

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, 2, N. J.

BULLETIN 613

APRIL 19, 1944

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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, 2, N. J.

BULLETIN 613

APRIL 19, 1944

1. DISCIPLINARY PROCEEDINGS - AIDING AND ABETTING THE HOLDER OF A SOLICITOR'S PERMIT IN THE VIOLATION OF R. S. 33:1-43 - VIOLATION OF R. S. 33:1-52 - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary)
Proceedings against)

PENGUIN CLUB INN, INC.
556 Allwood Road
Clifton, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-123, issued by the)
Municipal Council of the City of)
Clifton.)

Chazin & Chazin, Esqs., Attorneys for Defendant-Licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The following charge was served on the defendant:

"On November 13, 1943, and on divers dates prior thereto, you knowingly aided and abetted Kenneth C. Sackmann, holder of a solicitor's permit and salesman for a New Jersey brewery licensee, to commit a violation of R. S. 33:1-43, which prohibits a person from being simultaneously interested in both the retailing and wholesaling or manufacturing of alcoholic beverages, in that you employed the said Kenneth C. Sackmann and permitted him to work as a bartender in your licensed premises while you, through your officers, were aware of the fact that the said Kenneth C. Sackmann was a solicitor and salesman of a brewery as aforesaid; your aiding and abetting being in violation of R. S. 33:1-52."

Defendant entered a plea of not guilty. It admits that the facts as shown by the Department's investigation are true but contends that the acts complained of, as a matter of law, are not prohibited by the provisions of R. S. 33:1-43 - that R. S. 33:1-43 does not prohibit a brewery salesman's working as a bartender on retail premises; and thus, that the defendant's employing Sackmann as a bartender does not constitute aiding and abetting in violation of R. S. 33:1-52.

I find that Kenneth C. Sackmann was at the times mentioned in the charges employed as a salesman by a New Jersey licensed brewery and held a solicitor's permit, issued by the New Jersey Department of Alcoholic Beverage Control, authorizing him to solicit orders in this State for the sales of the alcoholic beverages manufactured by said brewery. At the times mentioned in the charges, Kenneth C. Sackmann was employed and worked as a bartender on the defendant's licensed premises, and sold and served alcoholic beverages for the defendant by virtue of such employment. Beer manufactured by the brewery employing Sackmann was sold by the brewery, through Sackmann, to the defendant. All these facts were known to the defendant.

The pertinent portion of R. S. 33:1-43 reads:

"It shall be unlawful for any owner, part owner, stockholder or officer or director of any corporation, or any other person whatsoever interested in any way whatsoever in any brewery, winery, distillery or rectifying and blending plant, or any wholesaler of alcoholic beverages, to conduct, own either in whole or in part, or be directly or indirectly interested in the retailing of any alcoholic beverages....."

In these proceedings the defendant relied upon the following specific points:

1. The Alcoholic Beverage Law, being penal in nature, must be strictly and stringently construed.

2. The language of the statute, "or any other person whatsoever interested in any way whatsoever in any brewery" must, under the rule of eiusdem generis, be limited to persons of the same kind or class as those particularly enumerated in the statutory language preceding the general language, to wit, "any owner, part owner, stockholder or officer or director of any corporation." A salesman is not such a person.

3. The language of the statute "interested.....in any brewery" means an interest by way of ownership. It does not cover the case of a mere salesman for a brewery who has no proprietary interest therein.

I shall consider these points, briefly, in their regular order.

1. The Alcoholic Beverage Law is certainly not penal in all of its provisions. At the same time, the section here in question (R. S. 33:1-43), taken together with R. S. 33:1-51 and 33:1-31, appears penal in character in the common sense that penalties of fine, imprisonment, and suspension or revocation of license may be imposed for violation thereof. Even penal statutes, however, are to be construed (assuming a construction is necessary) in light of the evil to be remedied and with the cardinal object of ascertaining and giving effect to the intention of the Legislature. (See State v. Hand, 71 N. J. L. 137; Stricker v. Pennsylvania R. R. Co., 60 N.J.L. 230; In re Merrill, 88 N. J. Eq. 261.)

Furthermore, and most significantly, the Legislature included the following provision in Section 74 of the Alcoholic Beverage Control Act:

"This chapter is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed." (R. S. 33:1-73).

2. The rule of eiusdem generis is a rule of construction only "to be used as an aid in the ascertainment of the intention of the lawmakers, and not for the purpose of subverting such intention when ascertained." Mid-Northern Oil Co. v. Walker, 268 U. S. 45, 69 L. Ed. 841; Texas v. United States, 6 F. Supp. 63, Dist. Ct. W. Mo., affd, 292 U. S. 522, 78 L. Ed. 1402.

