

BULLETIN 747

JANUARY 28, 1947.

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UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

TO : SAC, [illegible]

FROM : [illegible]

SUBJECT: [illegible]

[The body of the document contains several paragraphs of text that are almost entirely illegible due to extreme blurriness and low contrast. Only faint outlines of words and lines are visible.]

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

BULLETIN 747

JANUARY 28, 1947.

1. COURT DECISIONS - NEW JERSEY COURT OF ERRORS AND APPEALS -
THE PANDA (A CORPORATION) v. ALFRED E. DRISCOLL, COMMISSIONER -
COMMISSIONER SUSTAINED.

NEW JERSEY COURT OF ERRORS AND APPEALS
No. 38 October Term, 1946

THE PANDA, (a corporation),)

Appellant,)

-vs-

ALFRED E. DRISCOLL, Commissioner)
of the State Department of Alco-)
holic Beverage Control of the)
State of New Jersey,)

Respondent)

Argued October 18th, 1946 Decided Jan. 17, 1947

On Appeal from New Jersey Supreme Court

For appellant, Coult, Satz, Morse & Coult,
Joseph Coult, Jr., Esq., of Counsel.

For respondent, Hon. Walter D. Van Riper, Attorney General,
Thomas E. Hanson, Esq., of Counsel.

The opinion of the Court was delivered by

McLean, J.

This matter is before the Court on appeal from a judgment of the Supreme Court dismissing a writ of certiorari and affirming an order suspending the retail consumption license for the sale of alcoholic beverages of the appellant for a period of fifteen (15) days.

THE PANDA, a corporation, holds a plenary retail consumption license for the sale of alcoholic beverages, issued by the City of Newark for the premises No. 909 Frelinghuysen Avenue, in that City. On or about February 4, 1946, an investigator for the Commissioner visited the premises for the purpose of making a routine inspection. He tested the open stock of liquor of which he seized one bottle of Schenley Reserve Whiskey, which appeared to him to be questionable. A Chemical analysis of the contents of the seized bottle disclosed that it was not genuine Schenley Reserve Whiskey as labelled. THE PANDA was notified of a hearing before the Commissioner on a charge that it had violated the provisions of R. S. 33:1-50, in it had possessed "alcoholic beverage not genuine as labelled." The foregoing facts were disclosed by testimony at a hearing on that charge and thereupon the Commissioner made the order under review, finding THE PANDA guilty of the charge and suspending its license for fifteen (15) days commencing at 2 o'clock A.M. April 25 and terminating at 2 A.M. May 10, 1946. The effect of the Order was stayed pending this appeal.

We conclude that the action of the Commissioner was justified; that the rule in *State v. Cannizzaro*, 133 N. J. L. 383, relied upon by the appellant has no application in this case, and that there was ample evidence to support the charge.

State v. Cannizzaro, supra, is distinguishable from the present case because it was a criminal action and no person may be found guilty of a crime if the indictment upon which he is tried fails to charge a violation of the criminal law. This is a disciplinary action under R. S. 33:1-31. The charge is the possession of an illicit beverage in violation of R. S. 33:1-50. There is no requirement that a disciplinary action need be grounded upon a criminal violation. This is evidenced by the provisions of R. S. 33:1-31, empowering the Commissioner to suspend or revoke a license for violation of rules and regulations. Obviously, the rules and regulations formulated by the Commissioner of Alcoholic Beverage Control may not make that a crime which is not so denominated by the statute. It is patent from the consideration of 33:1-31 that licenses may be suspended or revoked for acts falling short of criminal.

In the present case, the Commissioner proceeded under R. S. 33:1-31 which provides: "Any license, whether issued by the Commissioner or any other issuing authority may be suspended or revoked by the Commissioner * * * * for any of the following causes: (a) violation of any of the provisions of this Chapter." The evidence disclosed that the appellant possessed a bottle containing an alcoholic beverage bearing a label which did not truly describe its contents, which under R. S. 33:1-88 was prima facie evidence that the bottle contained an illicit beverage. No evidence was offered by appellant to overcome this presumption. The possession of such illicit beverage is a misdemeanor under R. S. 33:1-50. Hence, such possession is a violation of a provision of the Chapter and is ground for revocation or suspension of a license.

