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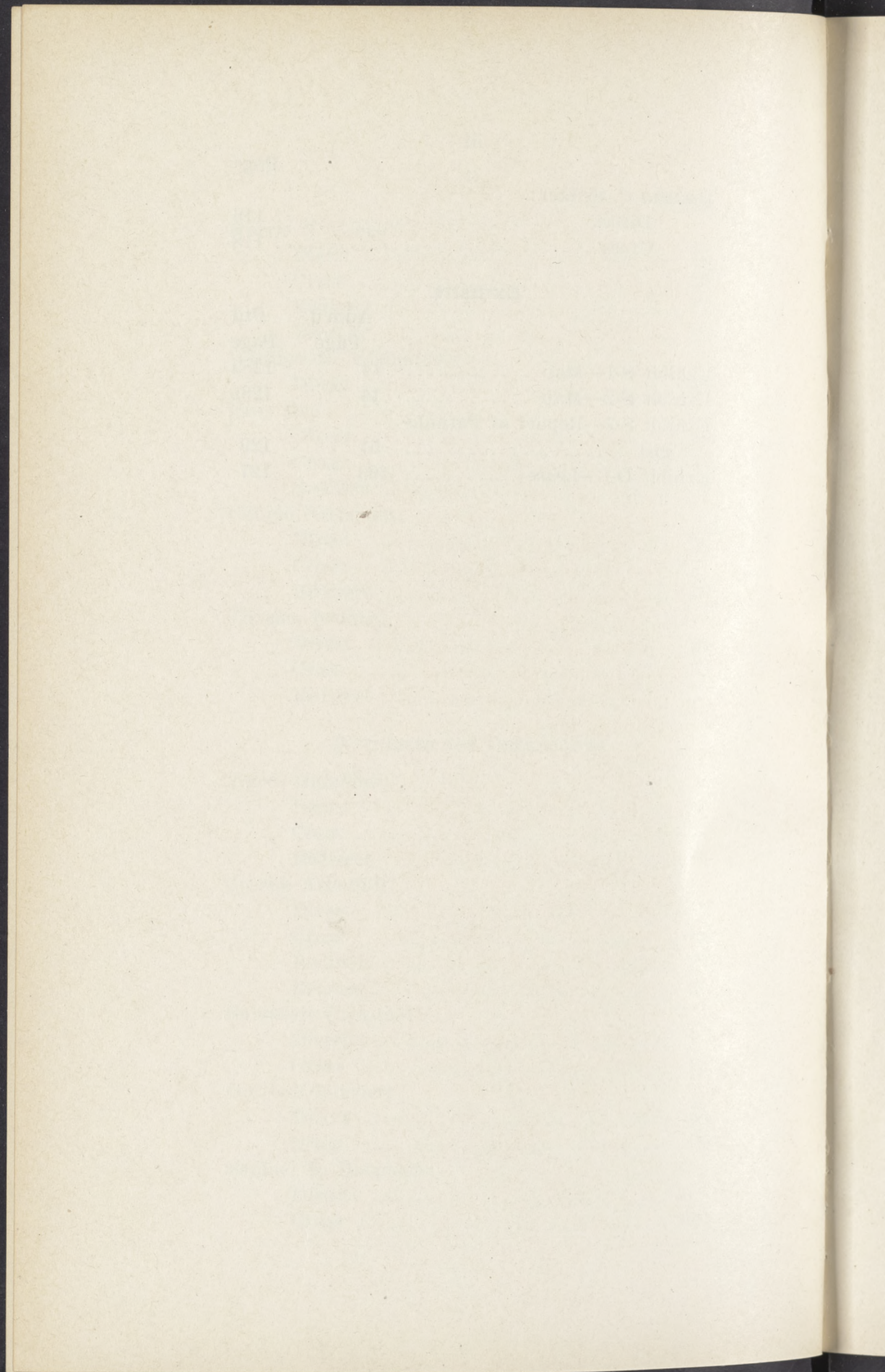
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**Writ of Error.**

Filed March 2, 1928.

NEW JERSEY, to wit:

(Seal) The State of New Jersey to C. Franklin Wilson, Esq., President Judge of the Common Pleas of the County of Morris and Judge of the Court of Quarter Sessions holden at Morristown, in and for the County of Morris, of the Term of January, in the year of our Lord

One Thousand Nine Hundred and twenty-eight:

Because in the indictment, record, proceedings and process and in giving judgment upon a certain indictment against Gotthel Reichert and James Gambino, of the Township of Pequannock in the County of Morris and State of New Jersey, for that they did on October 25th, 1927 possess intoxicating liquor for beverage purposes which said act of possessing intoxicating liquor was then and there prohibited and unlawful and that they did on the same date manufacture intoxicating liquor for beverage purpose which said act of manufacture was unlawful and prohibited.

Which said indictment was found by the Grand Jury of the County of Morris at the January Term of the Court of Oyer and Terminer in said County, in the year Nineteen Hundred and twenty-eight, wherefore before you they have been indicted, and are thereof convicted by a certain jury of the County taken between the State of New Jersey and the said Gotthel Reichert and James Gambino, as it is said, manifest error has intervened to the great damage of the said Gotthel Reichert and James

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*Writ of Error.*

Gambino, as from their complaint we have received information as well as in the said indictment, record, trial, judgment and proceedings; we being willing in their behalf to correct the error in due manner, if any there shall be, and that speedy justice may be done to them, the said Gottheil Reichert and James Gambino, command you that if said  
 10 judgment be thereon given, then that you distinctly and openly send, under your seal the records and proceedings aforesaid, with all things touching the same, to our Justices of the Supreme Court of the State of New Jersey, on the twenty-first day of March inst., and this writ, that the record and proceedings aforesaid, being inspected, we may further  
 20 cause to be done thereupon, for correcting that error, what of right and according to the laws of New Jersey ought to be done.

Witness, Honorable WILLIAM S. GUMMERE, Chief Justice of our Supreme Court at Trenton this first day of March, one thousand nine hundred and twenty-eight.

EDWARD J. KELLEHER,  
 Clerk.

LEON E. CONE and  
 30 WILLIAM A. HEGARTY,  
 Attorneys.

*Writ of Error.*

## NEW JERSEY SUPREME COURT.

<p style="text-align: center;">THE STATE OF NEW JERSEY, Defendant in Error,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">GOTTHEIL REICHERT and JAMES GAMBINO, Plaintiffs in Error.</p>	}	10
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WRIT OF ERROR.

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Filed March 2nd, 1928.

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E. BERTRAM MOTT,  
Clerk.

WILLIAM A. HEGARTY and  
LEON E. CONE,  
Counsellors at Law,  
28 Park Place,  
Morristown, N. J.

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### Return to Writ of Error.

*To the Honorable Justices of the Supreme Court  
of Judicature at Trenton, New Jersey:*

I return herewith as herein I am commanded the record and the entire record of proceedings in the case of The State vs. Gottheil Reichert and James  
10 Gambino, for Illegal Possession and Manufacturing Intoxicating Liquor, January Term, 1928, with all things touching the same.

IN TESTIMONY WHEREOF, I have hereunto  
set my hand and affixed the seal of  
(L.S.) said County, this Sixth day of March,  
A. D., Nineteen hundred and twenty-  
eight.

C. F. WILSON,  
Judge.

20

State of New Jersey, }  
County of Morris, to wit: }<sup>ss.:</sup>

Be It Remembered, That at a Court of Oyer and  
Terminer, holden at Morristown, and in said Coun-  
ty of Morris, on the second Tuesday of January, in  
the year of our Lord Nineteen hunderd and twenty-  
eight by the Honorable Charles W. Parker, one of  
30 the Justices of the Supreme Court of Judicature of  
the State of New Jersey, and C. F. Wilson, Es-  
quire, Judge of the Court of Common Pleas, in and  
for said County of Morris, by the oath of Charles  
Lloyd, Harry Gormley, Charles Cook, Herbert  
Hitchcock, Harry Averick, Mrs. Jettie Gerdon,  
Mrs. Mary Brotherton, Lewis G. Banks, Robert J.  
Stell, Mrs. Rose Fritts, John Tiger, Mrs. Helen P.  
Davis, George Harway, Lewis Elston, John T. Rit-  
40 ter, William Brown, Ward Witty, Mrs. Mabel Cor-  
iell, Lucy Margarm, W. E. Stewartson, Mrs. Carrie

*Return to Writ of Error.*

B. Tompkins, Mrs. Florence Mills and Henry Colgate, good and lawful men of the said County of Morris, duly summoned, and then and there duly sworn, and charged to enquire in behalf of the State of New Jersey, in and for said County of Morris, it is presented in manner and form following, to wit:

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MORRIS OYER AND TERMINER

January Term, 1928.

