your rights to make it?”

“I show you a notice of intention to manufacture 200 gallons of wine and ask you whether you filed this notice with the Federal authorities at Newark?”

9. Because the trial court refused to permit the defendant to show that no inventory was served upon him.

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*Reasons for Reversal.*

10. Because the trial court refused to allow the following question to be asked of and answered by the defendant's wife:

“Do you know whether your husband obtained a permit to make the wine?”

11. Because the Court said: “There was no duty on the part of the raiding officers to give  
10 the defendant an inventory.”

12. Because the trial court refused to direct a verdict of acquittal on motion for plaintiff-in-error on the ground that the State had failed to make a *prima facie* case and that there was nothing for the jury to decide, the wine having been kept in the defendant's private dwelling and that the alleged search warrant was issued without probable cause.

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13. Because the prosecutor in summing up said to the jury:

“There is no such thing as a Federal statute permitting the violation of the New Jersey law and that all cases similar to this have been affirmed by the Supreme Court and Court of Errors. The defendant had no right to keep liquor in his house.”

14. Because the trial court charged the jury  
30 as follows:

“I am somewhat astonished at this late date for anybody to argue that there is a right in New Jersey at the present time to manufacture or make two hundred gallons of wine or any other quantity. There is no right, no law and no privilege for so doing. There isn't any permit from any source whatever which can make the manufacture of wine or any other liquor in New Jersey at the present time legal. There isn't any such thing as a permit which makes it legal so to do. The point at issue under this in-  
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*Reasons for Reversal.*

dictment is "Did the defendant possess intoxicating liquor?"

15. Because in charging the jury the trial court read a part of Section 15 of the State Prohibition Act, but failed to read two provisos therein, viz:

10 "No search warrant shall issue to search any private dwelling occupied as such unless it is being used for or in connection with the unlawful sale of liquor or unless it is in part used for some business purpose, as a store, shop, saloon, restaurant, hotel or boarding house; and provided further, that no search warrant to search any private dwelling shall issue unless the person making the allegation shall upon oath aver that he has personal knowledge that such private dwelling is being used for or in connection with the unlawful sale of liquor."

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16. Because the trial court refused to charge the jury the following requests:

1. Under the laws of this State a private dwelling cannot be searched unless it is used as a store, shop, saloon, restaurant, hotel, or boarding house.

2. The evidence in this case shows that this defendant on December 3, 1924, filed with the Federal authorities at Newark, N. J., a notice of intention to manufacture in his private dwelling and for personal use 200 gallons of wine.

30

3. That on December 29, 1924, this defendant kept in the cellar of his private dwelling less than 200 gallons of wine, which he had the right to keep, and that on said day the wine was taken away by a deputy sheriff of this county.

4. Under the law a warrant to search the defendant dwelling could not be issued unless there

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*Reasons for Reversal.*

was probable cause supported by an affidavit setting forth the facts showing that this defendant had violated the law.

5. If the evidence satisfies you that the defendant had not sold any of said wine before it was taken away, you should find him not guilty.

17. Because the said judgment is contrary to law and the weight of evidence.

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G. M. BELFATTO,  
Attorney for Plaintiff-in-Error.

Served notice of argument, February 3, 1926.

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*Joinder in Error.*

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i>  <i>vs.</i> FRANK MATTEO, <i>Plaintiff-in-Error.</i>	}	<i>In Error.</i>  <i>Joinder-in-Error.</i>
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And thereupon, afterwards, the said State of New Jersey, by Albert H. Holland, Prosecutor of the Pleas of the County of Morris, comes into Court and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and prays that the Court may proceed to examine as well the record and proceedings aforesaid, as also the several causes before assigned for error, and the judgment aforesaid, in manner aforesaid given, may in all things be affirmed.

Dated, Feb. 3, 1926.

(Signed) ALBERT H. HOLLAND,  
Prosecutor of the Pleas of Morris County.

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*Opinion of Supreme Court.*

OPINION OF SUPREME COURT.

Filed May 20, 1926.

NEW JERSEY SUPREME COURT.

No. 7 May Term, 1926.

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THE STATE,  <i>vs.</i> FRANK MATTEO.	}
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Error to Morris Quarter Sessions.

Argued before Gummere, Chief Justice, and Justices Trenchard and Minturn.

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For plaintiff-in-error, G. M. Belfatto.

For the State, Albert H. Holland, Prosecutor of the Pleas.

Per Curiam.