The judgment of the Supreme Court is affirmed.

"ENDORSED

Filed - Jan. 17, 1947

Lloyd B. Marsh
Clerk."

2. DISCIPLINARY PROCEEDINGS - HOLDER OF SOLICITOR'S PERMIT EMPLOYED BY A WHOLESALER AND A RETAILER OF ALCOHOLIC BEVERAGES - SOLICITOR'S PERMIT SUSPENDED FOR A PERIOD OF 5 DAYS.

In the Matter of Disciplinary Proceedings against)
)
 BERNARD JOHN GURSKY)
 760 Myrtle Street)
 Elizabeth, N. J.,)
)
 Holder of Solicitor's Permit)
 No. 2347, issued by the State)
 Commissioner of Alcoholic)
 Beverage Control.)
 -----)

CONCLUSIONS AND ORDER

Bernard John Gursky, Defendant-permittee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant, holder of a solicitor's permit, pleads non vult to the following charge:

"From May 1946 and until December 12, 1946, while you were interested in the wholesaling of alcoholic beverages by reason of your employment as a solicitor for Boller's Beverages, Inc., holder of a New Jersey plenary wholesale license, you were at the same time also interested in the retailing of alcoholic beverages at the retail licensed premises of Cranford Town Tavern, Inc., t/a Club 415, at 415 Centennial Avenue, Cranford, N. J., by reason of your employment on said retail licensed premises; such being in violation of R. S. 33:1-43."

It appears that defendant, while working as a solicitor for a wholesale licensee, was also working nights as a bartender for a retail licensee. He discontinued his employment as a bartender on December 12, 1946. Defendant admits the charge and alleges that the violation occurred because of his ignorance of the law.

In view of the plea of non vult entered herein and the absence of a prior record or aggravating circumstances, a minimum five-day suspension of defendant's permit will be imposed. Cf. Re Kaplan, Bulletin 603, Item 10.

Accordingly, it is, on this 17th day of January, 1947,

ORDERED that Solicitor's Permit No. 2347, issued to Bernard John Gursky by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of five (5) days, commencing at 12:01 a.m. January 27, 1947, and terminating at 12:01 a.m. February 1, 1947.

ERWIN B. HOCK
Deputy Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary)
Proceedings against)

PHILLIP ROEY)
T/a ROEY'S BAR)
305 Main Street)
Lakewood, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-11 issued by the)
Township Committee of the Town-)
ship of Lakewood.)
-----)

Milton Miller, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic
Beverage Control.

Defendant has pleaded not guilty to the following charges:

"1. On Friday, November 1, 1946, Saturday, November 2, 1946, Sunday, November 3, 1946, and Monday, November 4, 1946, and on various other occasions between August 1, 1946 and November 4, 1946, you sold alcoholic beverages to Seaman l/c William ---, a minor, in violation of R. S. 33:1-77.

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

At the hearing herein, William --- testified that he was born on July 23, 1928, and hence was eighteen years of age at the time the alleged violations occurred. He testified that he visited defendant's premises in August 1946 and at various times during October 1946, and that he purchased and drank beer on each of these occasions. He said that, when he visited defendant's premises in September 1946, he drank an alcoholic beverage which he described as a "special." The minor likewise testified that he visited defendant's premises on three occasions between November 1, 1946 and November 3, 1946, and that on each of these occasions he consumed beer which he purchased from a son of defendant who was then acting as bartender.

After the above testimony had been given, the attorney for defendant stated:

"We are not going to deny we served him a drink or that we served him a drink in September, or deny that we served him a drink on November 1. We are going to admit that."