*Morris County*, to wit:

The grand inquest for the State of New Jersey, and for the body of the County of Morris upon their oaths Present: That Gottheil Reichert, James Gambino, Joseph Arborelli and Salvatore Crisolisi, lately of the Township of Pequannock, in the said County of Morris, on the twenty-fifth day of October, in the year of our Lord one thousand nine hundred and twenty-seven, and from thence hitherto, with force and arms, at the Township of Pequannock aforesaid, in the County aforesaid, and within the jurisdiction of this Court, did possess intoxicating liquor for beverage purposes which said act of possessing intoxicating liquor was then and there prohibited and unlawful, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

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And the grand inquest aforesaid, upon their oaths aforesaid, do further present that the said Gottheil Reichert, James Gambino, Joseph Arborelli and Salvatore Crisolisi on the twenty-fifth day of October in the year of our Lord one thousand nine hundred and twenty-seven, and from thence

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*Return to Writ of Error.*

hitherto, with force and arms, at the Township of Pequannock in the County of Morris aforesaid, and within the jurisdiction of this Court, did manufacture intoxicating liquor for beverage purposes which said act of manufacturing intoxicating liquor was then and there prohibited and unlawful, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

ALBERT H. HOLLAND,

Prosecutor of the Pleas for Morris County.

On the thirteenth day of January, A. D., Nineteen Hundred and twenty-eight, on which day the said Indictment was presented by the Grand Jury aforesaid, to the Court of Quarter Sessions, and delivered to the Clerk of the said Court of Quarter Sessions in and for the County of Morris, and then and there the said Indictment was duly delivered and duly filed by the Clerk of said Court and an entry made in the minutes of said Court at the same time pursuant to the statute in such case made and provided.

And afterwards, that is to say, at a Court of Quarter Sessions, holden at Morristown, in and for the County of Morris aforesaid, on the twentieth day of January, in the year of our Lord Nineteen hundred and twenty-eight, before Honorable C. F. Wilson, Judge of said Court of Quarter Sessions, the said Gottheil Reichert, James Gambino, Joseph Arborelli and Salvatore Crisolisi, being publicly called, cometh in their own proper person and forthwith being demanded of and concerning the premises in said Indictment above specified and charged upon them, and being asked in what manner they will acquit themselves thereof, they say

*Return to Writ of Error.*

that they are not guilty thereof and of this they put themselves upon the Country, and Albert H. Holland, Prosecutor for the said County of Morris, who prosecutes for the State in this behalf doth the like.

And thereupon, then and there, the said Gottheil Reichert, James Gambino, Joseph Arborelli and Salvatore Crisolisi, do by themselves in their pledge in that behalf enter into a recognizance in the sum of One Thousand Dollars each, with Chas. Triolo as surety, conditioned that they, Gottheil Reichert, James Gambino, Joseph Arborelli and Salvatore Crisoliso, will be and appear before the said Court on the 20th day of January, A. D. 1928 and from day to day thereafter and traverse to effect the said Indictment found against them and not to depart the Court without leave.

Therefore let a Jury thereupon here come on the 21st day of February, A. D., Nineteen hundred and twenty-eight, before the said Court of Quarter Sessions above mentioned, of free and lawful men of the County of Morris aforesaid, by whom the truth of the matter may be better known, and who are not of the kin to the said Gottheil Reichert, James Gambino, Joseph Arborelli and Salvatore Crisolisi, to recognize upon their oath whether the said Gottheil Reichert, James Gambino, Joseph Arborelli and Salvatore Crisolisi be guilty in manner and form as they stand charged in the Indictment above specified, or not guilty, because as well the said Albert H. Holland, Prosecutor as aforesaid, and who prosecutes for the State of New Jersey in this behalf as the said Gottheil Reichert, James Gambino, Joseph Arborelli and Salvatore Crisolisi have put themselves upon the said Jury, at which said Court of Quarter Sessions, to wit:

*Return to Writ of Error.*

At a Court of Quarter Sessions holden at Morristown in and for the County of Morris, on the 21st day of February, in the year of our Lord One thousand nine hundred and twenty eight, before the Hon. C. F. Wilson, Judge of the said Court of Quarter Sessions, according to the form of the statute in such case made and provided, come as well  
 10 the said Gottheil Reichert, James Gambino, Joseph Arborelli and Salvatore Crisolisi, as Albert H. Holland, who prosecutes as aforesaid, and the Jurors of the said Jury by the Sheriff of the County of Morris aforesaid for this purpose duly empanelled and returned, to wit: after the following challenges, by the State 9, by the Defendant 10, by the Court 11, Clara G. Freeman, Raymond Vanderhoof, Edith Horsefield, William Coghlan, Mary  
 20 Draggoo, Edwin B. Bave, Helena Bartow, Robert G. Cochran, Mable Quinn, Alexander Laurie, Frank L. Gillin and Abraham S. Young, who were elected, tried and sworn to speak the truth of and concerning the premises.

And the trial of the said Indictment against said Gottheil Reichert, James Gambino, Joseph Arborelli and Salvatore Crisolisi, having proceeded, the said Jurors upon their oaths say; that they find  
 30 the said Gottheil Reichert and James Gambino Guilty in manner and form as they stand charged in the Indictment, and Joseph Arborelli and Salvatore Crisolisi Not Guilty, and so say they all.

Whereupon, William Hegarty, Counsel for Defendants, requested that the jury be polled, whereupon the Clerk called the roll and each juror, for himself, answered "Guilty" as to Gottheil Reichert and James Gambino in the manner and form as is set forth in the Indictment, and Not Guilty as to  
 40 Joseph Arborelli and Salvatore Crisolisi."

*Return to Writ of Error.*

And afterwards, at the same term of said Court of Quarter Sessions, to wit, on the twenty-first day of February, in the year of our Lord, One thousand nine hundred and twenty-eight, the former bail of One Thousand Dollars each was continued, conditioned that they, the said Gottheil Reichert and James Gambino, will be and appear before the said Court of Quarter Sessions on the twenty-fourth day of February, in the year of our Lord one thousand nine hundred and twenty-eight, and from day to day thereafter to receive sentence as may be pronounced by the said Court on the Indictment found against them and not depart the said Court without leave. 10

And afterwards at the same term of said Court of Quarter Sessions, to wit, on the twenty fourth day of February, in the year of our Lord, one thousand nine hundred and twenty-eight (to which time the said Court had been regularly adjourned) came as well the said Gottheil Reichert and James Gambino, as the said Albert Holland, who prosecutes as aforesaid, whereupon it is demanded of the said Gottheil Reichert and James Gambino, if they hath or knoweth anything to say whereof the said Court here ought not upon the premises and verdict aforesaid to proceed to judgment and execution against them, who nothing further saith unless as they before hath said. Whereupon all and singular, the premises being fully understood by the Court, it is considered and adjudged by the Court here that the said Gottheil Reichert and James Gambino be confined in the County Jail of this County at hard labor for a term of three months, and that they pay a fine of Five Hundred Dollars each and that they stand further committed until the costs of prosecution are paid. 20  
30  
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*Return to Writ of Error.*

Judgment signed the twenty-fourth day of February, A. D. Nineteen Hundred and twenty-eight.

C. F. WILSON,  
Judge &c.

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

10 I, E. Bertram Mott, Clerk of the County of Morris, and also Clerk of the Court of Quarter Sessions, holden in and for said County, Do Hereby Certify, that the foregoing is a true, full and correct copy of the Judgment Roll in the case of The State vs. Gottheil Reichert and James Gambino as fully and entirely as the same remains of record in my office.

20 IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court and County at Morristown, this  
(L.S.) Sixth day of March, A. D., Nineteen hundred and twenty-eight.

E. BERTRAM MOTT,  
Clerk.

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**Testimony.**

QUARTER SESSIONS COURT,

MORRIS COUNTY.

<p style="text-align: center;">THE STATE</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">GOTTHELF REICHERT, JAMES GAMBINO, JOSEPH ARBORELLI and SALVATORE CRISOLISSI, Defendants.</p>	}	10
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Morristown, N. J., February 21, 1928.

Before—Honorable C. FRANKLIN WILSON, Judge. 20

APPEARANCES :

For the State, ALBERT H. HOLLAND, ESQ.,  
Prosecutor.

For the Defendants, WILLIAM A. HEGARTY,  
ESQ.

Mr. Holland: If the Court, please, the only case on for trial this morning is the case in which Arborelli, Crisolissi and Gambino are defendants, and your Honor will recollect that included in that indictment was another defendant, Gotthelf Reichert, and upon motion of the Prosecutor, your Honor granted a severance as to three from the one, and after the other trial the Prosecutor made another motion to vacate the severance and to again permit the combining of the four defendants; that motion was consented to by the defendant, and, as I understand this morning, the de- 30 40

*Testimony.*

10 fendant Gotthelf Reichert himself is willing that course should be followed. The only question is whether or not your Honor rules it is proper procedure to follow. If not, we will proceed with the three defendants; if it is waived, with consent, we will proceed against the four. It will save for your Honor and for the Prosecutor and counsel and the jury an extra day, that is all.

The Court: Well, I was unable to find any authority.

20 Mr. Holland: I think your Honor is absolutely correct, there is no authority; I have looked through the authorities, and I was unable to find any authority as far as the point was concerned, but it struck me that upon my motion, since there was a disagreement, to vacate the severance, that there can be no question as to that, because the power in the Court is always inherent to vacate any order it has made. I do not press it however, just so we have a definite ruling and may proceed either with the three or the four defendants.

The Court: Well, if the defendants are in Court you may do it either way you like.

30 Mr. Holland: I would prefer all four defendants, because it means that the same witnesses, and same evidence does not have to be repeated identically the next day.

The Court: Do the defendant's agree?

Mr. Hegarty: Yes, if your Honor, please.

The Court: Are they all present?

Mr. Hegarty: Yes.

The Court: Ready for trial?

