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SEPTEMBER 20
APRIL 22 1940
1879

One entire year has gone since at historic Charleston in South Carolina there passed the soul of

D. FREDERICK BURNETT.

Not large in body, yet he achieved the phenomenon -- by taking thought -- of adding cubits to his stature. This, at least, was the impression created by this master of metonymic expression.

A dynamo of mental energy, he chatted with his physicians even toward the end, remarking: "I am a nervous critter and my brain must have work to do." Those near him who understood him could feel the pervading influence of his unuttered, endless stream of thought.

Master of the art of concentration he combined with it an attention to details that was a marvel of conscientious care. Faithful devotion to precision caused him to strive constantly to exact improvement in the work of his subordinates. He believed that any dereliction of an employee was a personal reflection upon him. This attitude impelled him to write innumerable memoranda to his erring flock. He said: "When I stop writing memos to a subordinate, it is because I have lost hope that he can grow in usefulness to the service."

So deep and insatiate was this sense of responsibility and so continuously did he arrogate the tasks which might have been delegated that this characteristic may well have shortened his years.

His continued high level of intellectual curiosity toward daily tasks was a thing of wonder. This, even though he could be heard, at times, to remark: "At this job you get your pains for your thanks." A stern master, yet he found it almost impossible to bring himself to discharge a man. Though kindly and thoughtful of another's welfare, there were times when he demanded super-human performance.

A striking aggregation of human qualities to the memory of which one reacts with mixed emotions.

Mr. Burnett did not die. In his bulletins he built his monument, piece by piece -- an everlasting symbol of the fertile initiative of his mind. Come fair weather or foul to the human organization which was the instrument of his sojourn here, no force can ever extinguish the lamp of wit and painstaking perspicacity immortalized in the pages of his bulletins.

God rest the restless man.

E. W. Garrett

Acting Commissioner

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

BULLETIN 455

APRIL 22, 1941.

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

BULLETIN 455

APRIL 22, 1941.

1. MORAL TURPITUDE - RAPE INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPARENT INNOCENT EMPLOYMENT ON LICENSED PREMISES DESPITE DISQUALIFICATION - APPLICATION GRANTED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, pursuant)
to R. S. 33:1-31.2.)

CONCLUSIONS
AND ORDER

Case No. 139.)
-----)

In 1925 petitioner, then twenty-three years of age, was convicted of rape and sentenced to serve from seven to thirty years in prison. After serving about a year, he was, in 1926, released on parole.

The crime of rape, of which petitioner was convicted, necessarily involves moral turpitude, and hence disqualifies him from holding a liquor license or being employed by a liquor licensee in this State. R. S. 33:1-25, 26; Re Killie, Bulletin 131, Item 2; Re Case No. 190, Bulletin 222, Item 15.

Although petitioner, in 1937, obtained his restoration to citizenship rights from the Court of Pardons, such limited pardon does not remove his disqualification. Re Tanski, Bulletin 164, Item 12.

Petitioner has filed an application under R.S. 33:1-31.2 to have the Department remove his disqualification on the claim that he has been leading an honest and law-abiding life for the past five years.

For the past thirty-nine years, except for the time spent in prison, petitioner has lived in the same New Jersey municipality in which he was born. After his release from prison he returned to that municipality, where he operated a trucking business until 1930, and thereafter operated a gasoline station until 1934. In the latter year he and his sister took over the operation of a hotel formerly owned by one or both of their parents; they continued to operate the hotel until 1939, when it was leased to another person, and since then applicant has been without regular employment but has done minor odd jobs.

Petitioner produced five character witnesses - the Chief of Police, the Postmaster, and a business acquaintance, all in the municipality where petitioner resides, who have known him respectively for ten years, twelve years and thirty years; the Mayor and a member of the Common Council of a neighboring municipality, who have known him respectively for about twenty years and thirty years. All these witnesses testified that petitioner's reputation is good and that, in their opinion, it would not be harmful to the public interest to permit him to become engaged in the alcoholic beverage business.

I would have no hesitancy in lifting the disqualification except that it appears from applicant's testimony that, for at least part of the time between 1934 and 1939, while his sister held a liquor license for the hotel, he was employed in some capacity on the licensed premises. Because of his conviction he was, in fact, disqualified from being so employed. However, he says that prior to 1937 he gave no thought to the question of his disqualification and that, after his citizenship was restored, he believed he was no longer disqualified. No one ever questioned his right to be employed on the licensed premises. In view of applicant's good conduct during the past fifteen years, I shall give him the benefit of the doubt and decide that he mistook the legal effect of his restoration to citizenship and did not deliberately violate the law. From the evidence I conclude that the petitioner has been law-abiding for more than five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 10th day of April, 1941,

ORDERED, that applicant's statutory disqualification because of the conviction described herein be and the same is hereby lifted, in accordance with the provisions of R. S. 33:1-31.2.

E. W. GARRETT,
Acting Commissioner.

2. MORAL TURPITUDE - BURGLARY INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - TWO SUBSEQUENT ARRESTS BUT NO CONVICTIONS - APPLICATION GRANTED.