Thus it appears from the evidence and from the admission made at the hearing that the defendant is guilty as charged, unless he establishes a defense under the provisions of R. S. 33:1-77. The evidence shows that the minor did not falsely represent in writing that he was twenty-one years of age or over and, hence, it is clear that defendant is unable to establish a defense to the charges preferred herein. I find defendant guilty as charged.

At the hearing defendant attempted to show that the minor had displayed on the licensed premises a false identification card which

indicated that he was over the age of twenty-one years. This evidence, even if true, would not establish a complete defense but might well be considered a mitigating circumstance in this case. However, the evidence herein satisfies me that the minor did not display a false identification card in defendant's premises, and that the only identification card which he had and which he produced at the hearing herein set forth the correct date of his birth, namely, July 23, 1928.

Defendant has a prior record. On March 2, 1945, the local issuing authority suspended his license for a period of twenty days after he had pleaded guilty to a charge of selling alcoholic beverages to a minor. This is a second offense of a similar character. Since no other aggravating circumstances appear in this case, I shall suspend defendant's license for a period of twenty days.

Accordingly, it is, on this 20th day of January, 1947,

ORDERED that Plenary Retail Consumption License C-11, issued by the Township Committee of the Township of Lakewood to Phillip Roey, t/a Roey's Bar, for premises 305 Main Street, Lakewood, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. January 28, 1947, and terminating at 2:00 a.m. February 17, 1947.

ERWIN B. HOCK
Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MAX JACOBS)
T/a THE FIRE PLACE)
5 Spring Street)
Newark 2, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-693, issued by the)
Municipal Board of Alcoholic Beverage Control of the City of)
Newark.)
- - - - -)

Max Jacobs, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded non vult to a charge alleging that, on December 10, 1946, he possessed a bottle of illicit alcoholic beverages, to wit, a 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky", which contained an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

The defendant's previous record includes a suspension for violations occurring in 1939 (see Bulletin 344, Item 3), which, because of the intervening lapse of more than seven years, will not be considered in imposing the present penalty. Cf. Re Congress Hall Hotel Company, Bulletin 741, Item 12. With five days remitted because of the plea from the usual fifteen-day penalty herein, the net suspension will be fixed at ten days. Idem.

Accordingly, it is, on this 20th day of January, 1947,

ORDERED that Plenary Retail Consumption License C-693, issued by the Municipal Board of Alcoholic Beverage Control of the City of

Newark to Max Jacobs, t/a The Fire Place, 5 Spring Street, Newark, be and the same is hereby suspended for a period of ten (10) days. Pursuant to notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK
Deputy Commissioner.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JAMES TSALOS)
T/a BLUE HEAVEN INN)
Route 25 near East Side Avenue)
Raritan Township)
P.O. R.F.D. 5, New Brunswick, N.J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-21, issued by the Board of Commissioners of the Township of Raritan.)

James Tsalos, Defendant-licensee, Pro Se.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded non vult to a charge alleging that, on December 7, 1946, he possessed four bottles of illicit alcoholic beverages, to wit, a 4/5 quart bottle labeled "Black & White Blended Scotch Whisky", a 4/5 quart bottle labeled "Vat 69 Liqueur Blended Scotch Whisky", a 4/5 quart bottle labeled "Haig & Haig Five Star Liqueur Blended Scots Whisky", and a 4/5 quart bottle labeled "Fleischmann's Preferred Blended Whiskey", all of which contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

The defendant's only previous adjudicated violation, now more than eight years old, will be disregarded in imposing the usual twenty-day penalty for the instant offense. Cf. Re Congress Hall Hotel Company, Bulletin 741, Item 12. Five days will be remitted for the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 20th day of January, 1947,

ORDERED that Plenary Retail Consumption License C-21, issued by the Board of Commissioners of the Township of Raritan to James Tsalos, t/a Blue Heaven Inn, Route 25 near East Side Avenue, Raritan Township, be and the same is hereby suspended for a period of fifteen (15) days. Pursuant to notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK
Deputy Commissioner.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JOHN J. VISAGGI)
T/a JOHN'S DEW DROP INN)
614 Communipaw Avenue)
Jersey City 4, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-415, issued by the Board of Commissioners of the City of Jersey City.)
- - - - -)