Mr. Hegarty: Yes.

The Court: The Sheriff will return a panel.

40 Mr. Holland: Then, may it be understood we are proceeding with the trial of Gambino, Arborel-

*Arthur Flagg Vogt—Direct.*

li, Crisolissi and Reichert.

The Court: It is understood, gentlemen, that there will be no separate challenges for each defendant.

Mr. Hegarty: I realize that, your Honor.

(A Jury having been duly empanelled, accepted and sworn, the Prosecutor on behalf of the State opened to the Jury). 10

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ARTHUR FLAGG VOGT, called as a witness, having been duly sworn, testified as follows:

*Direct-examination by Mr. Holland:*

Q. Now, Mr. Vogt, you are associated with Mr. Howell as Surveyor and Engineer? A. Yes, sir.

Q. And did you and Mr. Howell and some other assistant go to this particular place illustrated on the map and take the measurements which go to make up the map? A. Yes, sir. 20

Q. Where did you find it to be located, Mr. Vogt, where did you find the farm to be located?

A. Coming from Pompton Plains and off the Turnpike running through Pompton Plains we turned down a road called the Jacksonville Road to an orchard leading north from the Jacksonville Road, a mile and four tenths west of the Pompton Turnpike, and we went down the road running north which is this (indicating on map,) very nearly a half mile, until we came to this group of buildings which were pointed out to us as a site we were to— 30

Q. That is on the smaller map, is it not? A. Yes.

Q. And is that illustrated on the larger map by what is marked as "Driveway," starting here (in— 40

*Arthur Flagg Vogt—Direct.*

dicating on map) and running up into the group of houses, which on the larger map represents the smaller group you have there? A. That is right.

Q. Did you make those from actual measurements on the ground that day, you and Mr. Howell? A. Yes, sir.

10 Q. And you illustrated those on these two maps from the measurements which you took? A. Yes, sir.

Mr. Holland: I offer the maps.

The Court: Any objection?

Mr. Hegarty: No objection.

The Court: They may be marked S-1, the smaller map; and the larger map S-2.

20 Q. Now, what sort of road is the Jacksonville Road? A. Dirt road.

Q. Is it what is commonly known as unimproved? A. Yes.

Q. And what sort of road or laneway is that leading from Jacksonville Road up to the group of buildings designated on Exhibit S-1, good or bad? A. We walked up, we thought it was a bad road.

Q. You left your cars where? A. Right here (indicating).

30 Q. And walked up instead of riding? A. Walked all the way through.

Q. And you say that is about half a mile? A. To be exact it is 1950 feet to this point, which is on this point here on S-2, and what I have marked as "Driveway," is where the driveway turned off into this road, into this group of buildings, which is this little short stretch here.

40 Q. The road doesn't go beyond the driveway, however, does it? A. It may, I don't know.

*Arthur Flagg Vogt—Director.*

Q. You didn't notice that? A. No.

Q. Did you stand up at what is marked S-1 at the group of buildings, and from that vantage point can you look down and see any part of the road leading to the Jacksonville Road? A. Yes, from in here you can see part of this road; I don't think you can see all the way out to the Jacksonville Road without going off this way a little bit, this is open (indicating on map), that has no brush on it down to the ditch, and this side down to the Jacksonville Road is grown up with young stuff ten or twelve feet high perhaps. 10

Q. So you could stand anywhere in this group of buildings somewhere between the barns and the house and have a command over this cleared ground down to at least as far as that (indicating on map)? A. Yes. 20

Q. Now, will you refer to S-2 if you will, and tell us what that group of buildings consists of? A. This is a grain house here.

Q. That is portrayed there according to measurement? A. According to actual measurements. This part with the dashed line represents a little room in here where they kept a stove to furnish heat; this is the glass part; this is the location of the barn and a crib that has apparently recently been burned; this is the house foundation in here, that has also been recently burned. 30

Q. Burned down, you mean? A. Yes. This is a shed, and this part in here, doors in here, open in front here, this is enclosed, this "L" shape here is water tank on the roof of it. There was a steam boiler in this space here. The steam boiler is perhaps in a sort of little pit or at least there is a step down from this floor, perhaps a foot and a half deep, and from that is a ditch in the rear of 40

*Arthur Flagg Vogt—Direct.*

the shed running out to the fields, sort of drainage ditch. This dashed line represents fence of a chicken yard; these are coops in here; the roof of the shed; that little dot is an opening that has been covered up where a chimney flue has been there at one time.

10 Q. Now, the section you marked "Boiler" is that where the boiler was, and is that the room in which the still was?

Mr. Hegarty: I object unless he knows it.

Mr. Holland: I will withdraw the question.

Q. Is the boiler still there? A. Boiler is, yes, sir.

20 Q. And is there a water pump still there? A. There was a pump on the floor.

Q. Now, Mr. Vogt, how far away is that shed or opening into the barn from the house? A. Here you mean (indicating on map)?

Q. Well, for instance, how far is it in a straight line from this corner of the house to that corner of that shack (referring to map)? A. About 39, 40 feet.

30 Q. And this line you have indicated, dotted line, that does not represent a building at all, it is just a yard? A. Yes.

Q. And the only building, with the exception of the coop there is this house and this building in here? A. Yes, this building, because this house isn't no more.

Q. I mean at that time? A. Yes.

Q. Now, there is an opening in here indicated by the dotted line? A. That is open in front.

40 Q. That is an open shed? A. Yes.

*Arthur Flagg Vogt—Direct.*

Q. And the door to this leads in here? A. Yes.

Q. And how far is it from the house over to the actual entrance of the longer part of the "L"? A. About 85 feet.

Q. And what is the size of that shed? A. It is about 32 feet long and 18½ feet wide.

Q. What is the size of the opening in that shed? 10  
A. This opening there is about fifteen feet.

*Cross-examination by Mr. Hegarty:*

Q. Did you draw this map, Mr. Vogt? A. Yes, sir.

Q. Who was with you at the Reichert farm? A. At the time I made these measurements?

Q. Yes. A. Mr. Howell, a boy named James Condon from our office, Mr. Gebhardt, Trooper 20  
Patterson and Mr. Kleindinst, the photographer.

Q. Did anyone show you just what they wanted on this map? A. They wanted the buildings located.

Q. Who told you to locate the buildings? A. Detective Gebhardt.

Q. And when you marked the map "House," that was where someone told you a house had once stood? A. Yes, sir. 30

Q. Indicated on S-1? A. Yes, sir.

Q. Now, referring to S-2, can you tell us just how many feet from the bend in this road to the corner of the greenhouse? A. About 155 feet in a straight line.

Q. And how far is the house from the bend in that driveway? A. From here (referring to map).

Q. Yes. A. 208 feet.

Q. Anyone driving up the so-called driveway could see these buildings you have marked on the 40

*Arthur Flagg Vogt—Cross.*

map? A. Could when you reached this point here (indicating on map); in back, along in here you might be able to see this, but not in here, the greenhouse would cut the view off.

10 Q. Do you recall testifying if you were standing at a point anywhere near the buildings, indicating the shed and place marked "Boiler," that you could see, it was clear down to, as a matter of fact—I want to withdraw that question. Using S-1 you told the Prosecutor in answer to his question, that the point marked group of buildings gave a clear view all the way down to the point on S-1 marked? A. That is true; asked if I stood at any point around the shed; I stood here (indicating on map) and looked down as far as the ditch across the field.

20 Q. So that when you say at a point where the road turns toward the building you can't see until you pass the greenhouse? A. Perhaps I didn't get your question; you asked if I could see any of these buildings from this road as you drove in?

30 Q. Yes? A. From along in here; I don't think you could see all of this shed because the greenhouse would cut the view off; before you get to the shed you could see all of that, but standing around from this "L" shaped end of the shed you can see from there, this way, down as far as the ditch, that is the end of the greenhouse.

Q. This spot marked here as burned house, that has been recently burned according to your map? A. Yes.

Q. And assuming that was standing at the time, can you see down to the point of the ditch? A. I couldn't say.

40 Q. You are merely testifying as to what you saw on the day you made the map? A. That is right.

*Arthur Flagg Vogt—Redirect.*

Q. Do you know how many feet it is from the point marked ditch, on S-1, to the corner of the greenhouse? A. Well, I can only give that to you roughly, that is a large scale.

Q. What is it roughly? A. Between 400 and 450 feet.

10

*Redirect-examination by Mr. Holland:*

Q. You forgot to mention, didn't you, Mr. Vogt, that Mr. Reichert was there, too, and he told you where the house had been standing and where the foundation was still there? A. That is true.

Q. And he was the one that was talking to you as well as the others about the location of the house and barns? A. Yes.

20

*Recross-examination by Mr. Hegarty:*

Q. Mr. Reichert didn't bring you there, did he?  
A. No.

Mr. Holland: Of course you were sent by the Prosecutor's Office?

The Witness: Yes.

*By the Court:*

Q. What is immediately in the rear of the barn to the east as I view your map, S-2? A. This side of the barn, out here, (indicating) is open fields.

30

Q. How far? A. I don't know, at least 100 yards, I should say.

Q. Cultivated? A. It has been cultivated once.

Q. Recently? A. I couldn't say the snow was on the ground at that time.

40

*Arthur Flagg Vogt—Recross.**By Mr. Holland:*

Q. What was beyond the open field? A. Woods, as I recall.

Q. Was there any habitation, or any house or point of vantage for anybody to see from that view unless they crept up in the woods? A. Off-hand  
10 I should say, no; I did forget to mention that this—I don't know whether you can distinguish it or not, some little blue dots in here, represent windows, some of the glass in the windows have been smoked, and some have not.

