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

BULLETIN 809

July 1, 1948

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ITEM

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

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In the Matter of the Seizure on February 13, 1948 of a quantity of alcoholic beverages and furniture, fixtures and equipment at 41 Smith Avenue, in the Borough of Penns Grove, County of Salem and State of New Jersey.	Case No. 7223 ON HEARING CONCLUSIONS AND ORDER

Edgar A. Wilkinson, t/a Mutual Music Machine Co., Pro Se.
Harry Castelbaum, Esq., appearing for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic beverages and furniture, fixtures and equipment, itemized in a schedule attached hereto, seized on February 13, 1948 at 41 Smith Avenue, Penns Grove, N. J. constitute unlawful property and should be forfeited.

It appears that on the day in question two ABC agents entered a one-story building at the above address to check a complaint that speakeasy activities were being carried on there. They took seats at a bar in the place and observed two other persons seated at the bar with drinks of alcoholic beverages in front of them. The agents purchased a number of drinks of beer and other alcoholic beverages for themselves and some of the other patrons from a person later identified as Oliver McClore.

The agents then disclosed their identity to McClore and seized the beer, whiskey and soda in the place, as well as the bar and other furnishings and equipment there, including a cash register, a music machine, a pinball machine and a cigarette vending machine, together with the currency in such machines. The agents also arrested McClore on charge of violating the liquor laws. He has since been sentenced to imprisonment from one to two years in State Prison.

Oliver McClore did not hold any license authorizing him to sell or serve alcoholic beverages and the premises were not licensed for the sale of alcoholic beverages.

McClore previously has been convicted of assault, disorderly conduct, gambling activities and, in January 1948, operating a disorderly house (involving the unlawful sale of liquor at the premises).

It is obvious that the alcoholic beverages which were seized in McClore's premises were intended for unlawful sale and are therefore illicit. R. S. 33:1-1(i). Such illicit alcoholic beverages and the other personal property seized therewith in the premises are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

When the matter came on for hearing pursuant to R.S. 33:1-66, Edgar A. Wilkinson appeared and sought return of the music machine and the pinball machine. No one opposed forfeiture of the balance of the personal property.

In view of McClore's prior record, including his recent conviction for violating the liquor laws, it is incumbent upon Wilkinson to

establish that he investigated the character and identity of McClore before placing his machine in McClore's establishment and, further, that he inspected the place and did not observe anything to cause him to suspect that it was a speakeasy. See Case No. 6875, Bulletin 716, Item 3, Case No. 6898, Bulletin 687, Item 1.

According to Wilkinson's records, he placed the machine in McClore's premises some time between February 8th and February 15, 1948, after his wife received a telephone call from a third party requesting that a machine be placed in McClore's establishment. Wilkinson says that one of his employees who contacted McClore reported that McClore told him he intended to open a "jitterbug" place for children to dance. Wilkinson then placed his machine there without further question; indeed, without knowing the name of his customer, even though Wilkinson's wife told him that she had been informed that the person who wanted the machine "had a bad record but was going to run a right kind of a place now, he thought". Wilkinson says that he construed this information to mean that the person had run illegitimate places before.

These facts were more than sufficient to put Wilkinson on notice of the possibility that McClore might engage in illegal liquor activities, with the attendant risk of forfeiture of Wilkinson's machines.

I am authorized to return property subject to forfeiture only in the event that the claimant acted in good faith and had no knowledge of the unlawful use to which the property was put or of such facts as would have led a person of ordinary prudence to discover such use. R. S. 33:1-66(f). It is obvious that under the circumstances Wilkinson cannot avail himself of this provision.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the State Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK
Commissioner.

Dated: June 9, 1948

SCHEDULE "A"

7 - bottles of beer
1 - 4/5 qt. bottle of whiskey
75 - bottles of soda
21 - glasses
1 - National Cash Register #2710800 (and $4.26 in currency therein)
1 - bar
1 - cola cooler
1 - steel clothes cabinet
2 - tables
16 - stools
4 - round wall mirrors
1 - electric wall clock
1 - Wurlitzer music machine #204829 (and currency therein)
1 - cigarette vending machine (and currency therein)
1 - baseball pinball machine (and currency therein)

2. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES INTENDED FOR UNLAWFUL SALE FORFEITED - MONEY REPRESENTING RETAIL VALUE OF MOTOR VEHICLE RETURNED BECAUSE EVIDENCE INSUFFICIENT TO ESTABLISH TRANSPORTATION OF ALCOHOLIC BEVERAGES IN SUCH VEHICLE.