In the Matter of an Application)	
to Remove Disqualification be-)	
cause of Conviction, pursuant to)	CONCLUSIONS
R. S. 33:1-31.2.)	AND ORDER
Case No. 140.)	
-----)	

In May 1923 petitioner, then a youth of nineteen, was convicted in New Jersey for fornication, and given a suspended sentence. Some six years later he was, in September 1929, convicted in Connecticut for so-called "statutory burglary" (being one of a group which broke into a garage and stole two automobiles and also broke into a factory and stole a considerable quantity of dresses), was sentenced to prison for one to four years, and was released on parole in May 1932. Thereafter, in September 1932, he was convicted in New Jersey for a minor motor vehicle violation, and fined \$5.00; and, in November 1932, for assault and battery (apparently a fist fight) and fined \$15.00.

Since the said "statutory burglary" of which petitioner was convicted clearly involves moral turpitude, his record, irrespective whether the other offenses are also crimes involving that element, mandatorily disqualifies him from holding a liquor license or being employed by a liquor licensee in this State. See R.S. 33:1-25, 26.

Petitioner is applying in this proceeding to have such disqualification removed under R.S. 33:1-31.2 on claim that, in accordance with that statutory provision, he has been leading an honest and

law-abiding life for at least the last five years warranting the removal.

At the hearing on such application petitioner testified that, after his release from prison in 1932, he returned to his home in a New Jersey city, where he has continuously resided with his parents ever since; that he has been engaged throughout such time as a helper in the electrician trade of his father, except for a few months in 1932 when he worked on "WPA" at a "pick and shovel" job.

Petitioner produced three character witnesses - a priest, who has become acquainted with him for the last two years as a result of petitioner's regular attendance at a club connected with the church where the priest is Pastor; the proprietor of a confectionery store in the neighborhood of petitioner's home, who has known petitioner for some eight years as a neighbor and customer; and the proprietor of a lumber business, who conducts his business and lives in the neighborhood of petitioner's home and has known petitioner for the last eight years as a "social friend."

These three witnesses uniformly testified that petitioner's reputation is good and that, in their judgment, he has been leading an honest and law-abiding life since they have known him.

The local Chief of Police states that there are no investigations pending against petitioner in his department.

Were this all, I would have no hesitancy in concluding that petitioner has, since 1932, been leading an honest and law-abiding life warranting removal of his disqualification.

The additional and disturbing facts in the case are that (as petitioner readily admits) he was arrested in December 1937 for book-making, although his case was dismissed; and further, that in January 1941 county detectives, in investigating a store where they believed book-making to be occurring, arrested everyone there, including petitioner, whom, however, they detained merely as a witness. Petitioner claims that he had stopped at this store to cash a check.

In view of these two arrests, I am in grave doubt as to whether petitioner's disqualification should be removed. There is the possible inference that it was more than just mere coincidence that both arrests happened to deal with book-making.

However, on the other hand, there is nothing which actually ties petitioner in any way with book-making. Even his previous criminal record does not suggest that he ever engaged in that activity. Hence, since his record is otherwise clear from 1932 and since his character witnesses appear to be both reputable and trustworthy, I shall, in view that he was actually dismissed on the 1937 arrest and held only as a witness in the 1941 case, give him the benefit of the doubt and conclude that he has turned over a new leaf in the last eight years warranting removal of his disqualification.

Accordingly, it is, on this 10th day of April, 1941,

ORDERED, that petitioner's statutory disqualification, resulting from the convictions described herein, be and the same is hereby lifted in accordance with the provisions of R.S. 33:1-31.2.

E. W. GARRETT,
Acting Commissioner.

3. MORAL TURPITUDE - LARCENY INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPARENT INNOCENT INTEREST AS OFFICER AND STOCKHOLDER IN CORPORATION HOLDING LIQUOR LICENSE - APPLICATION GRANTED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, pursuant)
to R. S. 33:1-31.2.)

CONCLUSIONS
AND ORDER

Case No. 144.
- - - - -)

In 1904 petitioner, while only 18 or 19 years of age, was convicted of the crime of larceny from the person (taking \$5.00 from the person of a drunk) and was sentenced to the State Reformatory for an indefinite term. After remaining in the reformatory for a year, he was paroled, and shortly thereafter given an absolute release. In 1909 he was arrested on a charge of loitering and fined \$10.00.

The latter conviction is not a conviction of a crime within the meaning of R. S. 33:1-25, 26. See Re Case No. 131, Bulletin 451, Item 7. The crime of larceny from the person, however, is a high misdemeanor (R. S. 2:145-2) and, per se, involves the element of moral turpitude.

Petitioner now seeks, in this proceeding, removal of the statutory disqualification resulting from such conviction of a crime involving moral turpitude, pursuant to R. S. 33:1-31.2.

On behalf of the petitioner, three character witnesses - a banker and two businessmen - who have known him for eight, seven and fifteen years, respectively, testified that his reputation is good and that he has led an honest and law-abiding life during the time that they have known him.

Petitioner's fingerprint record shows that he has not been convicted of any offense since 1909, when he was fined \$10.00 on the aforementioned loitering charge. The Chief of Police of the municipality wherein petitioner resides has certified that his records disclose no arrests or complaints against petitioner within the past five years and that petitioner is not the subject of any pending investigations or reports.