3. The defendant's contention that the statutory language "interested....in any brewery" relates only to proprietary interest fails to take into consideration the fact that an "officer" of a corporation, other than the president thereof, does not necessarily have a proprietary interest in the corporation. (See General Corporation Act, R. S. 14:7-6 and 14:7-2.)

The New Jersey courts have not construed the language of R. S. 33:1-43. As far back as 1937, however, the late Commissioner Burnett ruled that a brewer's solicitor may not act as a retailer's bartender:

" * * *

"The Control Act expressly prohibits it. Section 40 (R. S. 33:1-43) declares that it shall be unlawful for any person interested in any way whatsoever as a manufacturer or wholesaler of alcoholic beverages to be directly or indirectly interested in the retailing of alcoholic beverages. The objective was to divorce completely the manufacturing and wholesaling of alcoholic beverages from the retail trade and thus prevent the recurrence of 'tied houses.'" Re City Brewing Corporation, Bulletin 159, Item 5. See also Re Talmadge, Bulletin 176, Item 8 (1937); Re Cohen, Bulletin 390, Item 8 (1940); Bulletin 474, Item 11 (1941); Re Biard, Bulletin 516, Item 7 (1942); Re Del Mastro, Bulletin 572, Item 1 (1943); and Re Siciliano, Bulletin 580, Item 5 (1943).

I am convinced that the City Brewing Corporation ruling, consistently followed in the above cited bulletin items, is sound.

Even if the quoted language of Section 40 should be considered ambiguous or uncertain and the Commissioner's ruling taken as a construction thereof, it is a well settled general rule that the consistent administrative construction of a statute is entitled to the highest respect and, though not controlling, if acted upon for a number of years, will not be disturbed by the courts except for strong and persuasive reasons. (See United States v. Missouri Pacific Railroad Company, 278 U. S. 269, 73 L. Ed. 322, with Annotation citing manifold cases, pp. 325 to 339; Sanford's Estate v. Commissioner of Internal Revenue, 308 U. S. 39, 84 L. Ed. 20, with supplementary Annotation, pp. 30 to 42.)

Furthermore, Section 40 of the Alcoholic Beverage Law (R. S. 33:1-43) has, since its original enactment, been amended six times. (P. L. 1934, c. 85; P. L. 1936, c. 196; P. L. 1937, c. 126; P. L. 1938, c. 147; P. L. 1939, c. 225; and P. L. 1940, c. 234.) In none of the amendments was there any change in the section's language prohibiting "any....person whatsoever interested in any way whatsoever in any brewery" from being "directly or indirectly interested in the retailing of any alcoholic beverages." The City Brewing Corporation ruling, supra, was made on January 14, 1937, and Chapter 126 of the Laws of 1937 was approved June 2, 1937. Thus, there is substantial indication, indeed, that the legislative intent was, and is, to prohibit brewery salesmen from retail bartending. The designated several amendments, in which the legislature did not disapprove or restrict the Commissioner's rulings, are persuasive evidence that those rulings were in firm keeping with the pertinent purpose and intent of the legislature. (See United States v. Dakota Montana Oil Co., 288 U. S. 459, 77 L. Ed. 893; Massachusetts Mutual Life Insurance Co. v. United States, 288 U. S. 269, 77 L. Ed. 739; United States v. Farrar, 281 U. S. 624, 74 L. Ed. 1078; Continental Casualty Co. v. Shankel, 88 F. 2d, 819 - CCA Okla. 1937.)

Justice Perskie's opinion in Cino v. Driscoll, 130 N. J. L. 535 (1943) contains direct language regarding the presumption that the legislature approves the established administrative construction of

a statute when it does not show its disagreement by changing the statutory provision concerned; and, also, regarding the weight given by the courts to administrative construction. The appropriate portion of that opinion reads:

"Moreover, the legislature, charged with the knowledge of the construction placed upon the Alcoholic Beverage Law, as evidenced by these rules, has done nothing to indicate its disapproval thereof. Cf. Young v. Civil Service Commissioner, 127 N. J. L. 329; 22 Atl. Rep. (2d) 523. The contemporaneous construction thus given to a law of the state for over a decade is necessarily respected by us. State v. Kelsey, 44 N. J. L. 1; Graves v. State, 45 Id. 203; affirmed, Id. 347; Central Railroad Co. v. Martin, 114 Id. 69, 80; 175 Atl. Rep. 637; Burlington County v. Martin, 128 N. J. L. 203; 28 Atl. Rep. (2d) 116; Martini v. Civil Service Commission, 129 N. J. L. 599, 603; 30 Atl. Rep. (2d) 569."