In the Matter of the Seizure on October 7, 1947, of a Pontiac sedan, a quantity of alcoholic beverages, and other articles, in the vicinity of Camp Kilmer, in the Township of Raritan, County of Middlesex and State of New Jersey.	Case No. 7177 ON HEARING CONCLUSIONS AND ORDER

John T. Keefe, Esq., Attorney for Herman Wittmer.
Harry Castelbaum, Esq., appearing for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether two - one-half pint bottles and one 4/5 quart bottle of alcoholic beverages, a Pontiac sedan, and other articles, itemized in a schedule attached hereto, seized on October 7, 1947 on the highway in the vicinity of Camp Kilmer, Raritan, New Jersey, constitute unlawful property and should be forfeited.

On the evening of October 6, 1947, the Provost Marshall at Camp Kilmer received information that some person was selling alcoholic beverages there. This is prohibited by Federal, civil, and military law. Military police investigated and observed Herman Wittmer, a 28-year-old ex-serviceman, carrying a canvas bag. Upon being questioned Wittmer said that he had that evening brought seven bottles of liquor into the camp, sold four, and had the remaining three bottles in the bag.

Wittmer was detained by the Provost Marshal and signed a written statement admitting the sale of alcoholic beverages in the camp. Wittmer told the military police that his parents were seated in his Pontiac sedan, parked opposite an entrance gate to the camp. Since neither of Wittmer's parents could operate the motor vehicle, military police took Wittmer's parents to the railroad station and, at Wittmer's request, the motor vehicle was moved for safekeeping to the rear of the Provost Marshal's office.

Although the Army authorities detained Wittmer overnight, they did not charge him with any violation of Federal law, but merely called the case to the attention of the State Department of Alcoholic Beverage Control.

ABC agents went to the Provost Marshal's office the next day and obtained a supplemental statement from Wittmer which gave a detailed account of Wittmer's actions from the time he left his home in New York to the time he was apprehended in Camp Kilmer. In this statement he said that he used the Pontiac sedan to transport seven bottles of alcoholic beverages in a canvas bag and that, when he arrived at Camp Kilmer, he removed the bag with the alcoholic beverages from the rear trunk of the car and brought it into the camp for purpose of sale.

Wittmer's car was not licensed to transport alcoholic beverages in this state. Transportation of alcoholic beverages in an unlicensed

vehicle is strictly limited to such as is intended for personal consumption, or such as, passing through this state, is accompanied by proper documents and is a legitimate enterprise.

The ABC agents seized the Pontiac sedan, in which there were no alcoholic beverages at the time, on the basis of Wittmer's statement. A camera and a pair of binoculars were in the car. Three bottles of alcoholic beverages were turned over to the agents by the military authorities.

When the matter came on for hearing pursuant to R. S. 33:1-66, Herman Wittmer appeared with counsel and asserted that his car had not actually been used to transport the alcoholic beverages in question and, hence, was not subject to forfeiture for any violation of the Alcoholic Beverage Law.

After such hearing, the Pontiac sedan was returned to Herman Wittmer upon payment, under protest, pursuant to R. S. 33:1-66, of its appraised retail value of $1750.00. Wittmer has stipulated that the State Commissioner of Alcoholic Beverage Control shall determine in this proceeding whether this money should be returned to him, or be forfeited.

To support forfeiture, it must be established that the motor vehicle was actually used to transport alcoholic beverages in this state. Wittmer's express admission to that effect is evidence of a positive nature.

In repudiating his statements, Wittmer's explanation is that on the Friday before the seizure he came by railroad from New York, carrying the seven bottles of liquor, brought such liquor into Camp Kilmer, sold part, concealed the balance on the grounds of the camp, and returned the following Monday, in his car, to sell such balance. When questioned by the military police, he feared that his case would be aggravated if he admitted that it was his second visit to the camp to sell liquor, and hence, said that he had brought the liquor on Monday, without being aware that thereby his car would be subjected to forfeiture. When repeating this statement to the ABC agents on Tuesday, he was governed by the same impulse, again without knowledge that he was subjecting his car to forfeiture. Later that day when, at the local police station, he was advised that his car was being seized on the basis of his statements, he thought that it would be useless to change his story.