Under these circumstances, were it not for the fact that petitioner has held a one-third interest in, and has been actively engaged in the management of, a corporation which has operated a licensed restaurant and tavern during the last past five years, I would conclude, normally, that he has been leading an honest and law-abiding life during that period and would remove his disqualification. The fact remains, however, that during this period he has been engaged in the alcoholic beverage business. Question arises whether such engagement was in good faith.

Petitioner swears that he did not know that he was, or might be, disqualified by reason of his conviction until a short time ago when he prepared to transfer the liquor license of the corporation of which he is an officer and stockholder to his own name and was so advised by his attorney at that time. He testified that, upon the advice of his attorney, he promptly applied to this Department to

have his eligibility determined and his disqualification, if any, lifted. Investigation by this Department discloses that the municipal issuing authority, with apparent full knowledge of petitioner's conviction, issued and renewed, every year since 1935, the license of the corporation of which petitioner has been, and still is, an officer and stockholder, apparently on the theory that such crime, because of petitioner's youth at the time of its commission, did not involve moral turpitude.

Under these circumstances, I find no manifestation of bad faith on the part of petitioner. I shall, therefore, give him the benefit of the doubt and accept as true his testimony that he was previously unaware of his disqualification under the terms of the statute.

From all the evidence, I conclude that petitioner has led an honest and law-abiding life for more than five years last past and that his continued association with the alcoholic beverage industry will not be prejudicial to the interests of that industry.

Accordingly, it is, on this 10th day of April, 1941,

ORDERED, that petitioner's statutory disqualification, because of the conviction described herein, be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2.

E. W. GARRETT,
Acting Commissioner.

4. ELIGIBILITY -- ASSAULT WITH INTENT TO KILL - MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE TO HOLD A LIQUOR LICENSE OR BE EMPLOYED BY A LIQUOR LICENSEE.

April 10, 1941

Re: Case No. 372

On May 28, 1936 applicant, after pleading non vult to the crime of assault with intent to kill, was sentenced to six months in the penitentiary and execution suspended. On July 1, 1936 he was placed on probation for a period of three years.

He was indicted for atrocious assault and battery, involving shooting a person with a revolver. At the hearing held herein, applicant testified that the shooting was accidental, in that the gun went off when he attempted to take it away from an acquaintance who, while intoxicated, was about to go for a walk with the gun on his person.

Ordinarily, the crime of assault with intent to kill would involve moral turpitude. Case No. 17, Bulletin 116, Item 5. If the explanation given by applicant were true, it would not only remove the element of moral turpitude, but it would also show him to be innocent. However, in view of his plea in the criminal case, the question of guilt or innocence cannot be redetermined herein. The crime involves moral turpitude.

Applicant was also convicted, on December 16, 1940, for possessing lottery slips, and paid a fine of \$100.00. The police report that they found the slips on his person after he was brought into headquarters on some other charge. Applicant testified that at his girl's request, he played the "numbers" for her on that day, paying \$1.04 for the six slips. This crime does not involve moral turpitude. Case No. 296, Bulletin 353, Item 12.

It is recommended that applicant be advised that he is disqualified, by reason of his 1936 conviction, from holding a liquor license or being employed by a liquor licensee in this State.

Harry Castelbaum,
Attorney.

APPROVED:

E. W. GARRETT,
Acting Commissioner.

5. MORAL TURPITUDE - ROBBERY INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPARENT INNOCENT EMPLOYMENT ON LICENSED PREMISES DESPITE DISQUALIFICATION - APPLICATION GRANTED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of Conviction, pursuant)
to R. S. 33:1-31.2.)

CONCLUSIONS
AND ORDER

Case No. 141.
-----)

In 1932 petitioner was convicted of being a disorderly person and sentenced to imprisonment for several months. The following year he pleaded guilty to a charge of having robbed a woman of a pocket-book and was sentenced to State Prison for one to two years. He was released from prison on December 1, 1933.

The former conviction is not a conviction of a crime within the meaning of R. S. 33:1-25, 26. Re Case No. 131, Bulletin 451, Item 7. Robbery, however, is a crime which, per se, involves the element of moral turpitude. Re Case No. 316, Bulletin 397, Item 5; Re Case No. 313, Bulletin 393, Item 8.

Petitioner now seeks, in this proceeding, removal of the disqualification resulting from such conviction of a crime involving moral turpitude, pursuant to R. S. 33:1-31.2.

As evidence of his reputation and character, petitioner produced three witnesses: a neighbor who has known him for ten years; the owner of the tavern wherein petitioner has been employed for the last several months who has known him for six years; and the manager of the tavern who has known him for seven years. All testified that petitioner's present reputation in the community for being an honest and law-abiding citizen is good and otherwise spoke well of him.

Petitioner's fingerprint record discloses no arrests or convictions subsequent to his release from prison on December 1, 1933. The Police Department of the municipality wherein he has resided for the past five years has certified that its records disclose no arrests or complaints against petitioner during that period and that there are no pending complaints or reports against him.