The plaintiff was indicted for a violation of the Hobart Act. The trial on the indictment resulted in his conviction, and he now seeks to have that conviction reversed for alleged errors occurring during the trial.

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The first contention is that the conviction ought to be set aside because the indictment was defective in that it did not recite in full certain facts required by the provisions of the Hobart Act which were material to the charge made against the defendant. A reading of the indictment shows that it charged the offense alleged in the words of the statute, and this is ordinarily considered sufficient. But, even if it was otherwise, this Court would not be justified in reversing the judgment under review upon this ground. The case comes before us under the

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*Opinion of Supreme Court.*

136th section of the Criminal Procedure Act, and that section provides that, where a defendant has asked for and received the benefit of the statute, "No judgment given upon any indictment shall be reversed for any imperfection, omission, defect in or lack of form" of such pleading, "except such as shall or may have prejudiced the defendant in maintaining his defense upon the merits." It is perfectly clear that the defect in the indictment, if it exists, did not operate to the prejudice of the defendant in maintaining his defense on the merits.

The other grounds upon which we are asked to reverse are most of them directed to the rulings of the Court in the admission or exclusion of evidence and to alleged errors in the charge to the jury. We find no error in the rulings referred to by counsel in his argument or in the excerpts from the charge to which he calls our attention. But, even, if we had reached a contrary conclusion, we would not be justified in reversing this judgment, for the 136th section of the statute already referred to prohibits the reversal of judgment in a criminal case, "for any error except such as shall or may have prejudiced the defendant in maintaining his defense upon the merits," and the rulings and instructions complained of could not have produced such prejudice.

Lastly, it is contended that the Prosecutor of the Pleas in summing up made remarks to the jury which were injurious to the defendant. Naturally, most of them would have this effect. The only question in a given case is whether such summing up or such remarks were without any justification under the evidence, and there is no suggestion that this was the fact in the case now before us.

The judgment under review will be affirmed.

*Rule of Affirmance and Remittitur.*

**RULE OF AFFIRMANCE AND REMITTITUR.**

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, <i>Defendant-in-Error,</i>	}	<i>On Error.</i>	
<i>vs.</i>		<i>Rule of</i>	10
FRANK MATTEO, <i>Plaintiff-in-Error.</i>		<i>Affirmance</i> <i>and Remit-</i> <i>titur.</i>	

This cause having been submitted at the May Term, 1926, of this Court by Albert H. Holland, Esq., attorney for the defendant-in-error, and G. M. Belfatto, Esq., attorney for the plaintiff-in-error, and the Court having considered the same and finding no error in the record and proceedings in the Morris County Court of Quarter Sessions.

It is thereupon ordered and adjudged that the judgment of the said Morris County Court of Quarter Sessions removed by the Writ of Error in this cause, be affirmed with costs, and that the record be remitted to the said Morris County Court of Quarter Sessions to be proceeded with in accordance with this judgment and the practice of said Court.

Entered November 22, 1926.

On motion of

ALBERT H. HOLLAND,  
Attorney for Defendant-in-Error.

*Writ of Error.*

**WRIT OF ERROR TO SUPREME COURT.**

**COURT OF ERRORS AND APPEALS OF  
NEW JERSEY.**

10	THE STATE OF NEW JERSEY,  vs.  FRANK MATTEO,	}	<i>Illegal Possession of Liquor.</i>  <i>Writ of Error.</i>
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NEW JERSEY, ss.

The State of New Jersey to the  
Chief Justice and other Justices of  
(L. s.) our Supreme Court of Judicature.

GREETING:

20 For as much as in the record and  
proceedings and also in the giving of judgment  
in a certain indictment against Frank Matteo,  
late of the City of Dover, County of Morris and  
State aforesaid for illegal possession of intoxicat-  
ing liquor for beverage purpose, manifest error  
hath intervened to the great damage of the said  
Frank Matteo as it is said, we being willing  
that the error if any there be should in due  
manner be corrected and full and speedy justice  
30 done to said Frank Matteo in this behalf do  
command you that if judgment be thereupon  
given and affirmed then you distinctly and openly  
send under your seal, the record and proceed-  
ings aforesaid with all things touching the same  
to our Justices of our Court of Errors and Ap-  
peal in the last resort in all causes at Trenton  
on the 15th day of June, 1927, together with this  
writ and proceedings aforesaid being inspected,  
we may cause to be further done thereupon for  
40 correcting that error, what of right and accord-

*Writ of Error.*

ing to law and custom of the State of New Jersey  
ought to be done.