It is scarcely necessary to say that everyone does not do and say the same thing under a given set of circumstances. What is rational behavior for one person may be completely illogical for another. In Wittmer's case, his explanation of his damaging admissions is plausible, yet suspect, because of his vital interest in the outcome of the proceedings.

Wittmer's father gave his version of what actually occurred. He testified that when his son arrived at Camp Kilmer he parked the car, left the keys there, and did not go to or remove anything from the trunk of the car, but immediately walked towards the camp. While the father is naturally influenced by his desire to help his son avoid forfeiture of the car, I am not inclined to disregard entirely his testimony on that account. The officers confirmed the fact that the keys were in the car on Monday night after Wittmer was apprehended. The presence of the keys, while not dispositive of the question, has some bearing as to whether or not it is likely that the son unlocked the trunk of the car and removed the bag with the liquor.

Herman Wittmer had no previous criminal record. The Middlesex County Grand Jury dismissed the charge against him of transporting alcoholic beverages unlawfully. Under the evidence in the case, it is as consistent to accept as to reject Wittmer's repudiation of his statements to the military police and ABC agents. Hence, the Department has not sustained the burden of establishing by a preponderance of the evidence that the Pontiac sedan was used to transport alcoholic beverages on the day in question. The money on deposit with me, representing the retail value of the car, and the camera and binoculars, will therefore be returned to Herman Wittmer. Cf. Seizure Case No. 7156, Bulletin 791, Item 8.

The forfeiture of the three bottles of alcoholic beverages, which were intended for unlawful sale in Camp Kilmer, is not opposed.

Accordingly, it is DETERMINED and ORDERED that the sum of $1750.00 deposited by Herman Wittmer, and the camera and binoculars referred to, be returned to him; and it is further

DETERMINED and ORDERED that the three bottles of alcoholic beverages seized in the case constitute unlawful property, and that the same be and hereby are forfeited in accordance with the provisions of R. S. 33:1-66, and that they be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part at the direction of the State Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK
Commissioner.

Dated: June 9, 1948.

SCHEDULE "A"

2 - 1/2 pt. bottles of liqueur
1 - 4/5 qt. bottle of liqueur
1 - canvas top bag
1 - Colmont binoculars
1 - Rolleicord camera
1 - Pontiac sedan, Serial #L8-LB-2552,
N. Y. Registration 2T7786

3. DISQUALIFICATION - PREVIOUS PETITION DENIED - APPLICATION HEREIN GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2.

Case No. 677.

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

Petitioner was found to be disqualified to hold a liquor license in this State or to be employed by or connected with the holder of such a license by Conclusions and Order dated August 31, 1943, by reason of his conviction in 1936 of a violation of the "Mann Act". His petition for relief under R. S. 33:1-31.2 was denied at that time because his "falsification and suppression of the pertinent circumstances surrounding his conviction prevented (the then Commissioner) from finding....that petitioner has been law-abiding for the past five years and that his association with the alcoholic beverage industry will not be contrary to public interest". Re Case No. 285, Bulletin 583, Item 9.

Five years have now elapsed since petitioner falsely testified concerning his criminal record. He now offers testimony that during the past five years he has been employed in various businesses not connected with the alcoholic beverage industry, except during the period when he made a trip to Italy, and during the past few months when he was unemployed. He is now living with his wife whom he married in Italy.

Petitioner has no record of any criminal convictions since 1936. An investigation of his activities tends to establish the truth of his testimony and that he is not now and has not been connected with the alcoholic beverage business for at least five years immediately prior to the hearing herein.

He produced three witnesses, one an attorney-at-law of this state, the others, businessmen. They testify that they have known him for from six to ten years and that they know many people who know petitioner and that petitioner has for at least the last five years borne a good reputation as a law-abiding and honest person.

I find that petitioner has been law-abiding for at least 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 14th day of June, 1948,

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

ERWIN B. HOCK
Commissioner.

4. DISCIPLINARY PROCEEDINGS - IMMORAL ACTIVITIES - SALES DURING PROHIBITED HOURS - PERMITTING BRAWL ON LICENSED PREMISES - CONDUCTING BUSINESS AS NUISANCE - PREVIOUS RECORD - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against

GEORGE MacDONALD
T/a MacDONALD'S RARITAN BAY HOTEL
215 Main Street
Keansburg, N. J.,

Holder of Plenary Retail Consumption License C-1, issued by the Mayor and Municipal Council of the Borough of Keansburg.