Despite his ineligibility because of the aforesaid conviction, petitioner has, from time to time, been employed as a cook and kitchen worker in various licensed taverns and restaurants. He does not speak English. He is a cook and pie baker. He does not handle, sell or

serve alcoholic beverages. He applied promptly to lift his disqualification as soon as he learned that there was a question as to his eligibility. I shall accept as true his testimony that he was previously unaware of his disqualification under the terms of the statute.

It is concluded, therefore, that petitioner has led a law-abiding life for the last past five years and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 14th day of April, 1941,

ORDERED, that his statutory disqualification, because of the conviction described herein, be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2.

E. W. GARRETT,
Acting Commissioner.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCIES IN COLOR AND SOLID CONTENT - 10 DAYS' SUSPENSION, WITH NO REMISSION FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

JAMES YANERO,
286 West Market St.,)
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-81 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
-----)

Sugrue and Hoey, Esqs., by Joseph B. Sugrue, Esq., Attorneys for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to charges of possessing an illicit alcoholic beverage in violation of R.S. 33:1-50, and rebottling an alcoholic beverage in violation of R. S. 33:1-78.

The Department file discloses that, on November 28, 1940, agents of the Alcohol Tax Unit of the U. S. Bureau of Internal Revenue inspected the licensed premises and gauged and tested the open stock. As a result of the preliminary field investigation, the investigators seized one bottle labeled "Four Roses Rye, A Blend of Straight Whiskies." Analysis by the Federal chemist shows that the contents of the open bottle varied in color and solid content from genuine samples.

In connection with his plea, the licensee offered no explanation or excuse, but merely admitted the charges.

This is the licensee's first offense of any kind so far as the Department records disclose. No aggravating circumstances appear. The license will, therefore, be suspended for a period of ten days. Re Wnoroski, Bulletin 454, Item 6, wherein the penalties for illicit liquor offenses are reviewed.

Accordingly, it is, on this 15th day of April, 1941,

ORDERED, that Plenary Retail Consumption License C-81, heretofore issued to James Yanero by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of ten (10) days, effective April 21, 1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

- 7. DISCIPLINARY PROCEEDINGS - SALES BY CLUB LICENSEE TO PERSONS NEITHER MEMBERS NOR GUESTS - 5 DAYS' SUSPENSION - SALES AND CONSUMPTION DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION - OPEN DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION - TOTAL: 15 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

MORRISTOWN LODGE #815, BENEVOLENT AND PROTECTIVE ORDER OF ELKS, 31 Washington Street, Morristown, N. J.,)

CONCLUSIONS AND ORDER

Holder of Club License CB-48, issued by the State Commissioner of Alcoholic Beverage Control.)

Edward F. Broderick, Esq., Attorney for Defendant-Licensee.
Charles Basile, Esq., Attorney for the Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to charges of (1) selling alcoholic beverages to persons neither members nor guests of members of the club, in violation of Rule 5 of State Regulations No. 7; (2) sale, service and delivery and allowing consumption of alcoholic beverages during prohibited hours on Sunday, in violation of ordinance adopted by the Board of Aldermen of the Town of Morristown on September 6, 1940; and (3) failure to keep closed and securely locked during prohibited hours on Sunday the room in which alcoholic beverages are kept for sale, in violation of the aforesaid ordinance.

The Department file discloses that, on Sunday, February 9, 1941, two investigators entered the licensed premises through the open front door at about 10:00 A.M. and proceeded to the barroom on the second floor of the club premises, where they found two customers drinking. The investigators ordered and were served two glasses of beer and later two glasses of beer and two glasses of whiskey by the steward of the defendant-licensee who was acting as bartender. The steward did not in any way question the investigators concerning their membership or their standing as guests in the club. After the investigators were served the last drinks of alcoholic beverages, which they subsequently seized for evidential purposes, they disclosed their identity to the steward, who readily admitted the sales. The investigators were neither bona fide members nor guests of members of the defendant-licensee club at the time.

The instant offenses appear to be the defendant club licensee's first violations of record.

As regards the charge of selling to persons who were neither members nor guests of members of the defendant-licensee club, the license will be suspended for the minimum period of five days. Re Societa Di Mutuo Soccorso Guglielmo Marconi, Bulletin 451, Item 6. As to the charges for violation of the local ordinance, the minimum penalty is five days for each charge. Re Pendergast, Bulletin 452, Item 8. The license will, therefore, be suspended for a total of fifteen days.

By entering a guilty plea in ample time before the date set for hearing, the Department has been saved the time and expense of proving its case. Five days of the total penalty will therefore be remitted.

Accordingly, it is, on this 16th day of April, 1941,

ORDERED, that Club License CB-48, heretofore issued to Morrystown Lodge #815, Benevolent and Protective Order of Elks, by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of ten (10) days, effective April 18, 1941, at 2:00 A.M.

E. W. GARRETT,
Acting Commissioner.

8. MORAL TURPITUDE - FALSE AFFIDAVIT AND ATTEMPTED FRAUD UPON CREDITORS IN VIOLATION OF BULK SALES ACT INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPARENT INNOCENT EMPLOYMENT ON LICENSED PREMISES DESPITE DISQUALIFICATION - APPLICATION GRANTED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of conviction of Crime,)
Pursuant to R. S. 33:1-31.2.)
Case No. 137.)
-----)

CONCLUSIONS
AND ORDER

On October 14, 1935 petitioner pleaded guilty to an indictment charging him with the crime of violation of the Bulk Sales Act. He was sentenced to serve six months in the county jail, but on November 15, 1935 sentence was reconsidered and he was placed on probation to pay a certain judgment entered against him in the Circuit Court and the cost of the criminal proceeding at the rate of \$20.00 per month. He has never been convicted of any other crime.