Witness, our Chancellor and President Judge  
of our said Court of Errors and Appeal at Tren-  
ton aforesaid the 26th day of May, 1927.

JOSEPH F. S. FITZPATRICK, Clerk.	10
G. M. BELFATTO, Attorney.	

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*Assignment of Errors.*

**ASSIGNMENT OF ERRORS.**

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	STATE OF NEW JERSEY, <i>Defendant-in-Error,</i>	}	<i>In Error.</i>
	<i>vs.</i>		<i>Assignment</i>
	FRANK MATTEO, <i>Plaintiff-in-Error.</i>		<i>of Errors.</i>

And now on this day the plaintiff-in-error assigns the following causes of error.

20 Because the Supreme Court gave judgment affirming the conviction of the plaintiff-in-error, and of the judgment thereon, when it should have reversed the judgment of the Quarter Sessions of the County of Morris, and set aside the conviction.

G. M. BELFATTO,  
Attorney for and of Counsel  
with Plaintiff-in-Error.

30 Service of the within assignment of errors is hereby acknowledged this 26th day of Aug., 1927.

ALBERT H. HOLLAND,  
Prosecutor of the Pleas.

**New Jersey Court of Errors and Appeals.**

THE STATE OF NEW JERSEY, Defendant-in-Error,	}	On Writ of Error.
VS.		Brief of Defendant-
FRANK MATTEO, Plaintiff-in-Error.		in-Error.

The following brief was submitted to the New Jersey Supreme Court at the May Term of Court, 1926, and is herewith submitted to the Court of Errors and Appeals.

## New Jersey Supreme Court.

THE STATE OF NEW JERSEY,  
Defendant-in-Error,

VS.

FRANK MATTEO,  
Plaintiff-in-Error.

On Writ of Error.  
Brief of Defendant-  
in-Error.

ALBERT H. HOLLAND,  
Prosecutor of the Pleas,  
Attorney for Defendant-in-Error.

### Facts.

The Plaintiff-in-Error, Frank Matteo, was indicted at the May, 1925, Term of the Grand Jury of Morris County on an indictment charging him with the illegal possession of intoxicating liquor containing one-half of one per centum or more of alcohol by volume used or to be used for beverage purposes, in the Town of Dover, County of Morris, on the 29th day of December, 1924.

The facts are that on December 29th, 1924, certain officers engaged in the business of investigating the violations of the Prohibition Enforcement Act in Morris County, after obtaining a search warrant for search of the premises of the Plaintiff-in-Error, made a raid upon the said premises and there seized two cases of Vermouth and a quantity of wine in barrels.

At the trial in the quarter sessions the defendant was found guilty and sentenced to pay a fine of Five Hundred (\$500.) Dollars and costs.

## ARGUMENT.

### POINT I.

#### **The indictment was not illegal or defective.**

The indictment charges that:—Frank Matteo, late of the Town of Dover, in the said County of Morris, on the twenty-ninth day of December, in the year of our Lord One Thousand Nine Hundred and Twenty-four and from thence hitherto, with force and arms, at the Town aforesaid, in the County aforesaid, and within the jurisdiction of this Court, did possess intoxicating liquor containing one-half of one per centum or more of alcohol by volume, used or to be used for beverage purposes, said act of possessing intoxicating liquor containing one-half of one per centum or more of alcohol by volume, used or to be used for beverage purposes being then and there prohibited and unlawful, contrary to the form of the Statute in such case made and provided, and against the peace of this State, and government and dignity of the same.

An Indictment for a statutory offense is sufficient where the offense is charged in language substantially identical with that of the statute or stronger in meaning.

*State vs. Caporale*, 85 N. J. L. 495.

In charging a statutory offense it is sufficient to lay the charge in the words of the act, without a statement of facts bringing the accused within its operation.

*State vs. Brand*, 77 N. J. L. 486, which is also cited favorably in the case of the *State vs. Mandeville*, 89 N. J. L. 228.

An indictment for a statutory crime is sufficient if the offense be charged in the language of the statute.

*State vs. Morris*, 98 N. J. L. 621.

In the *Soloman* case, 97 N. J. L. 252, cited by the plaintiff-in-error the reason for reversal in that case was that one of the elements of the offense (that the liquor was to be used for a beverage) was not included in the indictment.

Section 18 of the Hobart Act applies only to the search warrant and not to the indictment.