CONCLUSIONS AND ORDER

Edward F. Juska, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to charges alleging:

"1. On April 12, 1948, and on divers days prior thereto, commencing in or about January 1948, you allowed, permitted and suffered lewdness and immoral activities in and upon your licensed premises; in violation of Rule 5 of State Regulations No. 20.

"2. On Saturday, March 6, 1948, after 2:00 a.m. and as late as 3:45 a.m., you sold, served, delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages on your licensed premises in violation of Section 15 of an Ordinance adopted by the Municipal Council of the Borough of Keansburg on July 17, 1934, as amended by Ordinance adopted June 23, 1944, which prohibits any such activity between the hours of 2:00 a.m. and 6:00 a.m. on weekdays which are not holidays during the period from September 16th to May 29th of each year.

"3. On March 20, 1948, you allowed, permitted and suffered a disturbance and brawl in and upon the licensed premises; in violation of Rule 5 of State Regulations No. 20.

"4. On the occasions aforesaid, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered all the foregoing violations to occur, and conducted the licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20."

The licensed premises are operated as a hotel.

A local "hours" ordinance prohibits the sale, service or delivery of alcoholic beverages on the licensed premises between the hours of 2:00 a.m. and 6:00 a.m. on weekdays, other than holidays, during the period between September 16th and May 29th of each year. Apparently on Saturday, March 6, 1948, as late as 3:45 a.m., the bar was running "wide open" with a total disregard of the ordinance.

On March 20, 1948, a brawl occurred on defendant's premises resulting from a "disagreement" between two patrons starting at about 2:30 p.m., and finally culminated in a rowdy "free for all". During the course of the incident, one patron was seriously cut across the face, necessitating some twenty or thirty stitches. Another patron lost the tip of his finger and suffered the near loss of an ear.

The lewd and immoral activity was permitted during the period from January 1948 to April 12, 1948. Apparently the rooms of the hotel were rented to men and women in a total disregard of their use thereof. Defendant did not even maintain a hotel register as required by law.

In view of the plea and the evidence of the violations hereinabove set out, there can be no doubt that the premises were conducted in such a manner as to become a nuisance. In State v. Berman, 120 N.J.L. 381, it was said:

> "It has been repeatedly held that any place of public resort is a public nuisance where illegal practices are habitually carried on or when such place becomes the habitual resort of thieves, drunkards, prostitutes, &c., who gather there for an unlawful purpose or make it a rendezvous where plans may be concocted for depredations upon society and disturbing either its peace or its rights of property."

See also State v. Williams, 30 N.J.L. 102, 104.

I must find defendant guilty as charged. It is further noted that the hotel has the following adjudicated record: April, 1944, license suspended for violation of "hours of sale" ordinance by local issuing authority for five days; August, 1944, license suspended for violation of "hours of sale" ordinance by local issuing authority for fifteen days; May, 1945, license suspended for violation of "hours of sale" ordinance by State Commissioner for balance of term (some 33 days).

While Mrs. Rose MacDonald, the wife of the defendant-licensee, was the licensee of record in 1944, George MacDonald was then in charge of the licensed premises.

Under all the circumstances, the only proper penalty is revocation of the license.

Accordingly, it is, on this 21st day of June, 1948,

ORDERED that Plenary Retail Consumption License C-1, issued by the Mayor and Municipal Council of the Borough of Keansburg to George MacDonald, t/a MacDonald's Raritan Bay Hotel, for premises 215 Main Street, Keansburg, be and the same is hereby revoked, effective immediately.

ERWIN B. HOCK
Commissioner.

5. APPELLATE DECISIONS - PROTOS v. NEWARK AND O'NEAL.

RUBIN PROTOS,

Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, and TURNER O'NEAL and ARRE O'NEAL, trading as GOLDEN INN BAR,

Respondents

ON APPEAL
CONCLUSIONS AND ORDER

Avidan & Avidan, Esqs., by Alexander Avidan, Esq. and Saul C. Schutzman, Esq., Attorneys for Appellant.
Thomas L. Parsonnet, Esq., by George B. Astley, Esq., Attorney for respondent Municipal Board of Alcoholic Beverage Control.
James L. McKenna, Esq., Attorney for respondents Turner O'Neal and Arre O'Neal, trading as Golden Inn Bar.

BY THE COMMISSIONER:

This is an appeal from the action of the respondent Municipal Board of Alcoholic Beverage Control in granting to respondents, Turner O'Neal and Arre O'Neal, a place-to-place transfer of their plenary retail consumption license from 150 Charlton Street to 192½ Spruce Street.