John J. Visaggi, Defendant-licensee, Pro Se.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded guilty to a charge alleging that, on November 26, 1946, he possessed five bottles of illicit alcoholic beverages, to wit, a 4/5 quart bottle labeled "Mount Vernon Brand Whiskey A Blend", a 4/5 quart bottle labeled "Seagram's Seven Crown Blended Whiskey", a 4/5 quart bottle labeled "Gallagher & Burton White Label Blended Whiskey", a 4/5 quart bottle labeled "P. M. De Luxe Blended Whiskey", and a 4/5 quart bottle labeled "Three Feathers Blended Whiskey Reserve", all of which contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

The penalty will be fixed at twenty-five days. Cf. Re Betz, Bulletin 726, Item 6. Five days will be remitted because of the plea, leaving a net suspension of twenty days.

Accordingly, it is, on this 20th day of January, 1947,

ORDERED, that Plenary Retail Consumption License C-415, issued by the Board of Commissioners of the City of Jersey City to John J. Visaggi, t/a John's Dew Drop Inn, 614 Communipaw Avenue, Jersey City, be and the same is hereby suspended for a period of twenty (20) days. Pursuant to notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK
Deputy Commissioner.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CHARLES W. BRYANT)
35-37 Sussex Avenue)
Newark 4, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-231, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
-----)

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

Defendant has pleaded non vult to a charge alleging that he possessed illicit alcoholic beverages on his licensed premises, in violation of R. S. 33:1-50.

On December 23, 1946, an inspector of the State Department of Alcoholic Beverage Control seized one 4/5 quart bottle labeled "Haig & Haig Five Star Liqueur Blended Scots Whisky" and one 4/5 quart bottle labeled "The Blended Scotch Whiskey of the White Horse Cellar", when his preliminary tests indicated that the contents of said bottles were not the alcoholic beverages described on the labels thereof. Subsequent analyses by the Department chemist established that the contents of the seized bottles were not genuine as labeled.

Defendant, in submitting his plea, alleges that he has no knowledge of the discrepancy and cannot account for the fact that these bottles do not contain the whiskey indicated on the labels. This, of course, is no defense to the charge. The bottles were admittedly found in the possession of the licensee on his licensed premises. The mere possession of the illicit alcoholic beverages warrants a finding of guilt to the charge. Re Barrale, Bulletin 705, Item 5.

Defendant has no prior adjudicated record. I shall, therefore, suspend his license for the minimum period indicated in similar cases -- fifteen days, Re Rudolph, Bulletin 680, Item 1, and remit five days thereof because of the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 24th day of January, 1947,

ORDERED that Plenary Retail Consumption License C-231, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Charles W. Bryant, for premises 35-37 Sussex Avenue, Newark, be and the same is hereby suspended for a period of ten (10) days. Pursuant to notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK
Deputy Commissioner.

8. DISCIPLINARY PROCEEDINGS - NON-RESIDENTS BECAME OWNERS OF MORE THAN 10% EACH OF CORPORATE STOCK - FAILURE TO GIVE WRITTEN NOTICE OF CHANGE OF FACTS SET FORTH IN LICENSE APPLICATION - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against)

TANZMAN'S, INC.)
115 Albany Street)
New Brunswick, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-4 for the fiscal years 1945-46 and 1946-47, issued by the Board of Commissioners of the City of New Brunswick.)

-----)
John J. Rafferty, Esq. and Philip Blacher, Esq., Attorneys for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to charges that (1) on October 3, 1945 two non-residents of the State of New Jersey each became the owner of more than ten per cent of its capital stock, contrary to the provisions of R. S. 33:1-25; and (2) the defendant failed to disclose all the facts as to the residence of its two non-resident stockholders when filing notice of the change in stockholdings, in violation of R. S. 33:1-34.