While it may be that in some instances the Hobart Act may conflict with the National Prohibition Act, the State contends that this makes no difference. It makes no difference inasmuch as the provisions of the National Prohibition Act in no way limit the Hobart Act.

### POINT II.

Plaintiff-in-Error complains that various questions were permitted by the Trial Court. (1) "Was your attention directed to the selling by Frank Matteo?" This question was objected to and was not answered, so could not be prejudicial to Plaintiff-in-Error. (2) "What did Delimpio say?" Printed Case, page 14, line 38. This question was objected to and the witness was told by the court that he was not to tell the conversation. Printed Case, page 15, lines 1 and 2. (3) "Were you given any information by Delimpio concerning Matteo?" This is not hearsay because the answer does not state the conversation with Delimpio. Even, taking for granted, for the sake of argument that this was hearsay, the answer in no way prejudiced the defendant. (4) "Was there any liquor found?" Printed Case, page 27, line 28.

I do not find that this question was objected to. (5) "Did you make an Inventory?" Printed Case, page 27, line 29. There was no objection made to this question until after the answer was made.

Counsel cannot take the chance of testimony making in his favor and if it happens to be adverse, then interpose an objection.

*State vs. Fiore*, 93 N. J. L. 362.

Where accused did not object to questions calling for improper evidence, but waited until they were answered, the refusal of his motion to strike out was not error.

*State vs. Pisanello*, 88 N. J. L. 262.

*State vs. Murphy*, 87 N. J. L. 515.

(6) "Is this the search warrant that you had?" Printed Case, page 34, line 39. There was no objection to this question in the trial.

### POINT III.

Plaintiff-in-Error complains of the Court's refusal to admit the following question: "Did you see any liquor in possession of any person before you made the raid?" Printed Case, page 23, lines 35 and 36.

This certainly is immaterial and it would not make any difference whether witness had or not. The question at issue in this case was whether or not the liquor was in defendant's possession on December 29th, 1924, illegally. Defendant-in-Error can conceive no theory of law by which this could be material.

Plaintiff-in-Error also complains of the Court's refusal to admit in evidence, a certain alleged notice of intention said to have been given by defendant to the Federal authorities, that he wanted

to manufacture about two hundred gallons of grape juice for home consumption. Printed Case, page 43, lines 39 and 40; page 44, lines 1 and 2.

This certainly could not be admissible in this case. This indictment is being tried, of course, under the Hobart Act and not under the National Prohibition Act and it is therefore irrelevant and immaterial.

### POINT IV.

A verdict of acquittal could not have been directed in this case on the grounds mentioned by Plaintiff-in-Error, namely, (1) the indictment was defective, (2) No proof of probable cause justifying the seizure, (3) No proof of unlawful possession, (4) No proof of any violation of the act because where there was any testimony supporting the charge made in the indictment, the question of the defendant's guilt or innocence was for the determination of the jury and not for the Court, and it was proper to deny a motion to direct a verdict for the defendant.

*State vs. Morehouse*, 97 N. J. L. 285.

*State vs. King*, 4 N. J. Misc. 218.

### POINT V.

Plaintiff-in-Error complains that certain remarks in the summation of the Prosecutor, namely: "That there is no Federal Statute permitting the violation of the New Jersey Law," were prejudicial to the rights of the defendant. These remarks being true in law and in fact could not be in any way prejudicial.

**POINT VI.**

Plaintiff-in-Error complains that a certain request to charge, namely, the requirements of the two provisos of section 15 of the Hobart Act were denied by the Court. These provisos go only to the obtaining of the search warrant and not to the commission of the crime.

The portion of the act charged by the Trial Judge covered the commission of the crime sufficiently to apprise the jury of the crime charged in the indictment.

A Trial Judge is not required to charge requests of counsel in preference to language of his own correctly conveying the same points.

*State vs. Rombolo*, 91 N. J. L. 560.

The State contends that there is no reversible error and that the conviction should be affirmed.

Respectfully submitted,

ALBERT H. HOLLAND,  
Prosecutor of the Pleas,  
County of Morris.

**The following is a copy of the Supreme Court opinion rendered by the Supreme Court during the May Term, 1926.**

Filed May 20, 1926.

NEW JERSEY SUPREME COURT.

No. 7 May Term, 1926.

THE STATE,

*vs.*

FRANK MATTEO.

Error to Morris Quarter Sessions.