This is the third appeal filed involving an application to transfer a license from 150 Charlton Street to premises on Spruce Street. The first appeal was filed in 1941 (Golden Inn Bar, Inc. v. Newark, Bulletin 481, Item 2), and the second appeal in 1946 (O'Neal v. Newark, Bulletin 746, Item 2). In the prior appeals, the action of respondent issuing authority in denying the applications for transfer of the license to 194 and 192½ Spruce Street, respectively, was affirmed by the State Commissioner.

At the hearing herein it was stipulated that the transcript of the testimony taken at the hearing before respondent Municipal Board of Alcoholic Beverage Control would be considered as part of the record in this appeal, and additional testimony was introduced by the parties hereto. Rule 8 of State Regulations No. 15.

Appellant is the owner of premises 189 Spruce Street, in which a "package goods" store is located at the present time.

Although appellant alleges sundry reasons for reversal of the action of respondent issuing authority, the evidence presented resolved itself to the question as to whether respondent issuing authority had abused its discretion in granting the place-to-place transfer of the license.

In the prior appeals it was pointed out that the number of licensed premises to be permitted in any particular area is a matter confided to the sound and bona fide discretion of the local issuing authority. The burden rested with appellants to show that such discretion had been unreasonably exercised. Because appellants in the prior appeals failed to sustain that burden, the action of the respondent issuing authority was affirmed by the State Commissioner.

In the instant case, the situation is reversed. The respondent issuing authority has approved the transfer and the burden is now on the present appellant to show that there is no public need and necessity for said license at the premises in question. Unless this burden is met, the action of respondent issuing authority must be sustained.

Proper liquor control dictates that, in considering successive applications, an issuing authority may not be permitted to "back and fill" without sound reason for its action. I have carefully considered the evidence herein to ascertain the reasons given for reaching a different result in this case. Daniel Crosta, a member of respondent issuing authority, testified that he had voted on the two previous occasions against the place-to-place transfer of the license. He stated that he voted in favor of the transfer in the instant case for various reasons, viz., the dilapidated condition of the licensed premises on Charlton Street, the presentation to respondent Board of a petition containing the names of 1100 persons, many of whom reside in the immediate vicinity; the change for the better of conditions generally on Spruce Street; and the conversion of Charlton Street into a one-way street. The two other members of respondent Board, one of whom had not been a member when the prior applications were heard, also voted in favor of the transfer.

A large number of witnesses produced by respondents testified that they were familiar with conditions in the neighborhood of Charlton and Spruce Streets, and that in their opinion the transfer of the license to Spruce Street, a well-lighted thoroughfare, would be advantageous to the residents of that particular section of the community.

The testimony of witnesses is in agreement that Spruce Street is a business section. Although a number of licensed premises are located on Spruce Street in the neighborhood of the proposed premises, it appears that the granting of the transfer here in question will not aggravate to any appreciable degree the existing concentration of licenses in that area.

The question of public convenience and necessity is one which the respondent Board is best capable of solving -- they know the place and the people. Their opinion is worthy of great weight. The burden of proving that public convenience and necessity will not be served rests, as does all affirmative assertions, upon the appellant. State Regulations No. 15, Rule 6; Hoffman v. Ridgefield Park, Bulletin 334, Item 12; Mossman v. Irvington et al., Bulletin 715, Item 1.

My function on appeals of this type, however, is not to substitute my personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion, and if so to affirm, irrespective of my personal view on the subject. Rafalowski v. Trenton, Bulletin 155, Item 8; Northend Tavern, Inc. v. Northvale et al., Bulletin 493, Item 5; Mossman v. Irvington et al., supra.

After consideration of all the evidence in the instant case, I cannot say that the action of the members of respondent issuing authority in approving the transfer was so arbitrary and unreasonable as to constitute an abuse of discretion warranting a reversal of its action.

The action of respondent issuing authority in granting the transfer to respondents Turner O'Neal and Arre O'Neal is hereby affirmed.

Accordingly, it is, on this 21st day of June, 1948,

ORDERED that the petition of appeal be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

6. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALE OF HOME MADE WINE — WINE, OTHER BEVERAGES AND PROPERTY ORDERED FORFEITED - REFRIGERATOR AND OTHER PROPERTY RETURNED TO INNOCENT OWNER.