Prior to his conviction, petitioner was a retail liquor licensee, but in April 1935 he sold the fixtures and equipment used in conducting his business and has not held a license since that time. The criminal complaint which led to his conviction was made by one of his judgment creditors, who held a judgment for approximately \$900.00, recovered against petitioner and another individual in a Circuit Court action. Apparently the complaint was based upon the allegation that petitioner had executed a false affidavit at the time of the sale of his fixtures and equipment. In my opinion the crime involves moral turpitude because the conviction necessarily shows that petitioner was guilty of filing a false affidavit and attempting a fraud upon his creditors. Cf. Re Case No. 350, Bulletin 432, Item 8; Re Case No. 363, Bulletin 444, Item 6.

At the hearing herein petitioner testified that he understood he was given six months because he didn't pay the judgment recovered in the Circuit Court; that after he wrote a letter to the sentencing judge, promising to make arrangements to pay the judgment, he was recalled and told by the judge that if he would make arrangements to pay the judgment he would be released. In view of this testimony I shall give him the benefit of the doubt as to whether he knew that the conviction disqualified him from working in licensed premises or actually believed, as he says, that the proceedings constituted a step taken by his judgment creditor to enforce payment of the judgment. Hence, despite the fact that he has been employed as a bartender on licensed premises since his conviction, I shall not, merely on that account, deny the relief prayed for herein.

A police officer, a former retail liquor licensee and two businessmen, who have known him respectively for ten, twenty, twenty and fifteen years, testified that his reputation is good and that, to their knowledge, he was never arrested or convicted at any other time.

On the evidence I am satisfied that petitioner has been law-abiding for at least five years last past and that his continued connection with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 19th day of April, 1941,

ORDERED, that his statutory disqualification because of the conviction described herein be and the same is hereby lifted, in accordance with the provisions of R. S. 33:1-31.2.

E. W. GARRETT,
Acting Commissioner.

9. DISCIPLINARY PROCEEDINGS - FRONT FOR NON-LICENSEE - BOTH PERSONS QUALIFIED - SUSPENSION FOR BALANCE OF TERM, WITH LEAVE TO PETITION TO LIFT AFTER 10 DAYS IF SITUATION CORRECTED.

In the Matter of Disciplinary)
Proceedings against)

NUNZIO RUSSO,)
47 W. 23rd Street,)
Bayonne, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Con-)
sumption License C-85, issued)
by the Board of Commissioners)
of the City of Bayonne.)

Eugene T. Sharkey, Esq., Attorney for Licensee.
Charles Basile, Esq., Attorney for State Department of
Alcoholic Beverage Control.

Charges served upon the licensee allege, in substance, that in his application for license dated June 3, 1940 he falsely stated that no other individual had any interest, directly or indirectly, in the license applied for or in the business to be conducted thereunder, whereas in truth and in fact Michael Russo had such an interest, and that since July 1, 1940 licensee knowingly aided and abetted Michael Russo, a non-licensee, to exercise the rights and privileges of his license.

Nunzio Russo is the son of Michael Russo.

The evidence introduced by the Department consists of statements taken from both parties mentioned herein, dated September 7, 1940. In the statement given by the licensee, he said that he does not own the tavern; that he does not know anything about the business; that when his father, Michael Russo, wanted to open a tavern, his father owed much money; that his father asked him to take out the license in his name so as to avoid possible attachments of the business. The statement given by Michael Russo sets forth that he is employed as bartender by his son and has been so employed since the place opened up. The father's statement also contains the following questions and answers:

- "Q. Who owned the tavern?
 A. I own the tavern.

 Q. Then why is the license in the name of your son, Nunzio?
 A. I used to be in the tavern business before in Bayonne. *** I had to give it up and went out owing money on the property. The people took out judgments against me which I now pay out little by little. I did not know that could do anything to the licensee than so I took it out in my son's name."

The father, Michael Russo, held a license in the City of Bayonne from the time of Repeal to April 1935. As appears from the facts set forth in Case No. 137 (Bulletin 455, Item 8), decided herewith, which concerns an application by Michael Russo to lift his disqualification, some creditors of Michael Russo obtained a judgment against him at about this time for the sum of approximately \$900.00. The son, Nunzio Russo, first obtained a license on July 16, 1935 and held this license until June 26, 1936, when he transferred it to a third person. It should be noted that this license was obtained by Nunzio Russo prior to the time his father was convicted, as set forth in Re Case No. 137, supra. It further appears that on June 15, 1937 a plenary retail consumption license was transferred from one Ciriello to Nunzio Russo and thereafter this license was renewed by Nunzio Russo from year to year until and including the present fiscal year.