I believe that the language "any other person whatsoever interested in any way whatsoever in any brewery" was purposely used by the legislature to cover persons employed by, and receiving compensation from, a brewery; and, accordingly, that the quoted language is sufficient to, and does, include a brewery salesman.

The well-known essential purpose of R. S. 33:1-43 "was to prevent control of retail outlets by manufacturers and wholesalers, i.e., a recurrence of 'Tied houses' which were responsible for many of the social and economic abuses which brought about Prohibition." (Re Princeton Municipal Improvement, Inc., Bulletin 255, Item 1.) It should easily be realized that to permit a brewery salesman to work as bartender for a retail licensee would be to encourage an effective method of achieving a "tied house", and so to foster the very evil which R. S. 33:1-43 seeks to eliminate.

I find the defendant guilty as charged.

As to the penalty, the defendant's license was suspended for three days on February 15, 1943 (Re Penguin Club Inn, Inc., Bulletin 555, Item 1) for employing as bartender a non-citizen permittee. In view of this prior record, I shall suspend the license for ten days.

Accordingly, it is, on this 12th day of April, 1944,

ORDERED, that Plenary Retail Consumption License C-123, issued by the Municipal Council of the City of Clifton to Penguin Club Inn, Inc., for premises 556 Allwood Road, Clifton, be and the same is hereby suspended for ten (10) days, commencing at 3:00 A. M. April 17, 1944 and terminating at 3:00 A. M. April 27, 1944.

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - VIOLATION OF R. S. 33:1-43 - AN
EMPLOYEE OF A STATE LICENSEE MAY NOT WORK FOR A RETAIL LICENSEE -
SOLICITOR'S PERMIT SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary)
Proceedings against)

KENNETH C. SACKMANN)

Greenbrook Road)

North Caldwell, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Solicitor's Permit ()
No. 301, issued by the State ()
Commissioner of Alcoholic Beverage ()
Control. ()

Kenneth C. Sackmann, Pro Se.

Harry Castelbaum, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Permittee entered a plea of not guilty to the following
charge:

"On November 13, 1943, and on divers dates prior
thereto, while you were interested in the manufacturing
and the wholesaling of alcoholic beverages by reason of
your employment as a solicitor for a New Jersey brewery
licensee, you were at the same time also interested in
the retailing of alcoholic beverages at the retail
licensed premises of Penguin Club Inn, Inc. at 556 Allwood
Road, Clifton, N. J. by reason of your employment on said
retail licensed premises; such being in violation of
R. S. 33:1-43."

While the plea is not guilty, the defendant admits all of
the pertinent facts but alleges that said facts do not constitute a
violation of the Alcoholic Beverage Law.

I must find the defendant guilty, based upon the reasons and
conclusions set forth in the affiliate case, Re Penguin Club Inn,
Inc., Bulletin 613, Item 1, and shall, therefore, suspend the
defendant's solicitor's permit for a period of twenty days.

Accordingly, it is, on this 12th day of April, 1944,

ORDERED, that Solicitor's Permit No. 301, issued by the
State Commissioner of Alcoholic Beverage Control to Kenneth C.
Sackmann, be and the same is hereby suspended for a period of
twenty (20) days, effective April 18, 1944, at 9:00 A. M. and
terminating May 8, 1944, at 9:00 A. M.

ALFRED E. DRISCOLL
Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE AND RULE 1 OF STATE REGULATIONS NO. 38 - PREVIOUS RECORD - 35 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CESARE CAPRIOTTI)
T/a ARCH CAFE)
136 Arch Street)
Camden, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-115, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Camden.)

Cesare Capriotti, Pro Se.
Milton H. Cooper, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads non vult to the charges that he sold, served and delivered alcoholic beverages to customers on Sunday, in violation of a local ordinance prohibiting any such activity after 2:00 A.M. and also in violation of Rule 1 of State Regulations No. 38, which prohibits sale on Sunday of alcoholic beverages at retail in their original containers for off-premises consumption.

The file discloses that an investigator of the Department of Alcoholic Beverage Control, while in the vicinity of the licensed premises about 11:30 A. M. on Sunday, February 27, 1944, noticed a man leave the defendant's premises with a package under his arm. The investigator ascertained that the package contained two one-quart bottles of beer. The man admitted that the beer had been obtained at defendant's place of business, whereupon the investigator entered the licensed premises. He observed eight men seated at tables. Several of the men were drinking beer while the others had either empty or partly filled glasses on the table in front of them.

The two offenses herein constitute two separate and distinct violations and are punishable as such. Cf. Blockburger v. United States, 284 U. S. 299. The usual penalty, where there is no previous adjudicated record and where the facts are substantially similar to those in the present case, is a suspension of the license for a period of fifteen days for each violation. Re Healey, Bulletin 600, Item 4.