Q. What do you mean, by some have been smoked? A. The windows are made of six small lights in each sash, and some of them have apparently been smoked or painted over.

Q. So the light on the inside wouldn't show through to the outside? A. So one cannot see  
20 through.

Q. So that light cannot shine through? A. Yes.

*By Mr. Hegarty:*

Q. How many panes were so smoked or painted? A. In this window there were six lights, and five of them were so smoked, and in this window there were none, in this window I think there were  
30 three; this is just an opening where a sash had been; there was no sash in at the time, and this is a doorway, barn door, which was shut.

(Witness excused.)

*Edward Gebhardt—Direct.*

EDWARD GEBHARDT, called as a witness, having been duly sworn, testified as follows:

*Direct-examination by Mr. Holland:*

Q. Mr. Gebhardt, you are a detective on the Prosecutor's staff? A. I am.

Q. Did you cooperate with Sergeant Cohen of the troopers in having this raid made? A. I did. 10

Q. What day did it occur? A. October 25, 1927 in the afternoon.

Q. About what time in the afternoon did you get there? A. I should judge about two, half past two; we left immediately after lunch from this office.

Q. How many cars were there that went there? A. One from this office, and when we went on the road the troopers used their car, making two cars. 20

Q. When you started out did you go into the property from the Jacksonville Road and up the laneway or roadway as shown on S-1? A. We did.

Q. As you were proceeding in there was your car—were you driving? A. Yes, sir.

Q. Was your car first or second? A. Second.

Q. What happened when you got as far as what is shown on S-2 as a driveway? A. When we got to the house I pulled to the left of the driveway, to the left side of the house. 30

Q. Just take a pointer and indicate what you did? A. My car was second, I pulled in this way, as I stopped I saw a man run towards that direction there (indicating on map); I got out of the car and caught him, he was in there (indicating on map).

Q. Who was that? A. Arborelli, the man on the extreme right. 40

*Edward Gebhardt—Direct.*

Q. At what point did you catch him? A. Right in back of the house.

Q. And did you see him running immediately prior to the time you got him? A. He started to run as our car come in there.

Q. Where did you catch him? A. Right here.

10 Q. What was he doing? A. He had a large stick in his hand.

Q. Just give us the size of the stick, if you will? A. I should judge three or four feet long.

Q. And how thick? A. To me it looked like a large limb of a tree.

Q. Was it bigger than that? A. Yes, much rounder.

Q. What occurred? A. I took the stick from him and I brought him back around front, and I  
20 searched around here (indicating on map), the barns, &c.

Q. Did you go into the house at first? A. No, sir, I did not.

Q. You searched through the greenhouse and the lower barn? A. Yes, sir.

Q. What did you find in the lower barn—by the way, while you were searching through the lower barn, what did you do with Arborelli? A. Gave  
30 him to Mr. Beddoe.

Q. Mr. Beddoe accompanied you as constable in your car? A. Yes, sir.

Q. Who else was there beside yourself, so we get that straight, in the group, who else in your car? A. Mr. Roff, of our office, Mr. Beddoe and I.

Q. Who was in the other car? A. Sergeant Cohen and Trooper Patterson, of the State Police.

40 Q. When you turned Arborelli over to Mr. Beddoe what did you find in going through the barn?

*Edward Gebhardt—Direct.*

A. This barn here I found about 50 to 75 empty five gallon cans; they were wrapped in threes.

Q. All right, continue. A. Then I come around and they had over in the still here, outside they had Crisolissi, the second man from Counsellor Hegarty; he was in custody of other officers, and I went in and saw the still here (indicating on map). 10

Q. What kind of still was it, what was it? A. It was a still, I should judge, of 150 gallon capacity.

Q. Made of what material, or metal? A. Copper.

Q. And rigged up how? A. In reference to that, from boiler and roof, the boiler was here, and the still was right here, and it was an upright still. 20

Q. How high up did the still extend? A. Well, it went right up to the roof—chimney there.

Q. And at the time you got there what was the condition of the boiler? A. The boiler had a fire under it.

Q. And was the fire going? A. Yes, sir.

Q. And what was in the still? A. The alcohol, &c.

Mr. Hegarty: I object, if your Honor please, unless the witness is qualified to say. 30

Q. Do you know what was in the still, did you tap the still? A. We drained it.

Q. When you drained it what came out? A. Alcohol.

Q. Did you take some of it and put it in one of these cans? A. Mr. Roff or Sergeant Cohen did that.

Q. In your presence, while you were there? A. I was at the doorway, yes, sir. 40

*Edward Gebhardt—Direct.*

Q. You don't know which one, do you? Then what did you do with the balance of the alcoholic liquid that you did not put in one of these tins?

A. What we did not take from the still we let it run out and we banked the fires, &c. so there wouldn't be an explosion.

10 Q. How were the fires banked and by whom, under what circumstances, tell the jury what occurred? A. We weren't familiar with the boilers in the matter of shutting them off, so Sergeant Cohen and Mr. Beddoe took these two men, Arborelli and Crisolissi over to shut it off; they didn't want to do it, but they took them by the arm and led them over and told them to do it, and they shut it off and threw ashes and stuff into the boiler.

20 Q. Where was Gambino? A. Gambino—when they were shutting off the Boiler Gambino come down.

Q. Who brought him down? A. Trooper Patterson.

Q. Was anybody with Trooper Patterson? A. I don't think there was anybody with him when he brought him down.

Q. You say, "I don't think;" if you don't know, say so? A. I don't know.

30 Q. When Gambino came down there with Trooper Patterson and somebody else, or alone, what if anything occurred? A. They took Gambino over there to the still; he said he did not know anything about it.

Q. And after that was the drawing off and shutting down of the fire, before or after Gambino got there? A. It was going on while he was brought there, because I recall he was well-dressed and he didn't want to have anything to do with it.

40 Q. Did you go through the house? A. I went

*Edward Gebhardt—Direct.*

through downstairs.

Q. Did you find anything there? A. No, sir.

Q. Had anybody been through there before you?

A. Yes, sir.

Q. Who? A. Trooper Patterson.

Q. When you got all through and came away were these two bottles and two cans turned over to you in your custody? A. It was put in my car. 10

Q. Put in your car and turned over to you? A. Yes.

Q. What did you do with them? A. Brought them into our office.

Q. Where have they been ever since? A. In our custody downstairs.

Q. In the Prosecutor's vault in the Courthouse? A. Yes.

Q. Since they were turned over to you, and you brought them over, have they ever been taken out except for the purpose of the other trial this last time? A. No, sir. 20

Mr. Holland: I ask that these four be marked for identification.

The Court: If you are going to offer them in evidence, is there any objection.

Mr. Holland: I will offer them.

Mr. Hegarty: We do not object to them. 30

The Court: They may be marked, Bottle of dark liquid S-3; the bottle of white liquid S-4, the two five gallon cans S-5 and S-6, respectively.

Q. Now, Mr. Gebhardt, you were not present when those two bottle were found? A. No, sir.

Q. Where did the two cans come from? A. From the still. 40

*Edward Gebhardt—Direct.*

Q. What do you mean? A. From the building where the still was in.

Q. Now, just tell us about the two cans? A. I know Mr. Roff drew off one.

Q. That was the liquid from the still? A. Yes.

10 Q. And the other one was a full can? A. That was full there.

Q. And were there other full cans there beside the ones you picked up? A. Yes.

Q. What do you say you found in the barn, marked, "Recently burned?" A. About 50 to 75 five gallon cans.

Q. Of this particular type as marked Exhibts S-5 and S-6? A. Yes, sir.

Q. And they were tied, what did you say? A. In threes, with heavy twine.

20 Q. Were some of these five gallon cans filled with anything? A. Not the ones in the barn, if I recall, they weren't full, but Mr. Roff found some over in this place here (indicating), five gallon cans, which were full.

Q. Full of what? A. Alcohol.

Q. Did you find any in the burned building with anything else besides alcohol? A. No, sir.

30 Q. What else did you find in the shed and barns? A. In the shed there were a number of barrels containing mash.

Q. How many? A. I should judge around fifty.

Q. What sort of barrels? A. That they call fifty gallon barrels.

Q. Just indicate roughly if you will the size and height of them, barrels about that size (indicating)? A. Yes, around that height, what you call wine barrels, that size.