As to charge (1): In October 1945, Joseph Hillman and David Hillman (brothers) each became the holder of about forty-five per cent of the capital stock of defendant-licensee. Neither was a resident of New Jersey at the time, both residing in New York City. On or about April 1, 1946, Joseph Hillman became a bona fide resident of this State. David Hillman has at all times continued to be a resident of New York City. However, I am satisfied by evidence recently presented to me that David Hillman has sold all of his interest in defendant corporation to his brother, Joseph Hillman, and hence, upon the evidence presented, I conclude that the illegal situation has been corrected. Cf. Rutherford Food Shop, Inc., Bulletin 666, Item 1.

As to charge (2): The notice filed with the local issuing authority, pursuant to R. S. 33:1-34, failed to set forth the proper legal addresses of the Hillman brothers. This information is required in an application for a license and, hence, is material in a notification of any changes occurring in the facts set forth in the application. Defendant is guilty as charged.

Defendant has no prior adjudicated record. The facts in this case were fully disclosed to an ABC investigator prior to January 1, 1946, and hence I shall suspend defendant's license for a period of ten days because of the violation set forth in charge (1). Re Tedraydot, Inc., Bulletin 707, Item 11. I shall suspend defendant's license for an additional period of five days because of the violation set forth in charge (2), thus making a total suspension of fifteen days.

Although this proceeding was instituted during the 1945-46 fiscal year, it does not abate but remains fully effective against the renewal license for the fiscal year 1946-47. State Regulations No. 16.

Accordingly, it is, on this 23rd day of January, 1947,

ORDERED that Plenary Retail Distribution License D-4, issued by the Board of Commissioners of the City of New Brunswick to Tanzman's, Inc., for premises 115 Albany Street, New Brunswick, be and the same is hereby suspended for fifteen (15) days, commencing at 9:00 a.m. January 29, 1947, and terminating at 9:00 a.m. February 13, 1947.

ERWIN B. HOCK
Deputy Commissioner.

- 9. DISCIPLINARY PROCEEDINGS - SUPPRESSION OF MATERIAL FACT IN APPLICATION FOR EMPLOYMENT PERMIT (PERMITTEE HELD PROHIBITED INTEREST IN CORPORATE LICENSE) - EMPLOYMENT PERMIT EXPIRED BY ITS TERMS AND NOT RENEWED - PERMITTEE FOUND GUILTY, BUT NO ORDER ENTERED.

In the Matter of Disciplinary Proceedings against)

DAVID HILLMAN)
1024 Montgomery Street)
Brooklyn, N. Y.,)

CONCLUSIONS

Holder of Employment Permit)
No. 3381, issued for the 1945-46)
fiscal year by the State Commis-)
sioner of Alcoholic Beverage)
Control.)
-----)

John J. Rafferty, Esq. and Philip Blacher, Esq., Attorneys for Defendant-permittee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to charges which alleged, in substance, that in his application for his employment permit he suppressed the material fact that he was interested, directly or indirectly, in a plenary retail consumption license. See Re Tanzman's, Inc. decided herewith.

The employment permit which was the subject of these proceedings has expired by its terms, and the defendant, who resides in New York, has not renewed the permit for the present fiscal year. It has been represented that defendant does not intend to be employed hereafter on licensed premises in New Jersey.

Rule 1 of State Regulations No. 15 provides that disciplinary proceedings shall not be barred or abated by the expiration of a permit. I find defendant guilty as charged but, under the circumstances, no further order will be entered herein.

ERWIN B. HOCK
Deputy Commissioner.

Dated: January 23, 1947.

10. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES AND FIXTURES AND FURNISHINGS IN SPEAKEASY ORDERED FORFEITED - LIEN CLAIM AGAINST FURNITURE RECOGNIZED BECAUSE CLAIMANTS ESTABLISHED THEIR GOOD FAITH AND ABSENCE OF KNOWLEDGE OF OR REASON TO SUSPECT SPEAKEASY ACTIVITIES AT ESTABLISHMENT.