The defendant, however, has a previous record in that he pleaded guilty to a charge of mislabeling of a beer tap in violation of Rule 1 of State Regulations No. 22, as a result of which his license was suspended, effective April 20, 1942, for a period of two days. Re Capriotti, Bulletin 563, Item 9.

Under all of the circumstances, I must suspend the defendant's license for thirty-five days, less five days for the plea of non vult, or a net suspension of thirty days.

Accordingly, it is, on this 13th day of April, 1944,

ORDERED, that Plenary Retail Consumption License C-115, heretofore issued to Cesare Capriotti, t/a Arch Cafe, for premises 136 Arch Street, Camden, be and the same is hereby suspended for a period of thirty (30) days, commencing April 19, 1944, at 2:00 A. M., and terminating at 2:00 A. M. May 19, 1944.

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - FAILURE TO FILE NOTICE AS REQUIRED BY R. S. 33:1-34 - AIDING AND ABETTING NON-LICENSEES TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON CORRECTION OF ILLEGAL SITUATION AND EXPIRATION OF AT LEAST 20 DAYS.

In the Matter of Disciplinary
Proceedings against

CHRISTY DE ANGELO

604 Market Street

East Paterson, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-13, issued by the
Mayor and Council of the Borough
of East Paterson.

Herbert F. Myers, Jr., Esq., Attorney for Defendant-Licensee.
Gaylord R. Hawkins, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant pleads guilty to the following charges:

"1. In your application, filed with the Mayor and Council of the Borough of East Paterson and upon which you obtained your current plenary retail consumption license for premises at 604 Market Street, East Paterson, N. J., you falsely stated 'No' in answer to Question 29, which asks: 'Do you or any person mentioned in this application hold any official position pursuant to which you or they are entrusted with the enforcement of any laws concerning alcoholic beverages in any manner whatsoever?', whereas in truth and fact Leo Baur and Victor T. Buck, mentioned in your answer to Question 32 in said application as the holders of a chattel mortgage or conditional bill of sale on the furniture, fixtures, goods and equipment used in connection with the conduct of the alcoholic beverage business to be operated under the license applied for, both held official positions pursuant to which they were entrusted with the enforcement of laws concerning alcoholic beverages in that they were employed in the office of the Prosecutor of the Pleas of Bergen County as investigators or detectives; such false statement by you being in violation of R. S. 33:1-25.

"2. You failed to file with the Mayor and Council of the Borough of East Paterson, within ten days after the occurrence thereof, a written notice of change occurring in the facts set forth in answer to Question 30 of your aforesaid application, such change being that in August 1943 the said Leo Baur and Victor T. Buck each acquired a one-third interest in your said license and the business conducted thereunder; your failure to file the aforesaid notice of such change being in violation of R. S. 33:1-34.

"3. From August 1943 and until the present time, you knowingly aided and abetted the said Leo Baur and Victor T. Buck to exercise, contrary to R. S. 33:1-26, the rights and privileges of your plenary retail consumption license for the aforesaid premises, thereby yourself violating R. S. 33:1-52."

The file in this case discloses that, on February 2, 1944, investigators of the Department of Alcoholic Beverage Control obtained a written statement from the defendant, Christy De Angelo, and on the following day obtained written statements from Leo Baur and Victor T. Buck. From these statements it appears that, when De Angelo purchased the business in June 1943, he invested the sum of \$2500.00. It further appears that De Angelo then obtained from Baur and Buck, both of whom were employed as special investigators in the office of the Prosecutor of Bergen County, a loan of \$2500.00, which was secured by a chattel mortgage on the fixtures and all equipment in the licensed premises. In his application filed for the current license defendant disclosed the existence of the chattel mortgage but did not disclose the fact that Baur and Buck held official positions pursuant to which they were entrusted with the enforcement of the laws concerning alcoholic beverages.

The statements further disclose that, in August 1943, Baur and Buck loaned an additional sum of money to the defendant, at which time it was verbally agreed between the three interested parties that each would hold a one-third interest in the business. It thus appears that these three individuals are now equal partners in the licensed business although the license still remains in the name of Christy De Angelo. It is admitted that no written notice of the change which occurred in August 1943 was filed with the local issuing authority as required by the provisions of R. S. 33:1-34.

Sound public policy demands that those entrusted with the enforcement of the liquor laws shall have no personal or financial interest in the liquor trade. Thus, in Re Scott, Bulletin 109, Item 5, it was ruled that a special officer of the Police Department may not hold a liquor license. In Re Bruers, Bulletin 113, Item 9, it was ruled that a licensee may not also be a justice of the peace. In Re Branigan, Bulletin 129, Item 3, it was ruled that a police recorder may not hold a liquor license, and in Re DuPree, Bulletin 156, Item 11, it was ruled that a licensee may not be employed as a part-time marshal in an adjoining municipality.