40 Q. They were filled with mash? How full? A. Right to the top.

*Edward Gebhardt—Direct.*

- Q. Fifty or sixty of them? A. Yes.
- Q. Were there some larger than that? A. Yes.
- Q. How many? A. I should judge half a dozen  
I would call 100 gallon barrels.
- Q. They were filled with what? A. Mash.
- Q. Covered? A. No.
- Q. In what part of the shed were they standing? 10
- A. In this barn right in this section here (indicating).
- Q. What did you do with those barrels of mash?
- A. We threw kerosene into them.
- Q. Where did you get the kerosene from? A.  
Over in the barn, here, if I recall correctly.
- Q. What was the kerosene in? A. Five gallon  
cans.
- Q. I asked you if some of those five gallon cans  
were filled with anything? A. There was some 20  
there.
- Q. Some of them were filled with kerosene? A.  
Yes.
- Q. The rest of the cans were empty? A. Yes.
- Q. Now, is there any other house near this  
group of buildings; anywhere in that vicinity;  
where is the nearest house? A. The house I would  
say is nearest would be this house down here.
- Q. And that of course would be a half mile 30  
away if that road is half a mile long? A. Yes.
- Q. Is there any other house anywhere near it  
away from the Jacksonville Road? A. There is  
one other house, but it is hardly visible, it is away  
up in the woods, that way.
- Q. With the exception of that, is there any other  
house that is visible? A. No, sir.
- Q. Was there anybody else that you found there  
on the premises besides Crisolissi, Arborelli and  
Gambino in bed? A. No, sir. 40

*Cross-examination by Mr. Hegarty:*

Q. You say your car was the second in line going into the Reichert farm? A. Yes, sir.

Q. Whose car was ahead of you? A. The one Sergeant Cohen had.

Q. Who was with Sergeant Cohen? A. Trooper Patterson.

10 Q. Anyone else? A. No, not that I recall.

Q. Don't you recall at the previous trial you testified that Lieutenant Roff rode with you? A. He rode with me, yes, I said that this morning, too, that he rode with me.

Q. Don't you recall at the same time that you testified that Thomas Beddoes rode with the State Officers? A. No, I don't recall saying that.

20 Q. Will you kindly indicate by some mark where you first saw Arborelli on the map? A. You mean when we were driving in?

Q. Yes, as you were driving in? A. There (indicating on map).

Q. You saw him in front of the house? Is that the front of the house? A. Yes, that would be the front of the house facing the driveway.

Q. Will you mark it there, please. (Witness does so).

30 Q. What next did you do? A. You mean driving in?

Q. Yes. A. I chased Arborrelli, he ran towards the rear of the house, I chased him there.

Q. Don't you recall, in answer to the Prosecutor's question just a few moments ago that you said you first observed Arborelli running around this way, and you ran around there and got him? A. No, sir, didn't say that.

Q. That was not correct?

40 Mr. Holland: I object, he said he didn't

*Edward Gebhardt—Direct.*

say it; can't be termed incorrect if he says he didn't say it.

Q. Didn't you take the pointer and indicate for the Prosecutor when you first saw Arborelli who was running around in this direction, and you ran around there and caught him? A. When I got up I got out of the car and chased him and caught him up there back of the house. 10

Q. You didn't tell the Prosecutor you observed him back here and he ran toward the house and you ran around and caught him? A. In the back of the house.

Q. You said he had a large stick in his hand, something like a limb? A. Yes, sir.

Q. There were other sticks around there also, weren't there? A. There might have been. 20

Q. Did you look to find any? A. No, sir.

Q. Was that when you took the stick away from Arborelli or did he just drop it? A. I took it away from him.

Q. Did he want to hold on to it? A. No.

Q. Gave it to you when you wanted it? A. I told him to, and he handed it over.

Q. Where did you take Arborelli? A. Around to the front of the house.

Q. What did you do with him then? A. Gave him to Mr. Beddoe. 30

Q. Don't you recall telling the Prosecutor you took him to the greenhouse and barn, marked "Recently burned?" A. I didn't say that, I said I gave him to Mr. Beddoe.

Q. Anyone else running around the house after Arborelli with you? A. No.

Q. When did you first see Crisolissi, the gentleman here? A. When I got over to the still there, 40

*Edward Gebhardt—Cross.*

the building where the still was; they had him there.

Q. How long was that after you had arrived on the premises? A. I couldn't say to that.

Q. An hour afterwards? A. No, not that long.

10 Q. How long did you search through the greenhouse and the barn marked "Recently burned," on S-2? A. I don't know exactly how long I was in them, I was in through them and then I come down to the barn where it says, "Recently burned," and I come over to the other place.

Q. And that was the barn you told the Prosecutor there was fifty to seventy-five of these five gallon cans? A. Correct.

Q. Didn't you test them at that time? A. I kicked them.

20 Q. Did you kick any with the kerosene in them? A. No, they weren't tied up, they were loose, separated.

Q. You didn't see Arborelli down by the so-called still, did you? A. When I got there?

Q. Yes. A. No.

Q. You weren't the first one down to the still? A. No, sir.

30 Q. You spent your time after catching Arborelli going to the greenhouse and from there to the other barn? A. Yes.

Q. And by the time you were ready to go down where the still was located you saw Crisolissi down there with the other officers? A. Correct.

Q. And Gambino came there later? A. He was brought there.

Q. Did you notice any tilled ground nearby? A. Yes, there was a patch of it.

40 Q. Did you go out to examine or measure how

*Edward Gebhardt—Cross.*

much tilled ground there was? A. No, sir, did not.

Q. You didn't go all around the farm, did you?  
A. Around the buildings, I did.

Q. Just stayed in this one spot on the farm? A.  
The area of the buildings.

Q. You didn't go out through the farm land it-  
self? A. No, sir. 10

Q. Isn't there a house just about 800 feet away  
from the house on the Reichert place? A. Which  
direction.

The Court: Any direction.

Q. West? A. No, sir, I said the nearest house  
would be this one down here, and that was meas-  
ured at 1900 and some—2200 feet I think, by Mr.  
Vogt, this morning. 20

Q. Did you notice the nature or character of the  
land, as you drove in up to the point marked,  
"Ditch?" A. Just what do you mean by that,  
please?

Q. Was it covered over with short growth, or  
filled with trees, or what? A. This around here,  
the entrance into his house, farm, it is; here there  
are no weeds there, you might say it is, a few may  
have been cut that way as you come up there are  
weeds. 30

Q. You heard Mr. Vogt testify here this morn-  
ing there were bushes at a height of twelve feet or  
so? A. This is five months after, we were over  
there in October.

Q. Do bushes get their full growth in winter?  
A. I don't know, I am not a farmer, but I know  
they don't grow in the winter.

Q. Did you observe any bushes as you went up  
that roadway? A. I call them all weeds. 40

*Edward Gebhardt—Redirect.**Redirect-examination by Mr. Holland:*

Q. I show you photograph and ask you if that is a true representation of the barns including the shed and the boiler room?

10 Mr. Hegarty: I object if your Honor please.

Mr. Holland: I have the photographer if that is the source of the objection.

The Court: You must prove your photographs first.

Mr. Hegarty: I have a further objection.

The Court: That is plenty for the present.

(Witness excused).

20

MORRIS N. COHEN, called as a witness, having been duly sworn, testified as follows:

*Direct-examination by Mr. Holland:*

Q. Mr. Cohen, you are Sergeant of State Troopers? A. Yes.

30 Q. Your barracks are located where? A. Pompton Lakes, New Jersey.

Q. Were you first made aware of the fact that on this Reichert farm there was a condition to be investigated? A. Yes, sir.

Q. Did you prepare and arrange for a raid on October 25, 1927? A. Yes, sir.

Q. Who accompanied you? A. Trooper Patterson, Mr. Gebhardt, Mr. Roff and Mr. Beddoe.

Q. Who was driving your car? A. I was.

40 Q. Who was in your car? A. Trooper Patterson.

*Morris N. Cohen—Direct.*

Q. Did your car proceed into the road leading off the Jacksonville Road first? A. Yes, sir.

Q. Now, just tell the Court and Jury, if you will, what you did as you drove on up towards the driveway on S-2? A. Why, we just drove in and I drove to the right.

Q. Suppose you take the pointer and indicate for me if you will? A. According to S-1, come up this road, finally we hit this road, this isn't a driveway, it is a continuation of this road, I drove just about here so the car driven by the County authorities could get in to my left. I told Trooper Patterson to go upstairs in the house. I went around the back towards the barn. I made entry through here and I found a still in operation. I called out to some of the officers who I knew were around there, "I found it." Then I walked through here and looked at the mash; I returned to the still and Mr. Beddoes was there with one of the defendants, this curley headed man, Crislossi. 10 20

Mr. Hegarty: Which one?

The Witness: Crisolissi, that's right.

Mr. Hegarty: Stand up Crisolissi. (Does so.)

The Witness: I saw him. I returned to the house with Detective Roff, and in a room in the Reichert's we found these two jugs. 30

Q. S-3 and S-4? A. Yes.

Q. What is in these jugs? A. One is alcohol, the other is some kind of alcoholic drink.

Q. Where did you find them? A. They were in a corner of a room right near a trunk.

Q. What else did you do when you were in the 40

*Morris N. Cohen—Direct.*

house? A. Nothing, except that I confiscated this liquor.

Q. Did you find anything else? A. One of the defendants was upstairs in bed.

Q. Which one was that? A. Gambino.

10 Q. Is that the defendant that came down the stairs? A. Yes, sir.

Q. Did you wake him, or did someone else wake him. A. Trooper Patterson.

Q. You weren't there? A. Not when he went in first, no.

Q. Did Gambino go over to where the still was, afterwards? A. Yes.

Q. Who took him over? A. I walked over with Trooper Patterson and Gambino.

20 Q. What was done there in the still room? A. We started to dismantle it, at least we made those three defendants take it apart, with monkey wrenches and Stillson wrenches.

Q. What was done with the fire before that? A. We had to throw wet ashes on it, we were afraid it might explode it had a full head of steam going.