In the Matter of the Seizure on February 26, 1948, of a quantity of wine, soda, and pool tables, furniture and furnishings, at 27 Louis Street, in the Borough of Carteret, in the County of Middlesex and State of New Jersey.	Case No. 7229 ON HEARING CONCLUSIONS AND ORDER

William F. McCloskey, Esq., Attorney for Joseph Sarzillo.
Harry Castelbaum, Esq., appearing for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of wine and soda, and pool tables and other furniture and fixtures, itemized in a schedule attached hereto, seized on February 26, 1948 at 27 Louis Street, Carteret, New Jersey, constitute unlawful property and should be forfeited.

It appears that on complaint that wine was being sold unlawfully in a pool room at the above address, an ABC agent went there on February 25th and 26th, 1948 and purchased drinks of wine and a gallon jug of wine from Anthony Sarzillo, the proprietor of the establishment.

Anthony Sarzillo did not hold any license authorizing him to sell or serve alcoholic beverages and the premises were not licensed for the sale of alcoholic beverages. He had obtained a permit in September 1947 from the State Department of Alcoholic Beverage Control authorizing him to manufacture wine for personal consumption only.

On February 26, 1948 ABC agents executed a search warrant for the premises and seized the above mentioned wine and other property.

The evidence warrants the conclusion that the seized wine was intended for unlawful sale and hence is illicit. The wine is likewise illicit because illegally manufactured, inasmuch as the aforesaid permit merely authorizes the home manufacture of wine for personal consumption. R. S. 33:1-1(i), R.S. 33:1-75. Also see Seizure Case No. 6800, Bulletin 670, Item 4. The illicit wine, together with the other personal property seized therewith in the place, is subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

When the matter came on for hearing pursuant to R.S. 33:1-66, Joseph Sarzillo, a son of Anthony Sarzillo, appeared with counsel and sought return of the pool tables, refrigerator, wine press, grape masher and tables and chairs. No one opposed forfeiture of the wine or other items.

I am authorized to return property subject to forfeiture to a person who has established to my satisfaction that he acted in good faith and had no knowledge of the unlawful use to which the property was put or of such facts as would have led a person of ordinary prudence to discover such use. R. S. 33:1-66(f).

Such a claim, when presented by a close relative of the wrongdoer, is closely scrutinized but not necessarily rejected merely because of the relationship. See Seizure Case No. 7211, Bulletin 798, Item 3.

The general picture presented is that of a dutiful son providing his elderly impoverished father with a means of earning an independent livelihood by purchasing equipment with which the father conducted a small poolroom in a building owned by the son.

The son testified that he purchased the pool tables and other tables and chairs about 1932, and purchased the wine press in 1939. He produced documentary evidence that he purchased the refrigerator in 1941. The son has been employed for the past 25 years as a welder by an industrial concern, and did not at any time operate the pool parlor, although for a year or more the pool parlor license was in his name.

The evidence presented reasonably supports the son's claim that he is the owner of the articles in question.

The fingerprint records of the elder Sarzillo do not disclose any record for violating any liquor laws. The only record against him is that in 1935 the local police seized two barrels of wine manufactured without a permit. There has been no evidence presented that the son knew or should have suspected that his father would sell wine on the occasions in question.

Under the circumstances I am inclined to accept the son's story and, hence, will return the items owned by him except the wine press, which was the direct instrumentality used in the manufacture of the illicit wine, and hence must be forfeited.

Accordingly, it is DETERMINED and ORDERED that, if on or before the 6th day of July, 1948, Joseph Sarzillo pays the cost of seizure and storage of the pool tables, refrigerator, tables and chairs, they will be returned to him; and it is further

DETERMINED and ORDERED that the balance of the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the State Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK
Commissioner.

Dated: June 24, 1948.

SCHEDULE "A"

2 - 50-gallon barrels of wine
19 - bottles and jugs of wine
13 - empty 50-gallon barrels
1 - bottle capper
1 - wine press
1 - Sunshine Manufacturing Co. electric grape masher 1/4 H.P., Motor No. 30705
15 - packs of cigarettes
275 - bottles of soda
2 - pool tables and 1 pool table cover
2 - pool ball racks
32 - pool balls
21 - pool cues
4 - pool table bridges
1 - "Spot a Card" pinball machine (and currency therein)
1 - "Captain Kidd" pinball machine (and currency therein)
8 - wire chairs
1 - table
1 - "Hot Point" electric refrigerator
1 - glass show case

7. APPELLATE DECISIONS - CONKLIN v. BRIDGEWATER TOWNSHIP.

KENNETH C. CONKLIN, trading as TRAIL'S END LODGE,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BRIDGEWATER,
Respondent

ON APPEAL
CONCLUSIONS AND ORDER

George W. Allgair, Esq., Attorney for Appellant.
Ronald A. Gulick, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the revocation of appellant's plenary retail consumption license by respondent Township Committee. Respondent revoked appellant's license after it had found him guilty, in disciplinary proceedings, of violation of Rule 9 of State Regulations No. 20.