It appears that, on or about February 29, 1944, both Baur and Buck resigned their positions as special investigators in the Prosecutor's office. Each of them may now be eligible to hold a liquor license but, in accordance with the precedents hereinabove set forth, they were ineligible for a long period of time prior to the date of their resignations to be engaged in the liquor business in the State of New Jersey.

As to penalty: Since it appears that at the present time the three partners are illegally conducting the business under the license issued to defendant alone, I have no alternative except to suspend the license for the balance of its term. In the event that the illegal situation is corrected, I will consider an application to lift the suspension herein imposed but, in view of all the circumstances of this case, the suspension will not be lifted in any event until the expiration of twenty days from the effective date hereof.

Accordingly, it is, on this 14th day of April, 1944,

ORDERED, that Plenary Retail Consumption License C-13, issued by the Mayor and Council of the Borough of East Paterson to Christy De Angelo for premises 604 Market Street, East Paterson, be and the same is hereby suspended for the balance of its term, effective at 3:00 A. M. April 21, 1944; and it is further

ORDERED, that application may be made to me to lift this suspension; provided, however, that in no event shall the suspension be lifted prior to the expiration of twenty (20) days from the effective date of the suspension.

ALFRED E. DRISCOLL
Commissioner.

5. APPELLATE DECISIONS - ZICHERMAN v. NEWARK.

BERTHA ZICHERMAN,

Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC
BEVERAGE CONTROL OF THE CITY
OF NEWARK,

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

Giuliano & Giuliano, Esqs., by James R. Giuliano, Esq.,
Attorneys for Appellant.
Philip J. Schotland, Esq., by George B. Astley, Esq.,
Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the revocation of her Plenary Retail Consumption License C-229 issued for premises 174 West Kinney Street, Newark. Respondent revoked the license after it had found appellant guilty on the following charges:

"1. On or about April 10, 1943 you allowed, permitted and suffered in and upon the licensed premises a disturbance, brawl and unnecessary noises and allowed, permitted and suffered the licensed place of business to be conducted in such manner as to become a nuisance, in violation of Rule 5 of State Regulations No. 20.

"2. On or about April 10, 1943 you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to a person or persons

actually or apparently intoxicated, and allowed, permitted and suffered the consumption of alcoholic beverages to such persons upon the licensed premises, in violation of Rule 1 of State Regulations No. 20.

* * *

"6. On or about July 13, 1943 you sold, served and delivered alcoholic beverages to Private First Class Edward Turner, a person under the age of 21 years, and allowed, permitted and suffered the consumption of such beverages by the said Private First Class Edward Turner upon your licensed premises, in violation of Rule 1 of State Regulations No. 20.

"7. On or about July 13, 1943 you sold, served and delivered alcoholic beverages to Private First Class Edward Turner, a minor, in violation of Revised Statute 33:1-77.

* * *

"9. On or about April 10, 1943 you hindered and caused the hindrance and delay, and failed to facilitate an investigation at your licensed premises in violation of R. S. 33:1-35."

Upon the filing of the appeal an ad interim stay of the penalty was granted by me.

The evidence clearly establishes that a serious disturbance occurred in appellant's premises on the evening of April 10, 1943. At that time two colored girls -- Doris Alston and Jessie Washington -- were seated at the bar with a white man -- Joe Jordan (also known as Joseph Giordano) -- who has since joined the Army. Doris asked Joe to buy her a drink and, when he refused, an argument started between the two girls. After they had called each other unprintable names, Doris threw an open bottle (or glass) of beer at Jessie and the latter struck Doris a single blow. Almost immediately thereafter the two girls were led from the premises by different doors. I am satisfied that Jessie had a knife in her hand when she struck Doris and that, as a result of the blow, Doris was cut. Doris was taken to the hospital by the Military Police, who appear to have been in or near the defendant's tavern when the fracas took place. Doris died six or seven weeks later. Jessie was subsequently arrested, indicted and pleaded non vult to manslaughter as a result of the injury she inflicted upon the deceased girl.

Despite the seriousness of the disturbance and the fatal result which followed, the licensee may be found guilty as to charge (1) only if the evidence establishes that she, or her agents, allowed, permitted or suffered the disturbance to take place in and upon the licensed premises. Rule 5, State Regulations No. 20.

The licensee was not on the premises at the time the disturbance occurred. Her brother and manager, Fred Jaysen, was one of the three bartenders who were tending bar at that time. He says that his back was turned to the three people at the bar when he heard some profane language; that he turned to the three patrons and said, "We don't allow that in here -- get out." He further states that, as soon as the beer was thrown, he jumped over the bar, helped separate the two contestants, saw that they left the premises by different doors, and thereafter called the police and told them there was some trouble outside. He testified that, from the time he heard the language until he ejected the girls, the whole affair lasted about three minutes;

that he did not see any blow struck and that he did not see any knife.