At the hearing herein licensee testified that for the past eleven years he has been employed as a deck-hand by Texaco Company, working on an average of eight or nine hours per day; that he is unmarried and lives at home with his father, brother and sister; that the small profits of the licensed business are used as partial support for the family; that his father, Michael Russo, has been a bartender at the licensed premises during all the time that the license has been in the son's name. Licensee testified also that in June 1937 when he purchased the business from Ciriello, who is his uncle, he agreed to pay the sum of \$1,000.00 but he admits that only the sum of \$50.00 was paid in cash and that the balance of the purchase price was paid over a period of two years from the licensed business.

Michael Russo did not testify at the hearing herein.

The evidence leads me to conclude that this business is, in fact, owned by Michael Russo and has been owned by him during the time that the license was in his son's name; that the first license obtained in the name of Nunzio Russo on July 16, 1935 was taken in his name solely to avoid action by the father's creditors; that the licenses obtained since the father's conviction were taken in the son's name to avoid creditors. This latter result follows from a

finding in Case No. 137, supra, that the father did not believe his conviction disqualified him from being employed in licensed premises, and hence did not disqualify him from holding a license.

I find the licensee guilty as charged.

The operation of this business by the father under the license issued to his son may not continue, but in view that the disqualification of Michael Russo has been lifted and in view of my finding that the front existed to avoid creditors, an opportunity will be given to the parties to apply to the Board of Commissioners for a transfer of the license from Nunzio Russo to Michael Russo.
Re King, Bulletin 404, Item 5.

Accordingly, it is, on this 19th day of April, 1941,

ORDERED, that License C-85, heretofore issued to Nunzio Russo by the Board of Commissioners of the City of Bayonne, be and the same is hereby suspended for the balance of its term, effective April 22, 1941, at 7:00 A.M. Leave is hereby given to Michael Russo to file a petition with me requesting the lifting of the suspension herein imposed. With said petition there should be presented proof by affidavit that petitioner has complied with all statutory requirements for the transfer of the license and proof that the Board of Commissioners has granted the transfer of said license to petitioner, subject to the lifting of the suspension herein imposed. The license, of course, may not be actually transferred on its face until after the suspension is lifted. No order lifting suspension will be entered until the expiration of at least ten days from the effective date of the suspension.

E. W. GARRETT,
Acting Commissioner.

10. ELIGIBILITY - BIGAMY - MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

April 17, 1941

Re: Case No. 373

Applicant pleaded guilty to having committed bigamy in the State of Ohio, where such crime is a felony, and was sentenced to a jail term of one to seven years. He was confined from October 5, 1935 to May 1, 1938, when he was paroled to live in the State of New Jersey. On June 6, 1939 he was granted a final release of sentence.

Applicant admits that he was aware at the time of his second marriage, which resulted in his arrest, that such marriage was a bigamous one. His proffered explanation in attempted extenuation of such unlawful conduct contains various contradictions and inconsistencies. Piecing the story together, however, in the light most favorable to applicant, it appears that in July 1934, while lawfully married and having a child about three and a half years old, he went to Ohio to attend the funeral of a deceased relative. While there he met a widow, several years his senior, with whom he almost immediately started to have illicit relations. In September 1934 they announced to their relatives and friends in Ohio, although contrary to actual fact, that they had been married, and began to live together openly as husband and wife. About October 25, 1934 he left her and went to live alone at a hotel. Several days thereafter she contacted him at his hotel and told him that she was pregnant and, upon her insistence that he must marry her, they went through a form of marriage ceremony on November 1, 1934. It subsequently developed that

she had lied to him about her pregnancy. On March 20, 1935 she caused him to be arrested and, relying upon her promise that she would request the Court to impose a lenient sentence, he pleaded guilty. This promise she later broke by urging upon the Court that the maximum penalty be meted out to him.

Applicant maintained that, from the very beginning of their relationship, the widow knew that he was a married man having a wife from whom, although living separately and apart for several years prior thereto, he had not been divorced. He swore that she learned this not only from him but also from his sister and other relatives who resided in the same municipality in Ohio.

Such explanation, even taken at face value, taxes the credulity of an intelligent mind. If his relatives knew upon his arrival in Ohio that he was a married man, is it reasonable to believe that he would shortly thereafter announce his marriage to the widow? Why, if she knew of his prior marriage, would she attempt to trick him into marrying her? What could she gain thereby, especially since she was not pregnant? Why should she have had him arrested, then promise him that she would plead for leniency and finally urge the imposition of a severe penalty?

The greater likelihood is that he deceived the widow throughout into believing that he was free to marry her. In such case, his crime would unquestionably involve moral turpitude. It has already been held by this Department that where a married man fraudulently induces an innocent woman into a bigamous marriage with him, the element of moral turpitude is present. See Re Case No. 282, Bulletin 331, Item 12.

The crime of bigamy has always been regarded as abhorrent to the sentiment and feelings of the civilized world. In Davis v. Beason, 133 U.S. 333 (1889), Justice Field said:

"Bigamy and polygamy are crimes by the laws of all civilized Christian countries. * * * They tend to destroy the purity of the marriage relation, to disturb the peace of families, to degrade woman, and to debase man. Few crimes are more pernicious to the best interests of society, and receive more general or more deserved punishment."