In the Matter of the Seizure)	Case No. 7073
on November 22, 1946 of a)	
quantity of alcoholic beverages)	
and furniture and other personal)	ON HEARING
property at Cabin No. 45, Hurff's)	CONCLUSIONS AND ORDER
Canning Company Camp, located on)	
Lock Avenue, in the Township of)	
Woolwich, County of Gloucester,)	
in the State of New Jersey.)	

Herman Press and Irving William Packer, t/a Reliable Brothers Home Supply, by Ruth Press.

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

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic beverages, and furniture and other personal property, described in a schedule attached hereto, seized on November 22, 1946, in Cabin 45, Hurff's Canning Company Camp, located on Lock Avenue, Woolwich Township, N. J., constitute unlawful property and should be forfeited.

It appears that on the evening of November 21, 1946, an ABC agent, when checking a specific complaint that alcoholic beverages were being sold there unlawfully, entered the cabin in question and purchased drinks of whiskey from Neccie Gordon. The agent left without disclosing his identity.

On the following day, the agent returned to the cabin and at this time purchased drinks of whiskey from James Ward. Shortly thereafter, other ABC agents, by prearrangement, entered the cabin and at their request Ward produced the dollar bill with which the first agent had paid for the drinks.

The agents then obtained signed statements from James Ward and Neccie Gordon in which they admitted the aforementioned sales of alcoholic beverages to the agent. Ward also admitted that he had been selling alcoholic beverages at the cabin for some time.

James Ward and Neccie Gordon were arrested because they did not hold any license authorizing either of them to sell or serve alcoholic beverages and the place was not licensed for the sale of alcoholic beverages.

The ABC agents seized a quantity of beer and whiskey and the furniture and furnishings in the cabin.

It is evident that the seized alcoholic beverages were intended for unlawful sale at the premises. Hence, such alcoholic beverages are illicit (R. S. 33:1-1(i)) and, together with the furniture and furnishings seized therewith, constitute unlawful property and 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, an appearance was entered for Herman Press and Irving William Packer, trading as Reliable Brothers Home Supply, who sought return of various items of furniture. Forfeiture of the alcoholic beverages was not opposed.

Under R. S. 33:1-66(f), I have the discretionary authority 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.

The specific items which the furniture concern seeks to recover are five metal cabinets, a metal table, four metal chairs, a bed, mattress and spring, an ironing board and a rug.

This concern sells household furniture on installment payments. According to Mrs. Press, who is employed by the concern, Ward purchased these articles at different periods between September 29, 1946 and November 7, 1946 after he identified himself as the chief cook at the camp. Mrs. Press testified that Ward purchased the furniture under an agreement that title thereto was to remain in the furniture concern until the account was paid in full.

Mrs. Press produced sales slips for the aforementioned articles, and a printed form of conditional sales contract, in blank except for Ward's signature, with entries on the reverse side showing the amount of indebtedness and payments on account. There is an unpaid balance of \$124.95. The full purchase price of these items was \$271.60. It is common knowledge that there is a substantial mark-up on merchandise sold on installment payments and that second-hand furniture has but little value. I am therefore satisfied that the unpaid balance exceeds what can be realized by the sale of such furniture.

Ward was in fact employed as a cook at the camp and from the nature of the transaction between the parties, I am satisfied that the furniture concern did not know or have any reason to suspect Ward's illegal activities there.

The claimants are therefore qualified to obtain relief from the forfeiture if the evidence presented establishes that they have a lien by way of conditional sales agreement against the furniture. The conditional sales agreement is not in itself sufficient for that purpose because it is nothing but a blank form. However, a verbal conditional sales agreement is valid as between the parties. Cf. McAusland v. Reiser, 82 N. J. E. 614. See also R. S. 46:32-10. It is not valid as against bona fide purchasers or creditors, because it is not capable of being recorded in conformity with the Uniform Conditional Sales Law (R. S. 46:32-11), but in forfeiture proceedings the State is not regarded as a bona fide purchaser or creditor. Cf. General Motors Acceptance Corporation v. U. S., 23 F. (2nd) 799.