Q. Was the still in operation? A. Oh, yes.

Q. What was in the still? A. Alcohol.

30 Q. Did you draw some of it off? A. We drew it all, that is, we filled up one of the cans.

Q. What is in the other can? A. That was already filled.

Q. Where was that found? A. Right along, the can that was—perhaps if I could explain it, I could make myself clearer. The full can was standing right near the door, and this can partly filled was right under the outlet from the still, the drippings fell in it, and of course when we took the still apart, we busted it and filled it up.

40 Q. You didn't wait for it to drip in the process

*Morris N. Cohen—Direct.*

of distillation? A. No, sir.

Q. Was there anybody else on the premises beside Crisolissi, Arborelli and Gambino? A. No, sir, there were not.

Q. When did you get Reichert? A. That evening.

Q. He came over? A. Yes, I communicated with the local chief of police. 10

Q. And as a result of that communication he was picked up? A. Brought to our station.

Q. Through the Chief of Police of Pompton? A. Pompton Plains.

*Cross-examination by Mr. Hegarty:*

Q. When you drove in near the house of Mr. Reichert, what was the first thing you did? A. I stopped and ran towards the barn, got out of the car and went towards the barn. 20

Q. Did you notice what the other men were doing? A. I did not, except that Trooper Patterson's actions, I told him to go into the house.

Q. And you ran? A. Towards the barn.

Q. And you testified you went into a point where it is marked "Boiler?" A. Yes, sir.

Q. What did you find? A. A boiler and a still. 30

Q. Did you find anyone there? A. No, sir, I did not.

Q. Do you recall, in answer to a question of a similar nature at the last trial that you testified that you found Arborelli stoking the boiler? A. I did not testify to that effect.

Q. You say now, you did not testify that you saw Arborelli stoking the boiler when you entered the building? A. I certainly didn't say so.

Q. And he wasn't there? A. He wasn't. 40

*Morris N. Cohen—Cross.*

Q. And you searched through the remainder of the building into the shed? A. Yes, sir.

Q. Did you find anybody in the building? A. You mean in the barn?

Q. In the barn? A. No, sir, I did not.

10 Q. Meet any of your officers? A. Not until I returned back to the still.

Q. While you were in the building marked "Boiler and Tank", did you hear any of the officers on the outside of the building? A. I could hear noises that would make me believe somebody was outside.

Q. As a matter of fact didn't you testify you spoke to Mr. Roff, and could see him through a crack in the door? A. I don't believe I did.

20 Q. Didn't you testify that there was a door nailed but there was a crack in it so you could see the officer outside? A. I testified there was a door nailed.

Q. And through that door you could see Officer Roff? A. I did not.

Q. Didn't you talk with him? A. Not through the door no.

Q. But there was an officer on the outside? A. Several of them.

30 Q. Several on that side of the building? A. Several in the yard.

Q. Will you indicate with the pointer which side they were on? A. There were some officers in here, right through here, the house, shed and the barn where the still was.

Q. On which side of the building was the door on which you saw Officer Roff? A. I didn't say I saw Officer Roff.

40 Q. I ask you again, if you didn't so testify at the previous trial? A. I can't recall, Counsellor.

*Morris N. Cohen—Cross.*

Q. You seemed to be all over this place at one time, were you not? A. Well, I tried to be, cover as much territory as I possibly could.

Q. In your haste you didn't grab any officers by mistake for men on the premises? A. Oh, no.

Q. But you say, after you left the buildings or sheds you went into the house? A. Yes, sir. 10

Q. Who went in with you? A. Officer Roff, Detective Roff.

Q. Who else was in there? A. Trooper Patterson was upstairs waiting for Gambino to get dressed.

Q. Do you remember going into the kitchen of the Reichert house and finding this man employed, working at the stove, cooking? A. I do not, no, sir.

Q. You are sure about that? A. Positively. 20

Q. Who did you tell, "I found it," to? A. I called out.

Q. You called out, "I found it?" A. I said, "I found it," so if anybody else was in the act of looking for it they would quit right there, wouldn't have to search any further.

Q. Everybody stopped seaching? A. No, you see when you go on a raid—

The Court: No, you have answered, "No." 30

Q. Now, you said you had prepared and arranged for the raid, how did that come about? A. I communicated that morning with the Morris County Prosecutor's Office.

Q. Had you any information that the law was being violated down on the Reichert farm? A. Yes, sir.

Q. What was the nature of that information? A. I received numerous complaints, anonymously; and then the night preceding the raid I drove up 40

*Morris N. Cohen—Cross.*

that road, and there was a strong odor of alcohol, and that being the only house in the vicinity, and in addition to what I had been told, I thought it wouldn't be a bad idea to look things over.

10 Q. I call your attention to S-1 and ask you if there aren't two houses down here on the main road? A. There are.

Q. Where were you when you smelled this so-called alcohol? A. Right here, and I kept driving back and forth, and then I drove up here and backed out, and I drove up the other way a little this way; I spent about forty-five minutes.

Q. Turned around in on that driveway? A. No.

Q. Where did you turn around? A. I didn't turn, I couldn't turn.

20 Q. How did you get out? A. I backed out.  
Q. You backed out of that? A. I left the car

about 100 feet from the Jacksonville Road, as a matter of fact, I was afraid to drive any further for fear I never would get out, and I walked part of the way.

Q. And rode the rest of the way? A. Oh, yes, used the car whenever I could.

30 Q. So you only went in 100 feet on that road-way? A. I couldn't say just how far I went in, far enough to satisfy myself.

Q. That the alcohol smell wasn't coming from either of the houses down the road? A. That is right, as a matter of fact, there were lights over there.

Q. In the house? A. I don't know, too far away to tell whether it was in the house or barn.

Q. Who gave you the information the law was being violated at that place? A. I don't know his name.

40 Q. Didn't you make any effort to find out? A.

*Morris N. Cohen—Cross.*

I did not, most people—

The Court: You did not, that is the answer.

Q. You did not have these people reduce their statements to an affidavit? A. No, I did not.

Q. And the people who gave you the tips, didn't tell you Arborelli, Crisolissi or Gambino or Reichert was running a still? A. They told me Reichert was. 10

Q. Who told you? A. People who gave me these tips.

Q. And notwithstanding they told you Reichert was running a still, you didn't ask them to give you that statement in writing? A. I did not.

Q. Didn't you see fit as an officer after receiving a tip of that kind to investigate the source of your information? A. Just what do you mean, Counsellor. 20

The Court: Repeat the question.

(The first preceding question repeated.)

The Witness: I did not, no, sir.

Q. Is that the custom of the State Troopers, to receive information and not act on it?

Mr. Holland: Just a moment, what do you mean, Not act on it? 30

Mr. Hegarty: He said he received a number of tips.

Mr. Holland: It seems to me he did act on it.

The Court: Any objection to the question?

Mr. Holland: No, sir, I will withdraw the objection. 40

*Morris N. Cohen—Cross.*

10 Q. When did you first get a tip there was a violation on the Reichert farm? A. I received several tips, complaints about that place, I don't know about the first one, just like with a lot of tips we received, I took it with a grain of salt, and when they came in constantly like this I thought it was just about time I would look around and see what it was.

Q. What do you mean, constantly? A. It is possibly about every week or every three days somebody would give me a call and say there was a still working at the Reichert farm, why isn't it being investigated.

Q. People called personally and gave you tips, too, didn't they? A. One man called in person.

20 Q. Did you make any note of that on your record day's report? A. Oh, yes.

Q. Have you that report here? A. No, I have not, I could get it here.

Q. Now, when these men were arrested you didn't take any statement from them, did you? A. They wouldn't offer any.

Q. Did you try to get a statement from them? A. I did.

A Juror: May I ask a question?

30 The Court: You may.

*By a Juror:*

Q. Were you familiar with these premises before you made this raid? A. I was not.

Q. You did not know the location of the buildings? A. No.

Q. Or how to find the still? A. No.

Q. Is it part of your duty to do that? A. As to what?

40 Q. To inform yourself before making a raid to

*Morris N. Cohen—Cross.*

make yourself familiar with the premises? A. As to general information.

Q. You didn't do that? A. In this particular case I knew where I was going to the Reichert place.

Q. You did not know the lay-out of the buildings? A. No. 10

Q. Is that part of your duty to, when you receive information, is it general for you to go into premises without knowing the lay-out? A. We have to take those chances; unless a public place like a saloon.

Q. Was it possible for you to get any advance information and find out the lay-out of this? A. Where the still was located and mash?

Q. Yes. A. No.

Q. Could you find out prior to the raid? A. No, I did not. 20

Q. But you did not make any effort? A. No, I did not.

*Redirect-examination by Mr. Holland:*

Q. When you did go there you actually did not go upon the premises until you had your search warrant? A. Yes. 30

Q. And when you did have a search warrant you did your duty? A. Yes.

Q. And went there with the other officers, and you having charge of Trooper Patterson told him where to go? A. Yes.

Q. Where did he go? A. In the house.

Q. Where did you go? A. To the barn.

Q. Why? A. There was a big tank and smoke stack sticking out of the barn. 40

*Morris N. Cohen—Redirect.*

Q. That is what attracted your attention? A. Yes.

Q. When you got there you found a still in operation? A. Yes, I did.

Q. And were you there, Sergeant, with Mr. Vogt, a day or so ago? A. No, I was not.

10 Mr. Holland: Oh, it was Trooper Patterson.

*Recross-examination by Mr. Hegarty:*

Q. And the reason for the stack referred to was a boiler underneath the stack, was there not? A. Yes, sir.

Q. And the tank on the roof was a water tank, was it not? A. Yes.

20 Q. You also saw a pump in there, didn't you? A. Yes.

*By Mr. Holland:*

Q. Now, you said in answer to Mr. Hegarty's question, that you did not find Arborelli in there stoking the boiler; did you ever find Arborelli in there by the still, and if so, when? A. Why, he was brought in there.