A crime of such nature involving, as it does, an abuse of the formal and solemn contract of marriage, forbidden by law because of its outrage on public decency (see 3 R.C.L. 804), at least ordinarily involves moral turpitude. Cf. Whitty v. Weedon, 68 F. (2d) 127.

The mere fact that the widow may have known of applicant's prior marriage does not, in my opinion, relieve his crime of the element of moral turpitude. That circumstance, standing alone, presents no justification for his knowingly and deliberately, albeit against his will as alleged by applicant, entering into a bigamous marriage. This is not to say that, when the proper situation is presented, the question of the accused's honest and bona fide belief as to the dissolution of the prior marriage or his good faith in entering into the subsequent marriage may not be pertinent factors to be considered in a determination of whether the crime is purged of that element. However, such is not the case at bar and that question is accordingly reserved for future decision when the specific issue squarely appears. All that is now decided is that the facts of the present case indicate nothing upon which to predicate a finding that applicant's crime is relieved of the element of moral turpitude.

The foregoing renders it unnecessary to determine whether applicant's conviction in 1932 for the crime of false pretenses in passing four worthless checks is also tainted with moral turpitude.

It is recommended that applicant be advised that he is ineligible to hold a liquor license or be employed by a liquor licensee in this State.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

Samuel B. Helfand,
Attorney.

11. APPELLATE DECISIONS - CROWLEY ET AL. v. ATLANTIC CITY AND FOXWELL.

TRANSFER OF LICENSE APPEALED ALLEGING DEFECTIVE APPLICATION AND VIOLATION OF LOCAL REGULATION BARRING NEW RETAIL LIQUOR PLACES WITHIN 300 FEET OF EXISTING PLACES - APPLICATION DEFECTIVE AND LOCAL REGULATION VIOLATED - TRANSFER REVERSED.

RETAIL LICENSES - APPLICATIONS - AMENDMENTS TO APPLICATIONS MUST BE PERSONALLY SIGNED AND SWORN TO BY THE APPLICANT.

RETAIL LICENSES - APPLICATIONS - ADVERTISING - THE NOTICE OF APPLICATION MUST STATE THE CORRECT ADDRESS.

MUNICIPAL REGULATIONS - DISTANCE BETWEEN LICENSED PREMISES - REGULATION APPROVED AND METHOD OF MEASUREMENT ILLUSTRATED.

LAWRENCE CROWLEY, CHILDS COMPANY,)
CAROLINA BOARDWALK CORPORATION and)
ATLANTIC CITY LICENSED BEVERAGE)
ASSOCIATION,)

Appellants,)

-vs-

BOARD OF COMMISSIONERS OF THE CITY)
OF ATLANTIC CITY and LOUIS N. FOXWELL,)

Respondents.)

ON APPEAL
CONCLUSIONS AND ORDER

Vincent S. Haneman, Esq. and James N. Butler, Esq.,
Attorneys for Appellant.
Emerson L. Richards, Esq., Attorney for Respondent-Licensee,
Louis N. Foxwell.
No appearance on behalf of Respondent Board of Commissioners.

This appeal is from the action of the Board of Commissioners of Atlantic City in granting a place to place transfer of Louis N. Foxwell's plenary retail consumption license from 126 S. South Carolina Avenue to so-called "1 Richards Place" in that City.

Appellants contend (1) that the application for such transfer was defective and (2) that, in any event, the transfer violated the provision of a local ordinance barring retail liquor places from being permitted within 300 feet of an existing place.

As to (1): The premises to which Foxwell obtained transfer of his license are in a building which is located on S. South Carolina Avenue. Foxwell, when applying on December 5, 1940 for transfer to these premises, described them as "183 S. South Carolina Avenue," such apparently being the address of a proposed entrance to be built on that Avenue in accordance with a sketch accompanying the application. Likewise, when publishing the requisite notice of his application in a local newspaper on December 5 and 12, Foxwell described the premises as "183 S. South Carolina Avenue."

Thereafter, on January 8, 1941, Foxwell's attorney (apparently fearful that the proposed entrance would be within the locally forbidden distance of 300 feet from a plenary retail consumption license, a Childs Restaurant, across the street) wrote a letter, on Foxwell's behalf, to the Atlantic City Board, abandoning the proposed entrance and stating that, instead, the entrance to be used would be at a side alley and that the application was therefore being amended to describe the premises as "1 Richards Place," the alleged address of a door on that alley.

On February 17 the Board granted the transfer in question to "1 Richards Place" in accordance with such letter.

Now, since an application, whether for issuance or transfer of license, must be signed and sworn to by the applicant personally (R. S. 33:1-25, 26; Conway v. Haddon, Bulletin 165, Item 14; Re Rosenbaum, Bulletin 188, Item 5; cf. Zager v. Passaic, Bulletin 385, Item 9), it would seem logically to follow that any attempted amendment of such application must likewise be personally signed and sworn to by the applicant and that, therefore, the letter by Foxwell's attorney was inadequate to serve as an effective amendment.

However, even assuming that the letter was sufficient to effect the desired amendment, the application, in so far as seeking a transfer to "1 Richards Place," is faulty in another and fatal respect. The only notice which Foxwell published was for proposed transfer to "183 S. South Carolina Avenue" in accordance with his application as originally filed. After the purported amendment, he published no new notice of any kind.