Eight patrons, including Jessie Washington and Joe Jordan, testified on behalf of respondent. Jessie Walker testified that she did not hear any argument, and that Jayson came from behind the bar when the commotion started and separated the girls. Chorine Cherry testified that Jayson jumped over the bar and separated the girls and that she did not know how long the girls were arguing before Jayson came over the bar. Ruby Smoaks testified that she did not hear anybody arguing and that she did not see Jayson jump over the bar. Clarina Brown testified that the girls had been arguing for two or three minutes before the fight and that she stopped the argument. She further testified that, as soon as Jayson heard the argument, he walked up in front of the bar and said, "You all cannot fight here", and that the whole episode took fifteen minutes from the time they started to argue. Charles Martini testified that, after the beer was thrown, Jayson and another bartender came over or under the bar, and shoved the girls out. He says that the argument, as well as the fight, lasted about three minutes. Arthur Keaton testified that the girls were arguing two or three minutes before the beer was thrown; that Jayson jumped over the bar after the beer was thrown and pushed the girls aside. Jessie Washington testified that Doris called her a name and threw beer in her face, and that they had not been arguing before that. Joe Jordan testified that the argument continued for five or six minutes, but on cross-examination his testimony as to the length of time the argument continued was considerably weakened. He says that, as soon as the fight started, Jayson came from behind the bar and that, when Jayson got to where the girls were, the fight was over. The members of the police force called by the respondent seem to be in agreement that, despite the fact that the neighborhood is a "tough" one, the licensee had, previous to the incident in question, complied with the Rules and Regulations.

The liability of licensees for disturbances which occur on licensed premises presents grave problems. Manifestly it would be unfair to hold a licensee liable where a disturbance occurs without warning and the licensee and his agents do everything that a reasonable man may be expected to do under the circumstances to promptly terminate the dispute. Respondent apparently argues that appellant should be found guilty because, as a Police Captain testified, her premises are "patronized by a low class of people." There is nothing, however, in the record on this appeal to show that these people were known criminals, or that the licensee had any knowledge of bad blood existing between the two girls. After reviewing all the evidence, I am satisfied that the disturbance occurred unexpectedly and that the bartender did everything that a reasonable man might be expected to do under the circumstances. Re Gerrity, Bulletin 412, Item 6; Re Burd, Bulletin 412, Item 7; Re Hi-Spot Corp., Bulletin 417, Item 11; Re The Promenade, Inc., Bulletin 446, Item 7; Woodland Rod and Gun Club v. Belleville, Bulletin 569, Item 3. Nor does the evidence in the case indicate that the licensee or her agents participated in any of the events leading up to the fatal blow. In view of the seriousness of the disturbance and the questionable character of the persons frequenting the premises, there is a serious question as to whether or not the license should be hereafter renewed, but that is not the issue in this case. Upon the evidence, I am forced, with some reluctance, to reverse the finding of guilt as to the first charge.

Jessie Washington testified that she was intoxicated when she was served beer in appellant's premises on April 10, 1943. Joe Jordan, with whom she had previously lived, also testified that Jessie Washington was drunk on that evening and that he "bought her a couple of shots of whiskey." On cross-examination Jessie Washington appeared to have a very clear recollection of all the events which occurred on the evening of April 10th from the time she entered appellant's premises until she reached her home later in the evening. Appellant argues that the Washington girl was sober and that she testified she was intoxicated in order to mitigate the degree of her guilt in the criminal proceedings. All other witnesses produced by appellant and respondent testified that Jessie Washington was sober, or at least that she exhibited no evidence of being intoxicated. The greater weight of the testimony indicates that the Washington girl was not actually or apparently intoxicated. I am forced to reverse the finding of guilt as to the second charge.

Edward Turner, who was then twenty years and nine months of age, testified that he was in appellant's premises on the evening of July 13, 1943. This is admitted by the witnesses produced by appellant. Turner states that his companion, Randolph Dansby, of full age, purchased a glass of beer for each of them, which they consumed. He says that he thinks Fred Jayson served them. Randolph Dansby testified that Turner drank three glasses of beer on the licensed premises on the evening in question. The failure of Turner and Dansby to identify the bartender in the Police Court on the following morning is not dispositive of the issue presented herein. After reviewing the testimony, I am satisfied that the evidence sustains the finding of guilt as to charges (6) and (7). The finding of guilt as to these charges is, therefore, affirmed.