30 Q. I mean, Crisolissi? A. Crisolissi was the only one brought in with the officers, but the rest of them were brought in to dismantle the thing.

Q. Who brought him in? A. Officer Beddoe.

Q. And is that what you testified to formerly, that when you did catch anybody it was Crisolissi there who was brought in by Mr. Beddoe? A. That is right.

40 Q. And is it a fair statement to say that at the last trial you were somewhat twisted as to the or-

*Morris N. Cohen—Recross.*

der that that happened in? A. Oh, yes, readily admit that.

*By Mr. Hegarty:*

Q. You were one of the officers caught hold of Crisolissi to bring him down to turn off the still?

Mr. Holland: You mean Crisolissi or Gambino. 10

Q. Crisolissi? A. That is what I stated last time.

Q. You and Mr. Beddoe brought him down, dragged him down? A. No, brought him down.

Q. And the time you brought Crisolissi down you went out to bring Crisolissi down, the first time you saw Crisolissi? A. Yes, that is what I said last time. 20

Q. Did Crisolissi turn the still off? A. The three of them did it, Gambino, Crisolissi and the other defendant.

Q. They told you they didn't know how to turn it off, didn't they? A. That is what they told us.

Q. And they didn't turn it off? A. No, they did turn it off, we banked the fires.

*By the Court:*

Q. What do you mean, "They did turn it off?" 30  
A. They shut the valve that controls the flooding of the steam.

Q. Under your direction? A. I told them to shut the steam off, to disconnect the power, and they did, I told them to disconnect the still, make complete physical separation from the boiler.

Q. They did as ordered by you? A. Yes, sir.

Q. Did you go in the kitchen of the farmhouse?  
A. When I went into the house I did, I had to, 40

*William H. Kleindinst—Direct.*

that is the first room leading to the door on the inside of the house.

Q. Was the cook stove going? A. The stove was cold, no fire in the stove.

(Witness excused).

10

WILLIAM H. KLEINDINST, called as a witness, having been duly sworn, testified as follows:

*Direct-examination by Mr. Holland:*

Q. You are a photographer of many years standing in Morristown? A. Yes, sir.

Mr. Hegarty: I admit his qualifications.

20 Q. Did you take these pictures up on the Reichert farm? A. I did.

Q. When? A. Last Saturday.

Q. Do they properly represent the condition of the barn at the time you took the picture?

Mr. Hegarty: I object—that is all right, I withdraw my objection.

Mr. Holland: I offer them.

30

Mr. Hegarty: I object, first, on the ground that the taking of a picture last Saturday is too remote, and for the further ground, that the character of the premises has changed since the time of the raid.

The Court: That seems to be true as to the testimony so far.

40

Mr. Holland: I don't think so, in the first place, the taking of these pictures were no more remote than the making of the maps, and there was no objection made to them,

*William H. Kleindinst—Direct.*

and your Honor would not have ruled them out if there had been.

The Court: I don't know if there had been an objection.

Mr. Holland: Possibly, on the other hand, there is no change of anything so far as the barn recently burned or house recently burned, because we are not offering pictures of them, we are offering pictures of the shed and barn, marked "Boiler and Tank" on roof which is substantially the same now as then, because I think it is conceded that the character of the barn hasn't changed any, it is merely a question of showing physical representation, of showing what the barn looks like in the picture of it. I offer them in evidence. 10 20

The Court: Let me see them. (After examining same). Objection is sustained.

Mr. Holland: May they be marked for identification, if your Honor, please, "A" and "B"?

Q. Did you also take a picture of the road, and is that a true representation of the road, as you found it? A. Yes, sir, it is, absolutely. 30

Mr. Holland: I ask that be marked for identification.

The Court: It will be marked for Identification "C".

Q. I show you Exhibit S-A for Identification, and ask you if that is a true representation of the object it portrays? A. It is.

Mr. Hegarty: As of last Saturday. 40

*Fred Roff—Direct.*

Q. As of last Saturday. And I show you Exhibit S-B for Identification, and I ask you if that is a true representation of the objects and structures it portrays as of last Saturday? A. Absolutely.

(Witness excused).

10

FRED ROFF, called as a witness, having been duly sworn, testified as follows:

*Direct-examination by Mr. Holland:*

Q. You are a lieutenant of detectives on the Prosecutor's Staff? A. I am.

Q. And you recall taking part in this raid? A. I do.

20 Q. With whom did you drive up there, Lieutenant? A. I rode in the car driven by Detective Gebhardt, accompanied by Constable Beddoe.

Q. When you got out what was your first activity? A. I went between what is marked as shed and house.

30 Q. Just take the pointer and point out what you did? A. As we came up I saw a man crossing from back here, some one running toward the back of the house. As we got out of the car I ran between and back here I caught a man, the man with the bushy hair, Crisolissi—maybe I forget the name.

Q. Whereabouts in reference to the house did you catch him? A. Right in back around the corner somewhere.

40 Q. Was he standing still or walking away, or running? A. Standing in back here when I came around. I took him and brought him back and left him in custody of Mr. Beddoe.

*Fred Roff—Direct.*

Q. Then what did you do? A. Went back up around and looked all around through here (indicating on map).

Q. Were you searching? A. I was looking for an opening into the shed, or perhaps someone else might have been hiding back there; I came all the way around; as I got along in here somewhere, I believe it was Sergeant Cohen said, "I have got it," or words to that effect, and I came on around, came here, and entered a door here. 10

Q. When you went in what did you find? A. There was a still in full operation with the alcohol running out of the spout, out of the coils into the cooler.

Q. What size still was it? A. 150 gallon, about.

Q. How high up did it extend? A. Pretty near to the roof of the still, and the boiler, it had something new in the still line, it had big copper pans where it went up and dripped back, and there were coils in it was something new. 20

Q. In your experience as a police officer you have seen a great number of stills? A. I have, yes, sir.

Q. When you got around in there, Mr. Roff, what else beside the still and furnace, did you notice? A. Why, right in along in here, there was a still in here operating, boiler full of steam, steam was blowing off at the time. 30

Q. What do you mean, "blowing off?" A. The check valve, I suppose, you call it.

Q. Safety valve? A. Steam coming from the safety valve; and right along in here there were hogsheads, 100 gallon and 75 gallon, bigger than the average barrel, filled with mash, that was fermenting.

Q. How many were there? A. I think I count- 40

*Fred Roff—Direct.*

ed around seventy, all told, they were full; right over here, I would say and here, and filled with mash, fermenting.

10 Q. What was done? A. We had the men in custody; we went over there after we searched around, went back in the house, I entered the door, a room right on the left, we found different things around, a little rifle, a single barrel shotgun, and a revolver. In back of a trunk as you entered in here to the left there was a trunk, and behind that trunk was the jug with the colored liquor into it; in back of the door as you go in there was a door open; with a pile of cushions thrown over it was the other jug of liquor.

20 Q. What did you do with the liquor? A. Sergeant Cohen who was in the room at the same time took it, and it was put in our car, that is, these cans and two one gallon jugs.

Q. Where did you get the cans? A. There was a can—I am not quite clear whether the can or a pail was under that—

30 Q. Under what? A. Under the spigot where the cooler cooled the steam and made it go into alcohol, I don't know whether it was a pail, or it may have been a big funnel, into the jar, and we took that out—one was already filled; we had taken that can and turned that over to Constable Beddoe detailed to watch those things.

Q. And when you were in the house, I am referring to the question the Judge asked Sergeant Cohen, were you in the kitchen? A. I was.

Q. Did you take any notice of the stove? A. I don't recollect.

40 Q. What did you do in reference to searching the other buildings? A. I went back over into

*Fred Roff—Direct.*

here, in these places here I saw was a number of cans.

Q. And how were those cans stacked? A. They were tied up in threes and stacked up in a solid mass.

Q. When you say a solid mass— A. On top of each other. 10

Q. Were the cans full or empty? A. Empty.

Q. Where was the tractor? A. Then there was a little out-shed, an axe lay on the ground, I picked that axe up, and put it aside for a protection; in here was the tractor.

Q. Did you find any of these five gallon tins filled with kerosene? A. After we had started to have them in to empty these hogsheads of mash, the one next to Mr. Hegarty had a good suit on, we let him put a jumper on, and realized the enormous job of emptying of them I went looking for kerosene. I found two five gallon cans, one full and one partly filled in alongside of the tractor, which we took back and had put in the barrels to spoil the mash. 20

Q. That is the only kerosene you found? A. I found a can half full on the rear enclosed porch of the house, around here somewhere; we used that also. 30

Q. Were was Gambino? A. Which is Gambino?

Q. You arrested them? A. I don't know their names.

Q. Where was the fat fellow? A. He came out of the house.

Q. Did you have a talk with him? A. Yes.

Q. Did you ask him if he would make and sign a statement? A. Not at that time.

Q. Did you afterwards? A. Sergeant Cohen asked them about statements. 40

*Fred Roff—Direct.*

Q. They didn't give any? A. No, in fact, they could not speak English, that was their excuse, they didn't know anything, that is, the two, and the other one the stout fellow, Gambino, he said he did.