A lien claim which rests upon a verbal agreement and not upon a written document will, in general, be regarded with disfavor in forfeiture proceedings. However, in the instant case, the verbal agreement is, to some extent, supported by the other documents and, hence, I will recognize the claim.

Accordingly, it is DETERMINED and ORDERED that if on or before the 4th day of February, 1947, Herman Press and Irving William Packer pay the costs of seizure and storage thereof, the five metal cabinets, a metal table, four metal chairs, a bed, mattress and spring, an ironing board and a rug, listed in Schedule "A" attached hereto, will be returned to them; and it is further

DETERMINED and ORDERED that the balance of the seized property, more fully described in the aforesaid Schedule "A", 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
Deputy Commissioner.

Dated: January 23, 1947.

SCHEDULE "A"

- 7 - bottles of alcoholic beverages
- 168 - empty beer bottles
- 5 - metal cabinets
- 1 - metal table
- 1 - wooden table
- 4 - metal chairs
- 1 - Philco radio
- 1 - oil stove
- 1 - metal bed, mattress and springs
- 1 - ironing board
- 1 - rug
- miscellaneous household equipment

11. APPELLATE DECISIONS - FOSS v. MONROE TOWNSHIP (MIDDLESEX COUNTY) - DISMISSED.

RAYMOND LOUIS FOSS,
t/a UNION VALLEY TAVERN,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF MONROE (Middlesex
County),

Respondent

ON APPEAL
ORDER

Benjamin Kleinberg, Esq., Attorney for Appellant.
Henry C. Berg, Esq., Attorney for Respondent.

This is an appeal from the denial by respondent of an application by appellant to transfer his plenary retail consumption license to other premises.

At the hearing herein, appellant, by his attorney, moved that the appeal be dismissed and the action of the respondent be affirmed. Respondent consenting and no reason appearing to the contrary,

It is, on this 24th day of January, 1947,

ORDERED that the action of respondent Township Committee be affirmed and that the appeal herein be and hereby is dismissed.

ERWIN B. HOCK
Deputy Commissioner.

12. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

GRAY'S PHARMACY INC.)
585 Broad Street)
Newark 2, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-98 issued by the)
Municipal Board of Alcoholic Beverage Control of the City of)
Newark.)

-----)
Defendant-licensee, by I. R. Leventhal, Pres.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant, through its President, pleads non vult to a charge that it sold a pint bottle of Fleischmann's Preferred Blended Whiskey below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On December 27, 1946, the President of the defendant corporate licensee sold a pint bottle of Fleischmann's Preferred Blended Whiskey to an ABC agent for the price of \$2.22. The minimum retail (consumer) price for this item, contained in the "Minimum Price Supplement" effective December 16, 1946, was \$2.29. See Bulletin 740.

Defendant's President admits sale of a pint of Fleischmann's whiskey for \$2.22 instead of \$2.29. In explanation thereof he alleges that the correct price was on the merchandise in the store but that he sold it for the price indicated on a tag in the window to avoid trouble.

The defendant has no previous adjudicated record. I shall suspend the license for a period of ten days, less five days for the plea, leaving a net suspension of five days. Cf. Re Mack Drug Co., Bulletin 695, Item 9.

Accordingly, it is, on this 24th day of January, 1947,

ORDERED that Plenary Retail Distribution License D-98, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Gray's Pharmacy Inc., for premises 585 Broad Street, Newark, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. February 3, 1947, and terminating at 9:00 a.m. February 8, 1947.

ERWIN B. HOCK
Deputy Commissioner.