Argued before Gummere, Chief Justice, and Justices Trenchard and Minturn.

For plaintiff-in-error, G. M. Belfatto.

For the State, Albert H. Holland, Prosecutor of the Pleas.

Per Curiam.

The plaintiff was indicted for a violation of the Hobart Act. The trial on the indictment resulted in his conviction, and he now seeks to have that conviction reversed for alleged errors occurring during the trial.

The first contention is that the conviction ought to be set aside because the indictment was defective in that it did not recite in full certain facts required by the provisions of the Hobart Act which were material to the charge made against the defendant. A reading of the indictment shows that it charged the offense alleged in the words of the

statute, and this is ordinarily considered sufficient. But, even if it was otherwise, this Court would not be justified in reversing the judgment under review upon this ground. The case comes before us under the 136th section of the Criminal Procedure Act, and that section provides that, where a defendant has asked for and received the benefit of the statute, "No judgment given upon any indictment shall be reversed for any imperfection, omission, defect in or lack of form" of such pleading, "except such as shall or may have prejudiced the defendant in maintaining his defense upon the merits." It is perfectly clear that the defect in the indictment, if it exists, did not operate to the prejudice of the defendant in maintaining his defense on the merits.

The other grounds upon which we are asked to reverse are most of them directed to the rulings of the Court in the admission or exclusion of evidence and to alleged errors in the charge to the jury. We find no error in the rulings referred to by counsel in his argument or in the excerpts from the charge to which he calls our attention. But even if we had reached a contrary conclusion, we would not be justified in reversing this judgment, for the 136th section of the statute already referred to prohibits the reversal of judgment in a criminal case, "for any error except such as shall or may have prejudiced the defendant in maintaining his defense upon the merits," and the rulings and instructions complained of could not have produced such prejudice.

Lastly, it is contended that the Prosecutor of the Pleas in summing up made remarks to the jury which were injurious to the defendant. Naturally, most of them would have this effect. The only question in a given case is whether such summing up or such remarks were without any justification under the evidence, and there is no suggestion that this was the fact in the case now before us.

The judgment under review will be affirmed.

**It is therefore respectfully contended in view of the foregoing, that the conviction should be affirmed, and the writ dismissed.**

Respectfully submitted,

ALBERT H. HOLLAND,  
Prosecutor of the Pleas,  
for the County of Morris.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

**Court of Errors and Appeals  
OF NEW JERSEY**

THE STATE OF NEW JERSEY,

vs.

FRANK MATTEO.

*Illegal  
Possession  
of Liquor.*

**DEFENDANT'S BRIEF.**

On December 3, 1924, the defendant living at Dover, N. J., notified the Collector of Internal Revenue that he intended to produce about 200 gallons of fruit juice for home consumption. He made and kept in the cellar of his dwelling about 87 gallons of grape juice. On the 29th of said month a deputy sheriff of the County of Morris with force entered the defendant's house and carried them away.

In the May term 1925, the defendant was indicted for illegal possession of liquor and on December 29th, of said year, was tried and convicted in the Court of Oyer and Terminer of said county and sentenced to pay \$500 and costs.

Now he appeals from said conviction and assigns the following reasons for reversal.

**LAW.**

**1. The indictment defective and illegal.**

The indictment reads:

Frank Matteo late of the Town of Dover in said county of Morris on the 29th day of December, in the year of Our Lord One Thousand Nine Hundred and Twenty Five and from thence hitherto with force and arms at the Town afore-

said in the county aforesaid and within the jurisdiction of this court, did possess intoxicating liquor containing one half of one per centum or more of alcohol by volume used or to be used for beverage purposes being then and there prohibited and unlawful contrary to the form of the statute in such case made and provided and against the peace of this state of government and dignity of the same.

Section 15 Laws 1922 p. 615 known as the Prohibition Enforcement Act makes it unlawful to keep, occupy, or maintain, a room, house, building, vehicle, etc; where liquor is manufactured, sold, kept, transported etc; but it provides that no warrant shall issue to search any private dwelling occupied as such, unless it is being used for or in connection with the unlawful sale of liquor or unless it is in part used for some business purpose as a store, shop, saloon, restaurant, hotel, or boarding house.

The indictment does not state which section of the act was violated; and how it was violated nor the place where the liquor was kept.

In the case *State v. Soloman*, 97 L. 252, it was held that an indictment should set forth such facts and circumstances which are necessary ingredients for the offense.