It appears from the testimony presented herein that, during the absence of appellant on March 12, 1948, Township Supervisor William Paul and Special Police Officer John F. Connors entered the licensed premises through the front door and, upon finding no one in the premises, made a search of the building. Supervisor Paul testified that, during the search of the premises in question, he found a box containing several contraceptives on a shelf in back of the bar.

Special Officer Connors corroborated the testimony of Supervisor Paul, especially with reference to the discovery of the contraceptives.

Three ABC agents dispatched to appellant's premises on March 12, 1948 testified that they arrived at the licensed premises at 9:15 p.m. and that, during the investigation, they observed a metal box containing the contraceptives on the bar.

Appellant testified that he had locked the front door of the premises and the box in which the contraceptives were allegedly found was in a closet in the bedroom which had at times been occupied by appellant and his wife. Appellant further contended that he never sold or made gifts of contraceptives to any person on his licensed premises.

The entire building is described in appellant's application for a license as the licensed premises. This being so, appellant, by possessing contraceptives in any part of the building, is guilty of a violation of the Rules and Regulations of the Department of Alcoholic Beverage Control. Appellant has not denied that the contraceptives were his property. I therefore find appellant guilty of the violation charged.

The question now to be decided is whether the penalty imposed herein is excessive.

Appellant, who has operated the licensed premises at the place in question for two years, has no previous adjudicated record. No evidence was presented that appellant sold or distributed the contraceptives to other persons. His testimony that the contraceptives were for his personal use only was not refuted.

I dislike to moderate any penalty inflicted by any issuing authority, and will do so only in those cases where it clearly appears that the penalty imposed is excessive. Allowing reasonable latitude for differences of opinion, twenty days would appear to be ample for a

first offense of this kind. Cf. Ziomek v. Clementon, Bulletin 381, Item 3.

The revocation imposed by respondent became effective at 2:00 a.m. on May 25, 1948. When the appeal was filed herein I denied a stay but permitted appellant to make application for a stay at the time of the hearing. On June 4, 1948, I entered an order staying respondent's order of revocation of the 1947-48 license until further order of the Commissioner. I shall now vacate my order dated June 4, 1948 and enter an order suspending the license for twenty days, less ten days already served. See Rule 2 of State Regulations No. 16.

Accordingly, it is, on this 25th day of June, 1948,

ORDERED that the revocation of Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Bridgewater to Kenneth C. Conklin, t/a Trail's End Lodge, be and the same is hereby modified to a suspension for a period of twenty days; and it is further

ORDERED that the suspension be reduced to ten (10) days, because of the ten days already served; and it is further

ORDERED that the order dated June 4, 1948 is vacated, effective at 2:00 a.m. June 29, 1948; that the license now held by appellant be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 29, 1948, and, if the license be renewed for the 1948-49 licensing year, such license shall be under suspension until 2:00 a.m. July 9, 1948.

ERWIN B. HOCK
Commissioner.

8. APPELLATE DECISIONS - CHESLER v. ROXBURY TOWNSHIP.

HARRY A. CHESLER, JR.,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF ROXBURY,
Respondent

ON APPEAL
O R D E R

Walter H. Jones, Esq., Attorney for Appellant.
Howard F. Barrett, Esq., Attorney for Respondent.
Sidney Simandl, Esq. and Bertram M. Berla, Esq., Attorneys for Objectors.

BY THE COMMISSIONER:

This appeal was filed to review the action taken by respondent on February 14, 1946, whereby it denied appellant's application for a plenary retail consumption license for the 1945-46 fiscal year. Testimony was taken herein, and the matter was adjourned from time to time, but the case was never fully presented for the Commissioner's consideration.

In view of the Conclusions and Order entered on May 18, 1948 in Staiker v. Roxbury et al., Bulletin 804, Item 3, it appears that the issues raised herein are moot.