Detective Kirwan of the Newark Police Department testified that, after interviewing the Alston girl at the hospital on the evening of April 10th, he went to appellant's premises and reached there about 10:00 P. M. He asked Fred Jayson if there had been any trouble in the tavern and Jayson answered "No." He thereupon took Jayson into the hallway and showed him a pool of blood. The officer testified that Jayson made no further statement. Detective Staub of the Newark Police force likewise asked Jayson and the licensee "if anything happened in her place on the night of the 10th." Both insisted that "nothing happened in there." I am satisfied from the evidence that there had been blood on the floor of the tavern, and that Jayson knowingly mopped it up before the police arrived. The failure of the licensee and her agents to cooperate with the police, while understandable, is none the less serious. It was their plain duty to have truthfully and completely answered the repeated inquiries of the police. This they failed to do. The local police are required to use all due diligence in the detection of violations of the Alcoholic Beverage Law and the regulations duly adopted pursuant thereto. See R. S. 33:1-71 and R. S. 33:1-39. R. S. 33:1-35 provides that a licensee shall not in any way hinder or delay, or cause the hindrance or delay of, an investigation, examination or inspection in any manner whatsoever. The acts of Jayson, for which appellant is responsible, constituted a violation of the provisions of R. S. 33:1-35. Hence, the finding of guilt as to charge (9) is also affirmed.

As to penalty: In September 1935 appellant was found guilty by the local issuing authority of possessing illicit liquor, and her license was suspended for a period of ten days. Her prior record should be taken into consideration in considering the proper penalty in this proceeding. However, in view of the reversal as to charges (1) and (2), I conclude that revocation is unnecessarily severe and should be modified to a suspension for the balance of the term.

Accordingly, it is, on this 14th day of April, 1944,

ORDERED, that the penalty of revocation of Plenary Retail Consumption License C-229, heretofore issued to Bertha Zicherman for premises 174 West Kinney Street, Newark, be and the same is hereby modified to a suspension of said license for the balance of the term of said license, which suspension shall become effective at 2:00 A. M. April 21, 1944; and it is further

ORDERED, that the order heretofore entered staying respondent's order of revocation shall continue in effect until 2:00 A. M. April 21, 1944, when the suspension imposed herein takes effect.

ALFRED E. DRISCOLL

Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - PREVIOUS RECORD - 20 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

JOHN MORGENROTH

333 Market Street

Paterson, N. J.,

Holder of Plenary Retail Consump-

tion License C-330, issued by the

Board of Alcoholic Beverage Control

of the City of Paterson.

CONCLUSIONS

AND ORDER

John Morgenroth, Pro Se.

Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded not guilty to the following charges:

"1. On or about March 15, 1944, and on divers days prior thereto, you sold alcoholic beverages at your licensed premises to Bertha ----, a minor, and also on or about March 12, 1944, and on divers days prior thereto, you sold alcoholic beverages at your licensed premises to Seaman Alfred ---- and Private Vincent ----, minors, in violation of R. S. 33:1-77.

"2. On the occasions aforesaid, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Bertha ----, Seaman Alfred ---- and Private Vincent ----, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon your licensed premises, in violation of Rule 1 of State Regulations No. 20."

The proof herein shows that Bertha ---- was born on February 12, 1926. At the hearing she testified that, on the evening of March 15, 1944, defendant served and permitted her to consume a glass of beer on his licensed premises. She further testified that, on the evening of March 12, 1944, defendant served a glass of beer to her and a glass of whiskey to Seaman Alfred ----, both of which drinks were consumed on the licensed premises.

The proof herein shows that Seaman Alfred ---- was born on October 8, 1925. At the hearing he testified that, on the evening of March 12, 1944, he was present on defendant's premises with Bertha ---- and Private Vincent ---- and that defendant-licensee served a glass of whiskey to him and a glass of beer to Bertha ----.

Private Vincent ---- was not available to testify at the hearing and, hence, there is no proof in this case that he was in fact a minor.

Defendant-licensee admits that Bertha and Alfred frequently visited his premises, but states that neither of them was ever served with any drinks of alcoholic beverages. His bartender who was working on the afternoon of March 12, 1944 and the afternoon of March 15, 1944, testified that he had no knowledge that any drinks of alcoholic beverages were sold to the girl or the sailor on either of said dates. A waitress employed by defendant testified that she did not see the defendant serve any alcoholic beverages to either the girl or the sailor on March 12, 1944 or March 15, 1944, but admitted that she was busy most of the time. The waitress admitted also that, on March 12, 1944, she saw the sailor standing at the bar in the licensed premises.