There is no evidence in the case that the indictment was found as the result of an affidavit duly filed showing probable cause and a search warrant issued as required by section 18, Laws 1922, p. 620 (96 L. 382).

Section 15 of said act is an exact copy of section 25 of the Volstead Act, which also provides that: "No search warrant shall issue to search any private dwelling occupied as such unless it is

being used for or in connection with the unlawful sale of liquor or unless it is in part used for some business purposes as a store, shop, etc." (Blakemore on Prohibition 386.)

Section 29 of the Volstead Act in addition to permitting possession of wine for domestic consumption, it also provides that the penalties against the manufacturing of liquor without a permit do not apply in cases of manufacturing non-intoxicating cider, or fruit juice for home consumption (Blakemore on Prohibition, p. 179).

Section 128 of said act also provides that home brewing so-called is entirely beyond the interference of the prohibition law (Blakemore on Prohibition, p. 466).

The State contends that under section 2 of the Prohibition Enforcement Act, wine is presumed to contain more than half of one per cent. of alcohol; but such a presumption should not apply to cases where grape juice is manufactured and kept in a private dwelling for home consumption called wine during or after fermentation. To hold otherwise it would be in conflict with the provision of said Sect. 29 of the Volstead Act.

#### The Court admitted illegal evidence.

The court permitted the State to ask the deputy sheriff who made the raid the following questions:

"Was your attention directed to the selling by Frank Matteo?" (the defendant.)

"What did Delimpio say?"

"Were you given any information by Delimpio concerning Matteo?" (p. 14, ll. 30-40.)

"Was there any liquor found?"

"Did you make an inventory?" (p. 15, l. 20.) p. 16, ll. 30-40.)

"Is this the search warrant that you had?" (p. 34, ll. 30-40.)

The first three questions were hearsay, the fourth, fifth and sixth leading and irrelevant, there being no proof that an affidavit showing probable cause had been made and filed and a search warrant issued as required by Sect. 18, Laws 1922, p. 615.

A question tending to prove that the deputy sheriff made an inventory of the liquor found was admitted, although there was no proof that a copy of said inventory was served upon the defendant as required by Sect. 24 of the State Act (p. 27, ll. 1-30).

On behalf of the defendant it was testified that the deputy sheriff demanded \$75 of the defendant, in consideration of not raiding the place. The prosecutor was permitted by the Court to ask questions tending to show that said money if paid would be graft.

**The Court excluded legal evidence.**

Questions tending to show that the defendant sold liquor were admitted, viz: "Was your attention directed to selling by F. Matteo?" (the defendant?) (p. 14, ll. 20-40). The following question tending to disprove sale was denied, viz: "Did you see any liquor in possession of any person before you made the raid?"

The Court also refused to admit in evidence the notice of intention given by the defendant to the Federal Authorities to the effect that he wanted to manufacture about 200 gallons of grape juice for home consumption (p. 42, ll. 10-20).

**A verdict of acquittal should have been directed.**

At the close of the whole case the defendant's attorney moved for a direction of verdict of acquittal on the following grounds.

1. The indictment was defective.
2. No proof of probable cause justifying the seizure.
3. No proof of unlawful possession.
4. No proof of any violation of the act.

**Remarks of the prosecutor injurious to the defense.**

In summing up to the jury the prosecutor said, "There is no Federal Statute permitting the violation of the New Jersey Law. All cases similar to this have been affirmed by the Supreme Court or Court of Errors."

Such remarks influenced the jury's mind against the defendant (p. 70, l. 10).

**Charge by Court contrary to law and evidence.**

The trial judge read to the jury only parts of several sections of the State Prohibition Enforcement Act. He failed to state, or read to them the two provisos of Sect. 15 of said Act which were most important to the defense.

The trial judge said to the jury, "I am somewhat astonished at this late date for anybody to argue that there is a right in New Jersey to manufacture 200 gallons of wine or any other quantity. There is no right and no law and no privilege for so doing (p. 72, ll. 20-30). There is not any permit from any source that can make manufacture of wine legal. If this liquor or some of it was found in the house and in the posses-

sion of the defendant then your verdict will be guilty (p. 76, ll. 10-20).

A request to charge containing the requirements of the two provisos of Sect. 15 of the State Act was denied.

By such a charge and the refusal by the trial judge to charge as requested the jury had no alternative but to find the defendant guilty.

Respectfully submitted,

G. M. BELFATTO,  
Attorney for Appellant.