As was well stated in Parker v. Newark et al., Bulletin 425, Item 12, the evident and salutary purpose of the Alcoholic Beverage Law (R. S. 33:1-25, 26) in requiring publication of a notice of application "is to apprise the public at large, in plain and direct language, of just what application is being made so that possible objectors, realizing what is at hand, may, if they see fit, come forward to be heard."

It is clear that Foxwell's published notice, being for "183 S. South Carolina Avenue" (the address of the originally proposed entrance on that Avenue), may not be deemed notice to the public at large of any application for transfer to those premises under address of "1 Richards Place" and with the only entrance being on that side alley. Cf. Re Bolton, Bulletin 179, Item 3, ruling that, where a license has been issued for certain premises, a change in those premises giving them an entrance and address on a different street is such a substantial change as to require an actual place to place transfer of the license.

Since publication of proper notice is a jurisdictional requisite to the validity of any application, the defect in such notice in the present case of itself warrants reversal of the transfer. Parker v. Newark et al., supra; Pursel v. Phillipsburg et al., Bulletin 437, Item 3.

As to (2): Atlantic City has an ordinance which provides that—
 "No plenary retail consumption or plenary retail distribution license, except renewals of licenses presently outstanding, shall be issued for, or transferred to any premises within three hundred feet of premises for which a license of either type is outstanding." See Ordinance of August 10, 1939 (and also see amendment of April 10, 1941, adding a proviso immaterial in the present case).

Appellants contend that the premises in question are within the proscribed 300 feet of the already existing retail liquor premises of the Childs Restaurant across the street on S. South Carolina Avenue.

Since the ordinance specifies no way in which the 300 feet shall be computed, the method for such measurement is, in accordance with the rulings heretofore made by this Department, to be deemed the same as the method used in the Alcoholic Beverage Law's so-called "200-foot rule" (i.e., the provision in R.S.33:1-76 which forbids retail liquor places from being within 200 feet of a church or school). See Atlantic City Licensed Beverage Ass'n v. Atlantic City et al., Bulletin 296, Item 6, and cases there cited.

Such method is first to determine the normal route "that a pedestrian would properly walk," without jaywalking or trespassing, in going between the nearest points in the respective entrances. Measurement is then to be made along the very nearest unobstructed line in the public way along such route. See Aldarelli v. Asbury Park Bulletin 186, Item 12; Re Lizak, Bulletin 446, Item 5.

As thus measured, the distance between the entrance to the premises in question and the entrance to the Childs Restaurant is under 300 feet, whether the correct route, as urged by appellants, be deemed to be straight across S. South Carolina Avenue or whether, as urged by Foxwell, it be deemed to be a route across the street via the nearest crosswalk (a nearby over-pass where the Avenue dead-ends at the Atlantic City Boardwalk).

It is well to point out that in such measurement the "entrance" to the premises in question is deemed to be the side alley which Foxwell identifies as "Richards Place" and not the door which is some four and one-half feet down, since the alley is not a dedicated street or any type of public thoroughfare but merely and wholly a short private passage alongside the building. See Re Grove Liquors, Inc., Bulletin 397, Item 3; Re Lizak, *supra*. Cf. Aldarelli v. Asbury Park, *supra*; St. Mary's Greek Catholic Church v. Manville et al., Bulletin 187, Item 1. Indeed, if the alley were to be viewed as a public thoroughfare, it would follow that a pedestrian could properly cross S. South Carolina Avenue there and that, hence, the proper distance between even Foxwell's doorway and the entrance to the Childs Restaurant would take less than 200 feet.

However, Foxwell contends that, even if the transfer was contrary to the ordinance, nevertheless such ordinance is unreasonable as a whole and in its application to him.

I see no merit to this contention. The ordinance, in seeking to keep retail liquor places spaced apart and hence prevent overcrowding, is valid on its face as a reasonable exercise of the local police power. And nothing has been presented which establishes that the ordinance is unreasonable in its application to Foxwell or the premises in question. It may well be that it works hardship upon them. However, where private and public interests conflict, the latter must prevail. See Atlantic City Licensed Beverage Ass'n v. Atlantic City et al., *supra*.

One further point deserves mention: Foxwell, in his brief, seemingly attacks the standing of the appellants to press this appeal. However, since it was agreed at the hearing that the questions heretofore discussed were the only issues on the appeal, he is precluded from making such attack. In any event, irrespective of the standing of the appellants, this Department may, on its own motion in this proceeding, set aside the transfer in question since it was granted contrary to local ordinance and also to the jurisdictional requisites of law. See Parker v. Newark et al., *supra*, and cases there cited.

In view of the foregoing, the transfer in question must be set aside. It is unnecessary, therefore, to consider certain conditions which the Atlantic City Board had imposed on the transfer.

Accordingly, it is, on this 19th day of April, 1941, ORDERED, that the action of the Atlantic City Board of Commissioners in granting the transfer in question, be and hereby is reversed, and that all operation under such transfer shall cease forthwith.

New Jersey State Library *E. W. Garrett*
Acting Commissioner.