Despite the fact that defendant denies that alcoholic beverages were sold to either of the two minors on the dates mentioned in the charges, he also endeavored to establish a defense under the provisions of R. S. 33:1-77 as to the sale to Seaman Alfred ----. Defendant alleges that, a few months prior to the hearing, this young man signed a paper wherein he stated that he had been born in 1922. The young man testified that at one time he was asked to fill out a form by defendant but that he destroyed the form without signing his name thereto. The defendant admits that the form was destroyed. In order to establish a defense under the provisions of R. S. 33:1-77, the defendant must establish that the minor falsely represented in writing that he was twenty-one years of age or over. The vague testimony set forth above fails to convince me that the minor did falsely represent his age in writing. Moreover, the defendant must establish that the appearance of the minor was such that an ordinary prudent person would believe him to be twenty-one years of age or over, and that the sale was made in good faith, relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one years of age or over. In this case the defendant admits that he has known the young man for a period of more than two years. Under these circumstances, I conclude that defendant had no reason to believe that the minor was actually twenty-one years of age or over.

I find defendant guilty as to both charges in so far as the said charges concern the minors Bertha ---- and Seaman Alfred ----.

As to penalty: In the present case the minors were respectively eighteen years and one month of age and eighteen years and five months of age. There appear to be no aggravating circumstances. However, defendant has a prior record. On March 11, 1943 his license was suspended for a period of twenty-five days after he pleaded guilty to charges (1) of permitting a female employee to accept beverages at the expense of customers and patrons and (2) of selling alcoholic beverages to a minor, namely, a nineteen-year old soldier. Re Morgenroth, Bulletin 557, Item 12. Since the present case involves a second violation for sales to minors, I shall double the minimum penalty and suspend the license for a period of twenty days.

Accordingly, it is, on this 14th day of April, 1944,

ORDERED, that Plenary Retail Consumption License C-330, issued by the Board of Alcoholic Beverage Control of the City of Paterson to John Morgenroth for premises 333 Market Street, Paterson, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 A. M. April 20, 1944 and terminating at 3:00 A. M. May 10, 1944.

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON CORRECTION OF ILLEGAL SITUATION AND EXPIRATION OF AT LEAST 10 DAYS.

In the Matter of Disciplinary
Proceedings against

JOHN F. LYNCH, JR.
580-82 West Side Avenue
Jersey City, 4, N. J.,

CONCLUSIONS
AND ORDERS.

Holder of Plenary Retail Consump-
tion License C-407, issued by the
Board of Commissioners of the City
of Jersey City.

John F. Lynch, Jr., Pro Se.
Edward F. Hodges, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Licensee pleads non vult to the following charges:

"1. In your application, filed with the Board of Commissioners of the City of Jersey City and upon which you obtained your current plenary retail consumption license for premises 580-82 West Side Avenue, you falsely stated 'No' to Question 30, which asks: 'Has any individual....other than the applicant, any interest, directly or indirectly, in the license applied for, or in the business to be conducted under said license?', whereas in truth and fact John F. Lynch, Sr. was so interested in that he was the real and beneficial owner of the said business; such false statement being in violation of R. S. 33:1-25.

"2. From July 23, 1942 and until the present time, you knowingly aided and abetted the said John F. Lynch, Sr. to exercise, contrary to R. S. 33:1-26, the rights and privileges of your plenary retail consumption license for the aforesaid premises, thereby yourself violating R. S. 33:1-52."

John F. Lynch, Jr. is the son of John F. Lynch, Sr. The son is employed at the Federal Shipyards in Kearny, while the father is employed as a utility man in the Hudson County Sheriff's Office and does clerical work in said office. The licensed business, in fact,

is operated most of the time by a manager who was hired by both the father and son. It appears that, originally, the purchase price was advanced by the father, and the premises occupied by the licensee are owned by a corporation in which the licensee's father and mother are the principal stockholders. I am advised that the licensee has already entered into a contract of sale for the business to a third party, who appears to be a bona fide purchaser.

Since it appears that the father is unlawfully operating under the license issued to his son, the license must be suspended for the remainder of the term. However, if the proposed transfer of the license is approved by the local issuing authority, application may be made by the transferee to lift the suspension, but not until ten days have expired from the effective date of suspension.

Accordingly, it is, on this 14th day of April, 1944,

ORDERED, that Plenary Retail Consumption License C-407, issued by the Board of Commissioners of the City of Jersey City to John F. Lynch, Jr. for premises 580-82 West Side Avenue, Jersey City, be and the same is hereby suspended for the balance of its term, effective at 2:00 A. M. April 21, 1944; and it is further

ORDERED that, upon a correction of the existing unlawful situation by a bona fide transfer, application may be made to me by the transferee for an order lifting said suspension; provided, however, that such suspension shall not be lifted prior to the expiration of ten (10) days from the effective date of the suspension herein imposed.

Alfred E. Driscoll
Commissioner.