13. DISCIPLINARY PROCEEDINGS - PERMITTING MINOR, HOLDER OF EMPLOYMENT PERMIT, TO SELL ALCOHOLIC BEVERAGES - EMPLOYING MINOR TO WORK ON LICENSED PREMISES WITHOUT REQUISITE PERMIT - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BY MINOR PERMITTEE CONTRARY TO CONDITIONS OF EMPLOYMENT PERMIT - PERMIT SUSPENDED FOR A PERIOD OF 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JENNIE JANULIS)
504 No. 4th Street)
Harrison, N. J.,)

Holder of Plenary Retail Distribution License D-3, issued by the Town Council of the Town of Harrison,)

CONCLUSIONS AND ORDERS

-and-

GEORGE JANULIS)
504 No. 4th Street)
Harrison, N. J.,)

Holder of Employment Permit No. 747, issued by the State Commissioner of Alcoholic Beverage Control.)

Jennie Janulis, Defendant-licensee, Pro Se.
George Janulis, Defendant-permittee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant-licensee pleads guilty to charges alleging that (1) she knowingly permitted an employee, George Janulis, a minor, who holds an employment permit for a person disqualified by reason of age, to sell alcoholic beverages in violation of R. S. 33:1-26 and Rule 2 of State Regulations No. 13, and (2) she knowingly employed Bernard Quick, a minor, without a requisite permit from the State Department of Alcoholic Beverage Control, such employment being in violation of R. S. 33:1-26 and Rule 3 of State Regulations No. 13.

Defendant-permittee pleads guilty to a charge of selling and serving alcoholic beverages, contrary to the conditions upon which his permit was issued. Inasmuch as both proceedings arose out of the same incident, they will be considered and disposed of herein.

The investigation in the instant case discloses that defendant-licensee operates a combination delicatessen and liquor store. On December 18, 1946, an ABC investigator purchased a quart bottle of beer from George Janulis, a minor of the age of seventeen years, who was behind the liquor counter. When the investigator made known his identity, the youth admitted that he had been making sales of alcoholic beverages during the past year. He also stated he knew that he was not permitted to sell alcoholic beverages although his mother, defendant-licensee, had never warned him not to do so.

The investigator's report discloses that another minor, one Bernard Quick, seventeen years of age, was employed on the licensed premises without obtaining the necessary permit from the Department of Alcoholic Beverage Control.

Defendant-licensee has no previous adjudicated record. Under the circumstances, I shall suspend the license of defendant-licensee for

a period of ten days on charge (1), Re Trenz Community Market, Inc., Bulletin 736, Item 2, and for a further period of five days on charge (2). Five days will be remitted for the plea entered herein, making a net suspension of ten days. I shall suspend the permit issued to George Janulis for a period of thirty days, less five days for the plea, or a net suspension of twenty-five days. Re Leoshko, Bulletin 510, Item 10.

Accordingly, it is, on this 24th day of January, 1947,

ORDERED that Plenary Retail Distribution License D-3, issued by the Town Council of the Town of Harrison to Jennie Janulis, 504 No. 4th Street, Harrison, be and the same is hereby suspended for a period of ten (10) days, commencing at 9:00 a.m. January 28, 1947, and terminating at 9:00 a.m. February 7, 1947; and it is further

ORDERED that Employment Permit No. 747, issued by the State Commissioner of Alcoholic Beverage Control to George Janulis, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 9:00 a.m. January 28, 1947, and terminating at 9:00 a.m. February 22, 1947.

ERWIN B. HOCK
Deputy Commissioner.

14. STATE LICENSES - NEW APPLICATIONS FILED.

National Wine & Liquor Co.
19-37 Delaware Ave.
Passaic, N. J.

Application filed January 24, 1947 for transfer of Plenary Wholesale License W-80 from Herbert Hain, David Stein & Jacob Hain, t/a National Wine & Liquor Co.

Logansport Distilling Company, Inc.
2800 Girard Trust Company Building
Philadelphia, Pa.

Application for Plenary Wholesale License filed January 24, 1947.

Erwin B. Hock
Deputy Commissioner.