Under the circumstances, I shall dismiss the appeal filed herein.

Accordingly, it is, on this 24th day of June, 1948,

ORDERED that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

9. CANCELLATION PROCEEDINGS - LICENSE ISSUED IN VIOLATION OF P. L. 1947, CHAP. 94 - LICENSE CANCELLED.

In the Matter of Cancellation Proceedings against)
)
JAMES J. GALLOWAY)
T/a HAPPY LANDINGS CANTEEN) CONCLUSIONS
N/w cor. Lakewood and) AND ORDER
Lakehurst Roads)
Ridgeway, Manchester Township)
P.O. Whiting, N. J.,)
)
Holder of Plenary Retail Consumption License C-4 issued by the)
Manchester Township Committee.)
- - - - - - - - - - - - - - - - - - -)

Joseph A. Citta, Esq., Attorney for Licensee.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The above named licensee was required to show cause why his license should not be cancelled upon the ground that it had been issued in violation of R. S. 33:1-12, 14 (P.L. 1947, c. 94).

James J. Galloway enlisted in the U. S. Navy in 1917 and served therein until he was placed on inactive duty in 1936. On December 1, 1936 he obtained a plenary retail consumption license for the premises in question and held this license until it expired on June 30, 1937. Regina Galloway, wife of James J. Galloway, applied for and obtained the license for the same premises for the fiscal year beginning July 1, 1937. She renewed the license annually thereafter until June 30, 1940, at which time she permitted the license to expire by its terms without seeking any renewal thereof.

James J. Galloway was employed in his wife's premises from July 1, 1937 until March 1, 1940, when he was recalled to active duty in the U. S. Navy. He remained on active duty until December 3, 1947, when he was returned to inactive duty to await his retirement which became effective April 1, 1948.

The license considered herein was issued April 26, 1948. At that time three plenary retail consumption licenses were outstanding in Manchester Township. The population of the township, according to the 1940 Federal census, was 918. It thus appears that the issuance of the license violated the provisions of P.L. 1947, c. 94, unless it came within the exception set forth in Section 7 thereof, which provides:

> "Nothing in this act shall prevent the issuance, in a municipality, of a new license to a person who, having held a license of the same class in the municipality, surrendered his license or permitted it to expire because of his induction into or service in the armed forces of the United States; provided, however, that such ex-licensee shall have filed the application for a new license within one year from the completion of his active service in said armed forces."

The facts herein disclose that James J. Galloway was not the holder of a license when he returned to active duty on March 1, 1940, and that his wife, Regina Galloway, who permitted her license to

expire on June 30, 1940, did not serve in the armed forces of the United States. It thus appears that the licensee herein cannot claim the benefit of the exception set forth in Section 7 of P.L. 1947, c.94, and, hence, I have no alternative except to cancel the license.

Accordingly, it is, on this 28th day of June, 1948,

ORDERED that Plenary Retail Consumption License C-4, issued by the Manchester Township Committee to James J. Galloway, t/a Happy Landings Canteen, for premises at N/W Cor. Lakewood & Lakehurst Roads, Ridgeway, Manchester Township, be and the same is hereby cancelled, effective immediately.

ERWIN B. HOCK
Commissioner.

10. STATE LICENSES - NEW APPLICATIONS FILED.

A & B Distributors Inc.
611-13-15 Atlantic Ave.
Atlantic City, N. J.
Application for 1948-49 Limited Wholesale License filed June 24, 1948.

Edward I. Warren, t/a Warren Trucking Co.
Grant Ave.
South Vineland, N. J.
Application for 1948-49 Transportation License filed June 29, 1948.

Esa and George F. Balish
T/a Balish Beverage Company
5 Lafayette Ave.
Summit, N. J.
Application for 1948-49 State Beverage Distributor's License filed June 29, 1948.

W. A. Stackpole Motor Transportation, Inc.
1025 Paterson Plank Rd.
Secaucus, N. J.
Application for 1948-49 Transportation License filed June 29, 1948.

Pascale Trucking Co., Inc.
566 - 52nd St.
West New York, N. J.
Application for 1948-49 Public Warehouse License filed June 30, 1948.

Frank Masino and Frank Masino, Jr.
T/a Masino & Son
55 Park St.
Summit, N. J.
Application for 1948-49 State Beverage Distributor's License filed June 30, 1948.

Erwin B. Hock
Commissioner.