10 Q. What did he say? A. He told me he was there to repair the tractor for the boss. I asked him who was the boss, and he said, "I don't know." He was dressed in a blue suit, collar and tie.

Q. Blue suit, overalls? A. No, blue serge suit.

Q. Was it a working suit? A. No, it wasn't, it was pressed and in good shape.

Q. Was there any other person anywhere around the premises besides these three,—two men there and the one sleeping? A. No, sir, only the three men there besides ourselves.

20 Q. When you started out and came back home how did you get home, in whose car was who? A. Same car, we went in our car in which were Detective Gebhardt, driving, and Constable Beddoe—no, I drove it out and Detective Gebhardt was with me and Constable Beddoe sat in the back.

Q. Where were the men? A. The men were in custody of Cohen and Patterson.

30 Q. Before you started, did you have to wait for Mr. Beddoe? A. He went in the house with one to change his clothes.

Q. Did you wait for him? A. We did.

Q. As soon as these exhibits were brought down and in the Prosecutor's Office, did you turn over specimens of it to Dr. Christian, the State Pathologist, for analysis? A. I took Dr. Christian down into our vault and he took specimens of what he wanted.

40 Q. Did he furnish you a written report of the alcoholic content of the various liquids? A. He

*Fred Roff—Direct.*

did, yes, sir.

Q. Is this the written report he furnished you, which is signed by him? A. It is, yes, sir.

Mr. Holland: Dr. Christian is away, and it is impossible to serve a subpoena on him. I desire to offer this because of the fact he is not present, that is his official report to us. 10

Mr. Hegarty: Inasmuch as we claim that the liquor and things found there do not belong to us, I have no objection to it.

The Court: It will be admitted, then, if there is no objection, and marked S-7.

*Cross-examination by Mr. Hegarty:*

20

Q. Mr. Roff, you remember that you did not testify at the former trial to having arrested anyone?

A. Repeat that, Mr. Hegarty, please.

Q. You failed to say at the previous trial you caught anyone on that raid? A. I did not, I said I caught the gentleman, with the bushy hair at the back of the house and brought him back and turned him over to Constable Beddoe.

Q. Didn't you, in answer to a question of the Prosecutor say that the first time you saw Crisolissi was when Cohen and Beddoe was taking him to the place of the still? A. No, sir, I never said no such a thing. 30

Q. You heard Sergeant Cohen say, "I found it?" A. I did, yes, sir.

Q. And after arresting Crisolissi at a point in the rear of the house you brought him around to the front? A. No, not the way you have it, I brought him around here (indicating on map) 40

*Fred Roff—Cross.*

somewhere, I don't know just where, I didn't mark the spot.

Q. And you turned him over to another officer?

A. Constable Beddoe, yes, sir.

10 Q. Then you proceeded up to a point along this shed? A. I went all around here, through here, around the chicken coop, came around the whole barn, as I got in the back here I heard Sergeant Cohen inside, I recognized his voice, say, "I got it," or words to that effect, and I came right on around. I completely circled the whole building.

Q. Had he just found the still? A. He just said, I heard him say, "I have got it." I don't know whether he just found it then, or satisfied himself as to everything first, that is what I heard.

20 Q. How long did it take you to go around? A. I couldn't tell you.

Q. Have you any idea? A. A few minutes, I couldn't tell you exactly.

Q. You said you saw Crisolissi run from a point where it is marked "Yard?" A. I saw a man, I don't know—I did not know who it was at the time—crossing in here and I ran in back and caught the man, and afterwards turned out to be Crisolissi.

30 Q. You went in with Mr. Gebhardt? A. In where?

Q. In the premises? A. I rode in the car with him, yes, sir.

Q. Do you know—he marked a spot on here where his car was parked? A. Don't know where he parked his car, I don't remember.

40 Q. How could you see Crisolissi running if you were seated in your car? A. I don't say I was in that seat in the car, in fact, it wasn't when we pulled up I saw him, when we approached in here

*Fred Roff—Cross.*

I saw the man crossing in here, as I said, between the shed, it may be a little further back, as we came in I saw a man cross over here.

Q. You are sure you saw a man cross there? A. I did, and caught the man in back there.

Q. You didn't testify at the former trial you saw any one cross there? A. I did, and stated that was my reason for running in back of the house instead of going into the barn. 10

Q. It wasn't because you saw someone run through the chicken yard and escape through the woods you went through the chicken yard? A. No, sir, he was the only man in sight, it was a clear field around there.

Q. You did not find any of these three men, Gambino, Arborelli or Crisolissi or Reichert down at that still? A. I did see the man on the end when I got around there in that room where the still was. 20

Q. By the time you had travelled all around the chicken yard? A. Yes, sir.

Q. You saw him later there? A. I did, yes, sir.

Q. You don't know how he come there? A. Couldn't tell you, no, sir.

Q. You heard Detective Gebhardt say he turned Arborelli over to Mr. Beddoe? How many men did Mr. Beddoe have in custody? A. I couldn't tell you, generally— 30

The Court: Not generally, how many did he have in custody.

The Witness: Couldn't tell you at that time.

Q. Was Mr. Beddoe the man detailed to take care of anyone who was put under arrest? A. When a 40

*Fred Roff—Cross.*

man is detailed to do a thing I will see he does it.

Q. At the time you handed Crisolissi to him did he have Arborelli? A. Not that I can remember, I don't recall, I don't think so.

Q. Did you see Detective Gebhardt chase his man? A. No.

10 Q. You heard him testify he was back of the house also? A. I wasn't watching Gebhardt.

Q. You could have seen him if he was back there with another man, couldn't you? A. No, sir, I couldn't.

Q. Do you mean to tell this Court and Jury you couldn't see Gebhardt arrest another man in back of that building if you were around there? A. In the back of the building? I couldn't very well look  
20 through the house. If, as he testified, he went along the house, I couldn't look through the house and see him.

Q. You heard Detective Gebhardt say he chased a man around here and arrested him back here (indicating on map)? A. I so heard him, yes.

Q. You didn't lose any time going around the lower end of the building? A. No, sir, I was around quicker than he, because he stopped the car and got out.

30 Q. Then you must have seen Gebhardt? A. I did not see him.

Q. Did you notice him deliver Arborelli to Mr. Beddoe? A. I did not, I didn't wait.

Q. How were you looking for kerosene? Did you know there was any on the premises? A. Yes, having gone over there, having looked at the tractor I saw the kerosene and then when we wanted to destroy it remembered there was kerosene, that is  
40 when I went back.

Q. When you said Gambino had a blue serge suit

*Fred Roff—Redirect.*

on, you don't know what kind of suit he had before he went in the house? A. I didn't see him.

Q. You only saw him when he was dressed up and came out? A. That is correct.

Q. You were present in Court this morning when Sergeant Cohen testified, were you not? A. I was, yes, sir. 10

Q. And didn't you hear Sergeant Cohen testify that the two bottles of liquor were found together in the corner? A. No, sir, I did not.

Q. You are sure they were not? A. I am sure they were not, absolutely.

*Redirect-examination by Mr. Holland:*

Q. And he didn't say that either, did he? A. Not to my recollection, no, sir. 20

(Witness excused).

The Court: We will take an adjournment at this time. Let me caution you Jurors, do not discuss this case with anyone outside while you are out to lunch, and do not let anyone discuss it with you while you are out to lunch, and come back at two o'clock.

30

(Court convened pursuant to adjournment).

FRED ROFF, recalled.

*By Mr. Holland:*

Q. Mr. Roff, what was done with the still itself?

A. Loaded on a truck and brought to our storehouse.

Q. Dismantled that day? A. It was. 40

*Fred Roff—Recalled.*

Q. Has it been in the Prosecutor's storehouse ever since? A. It has, yes, sir.

Mr. Holland: I offer it in evidence.

Mr. Hegarty: No objection.

The Court: It will be admitted, Exhibit  
10 S-8.

Q. It was brought over from the storehouse, and where is it now? A. Downstairs.

Q. And that is the still with all the various parts? that go to compose it? A. Yes, sir.

Mr. Hegarty: No questions.

(Witness excused).

20

CLAUDE PATTERSON, called as a witness, having been duly sworn, testified as follows:

*Direct-examination by Mr. Holland:*

Q. Mr. Patterson, in whose car were you riding at the time? A. With Sergeant Cohen.

Q. And what did you do when the car came to a stop? A. I jumped out and ran into the house.

30 Q. Was that following the instructions that you had received from the Sergeant? A. Yes, sir.

Q. When you went into the house what if anything did you find? A. Why, I went upstairs and found Gambino in bed.

Q. Was he in bed, that is, were all his outer clothing off? A. Yes, sir.

40 Q. And just continue on, if you will, what did you do, and what did you say? A. I woke him up and told him to get dressed, and before he had finished dressing Sergeant Cohen came back in.

*Claude Patterson—Direct.*

Q. Then did you go downstairs? A. Yes, sir.

Q. Did you search through the house? A. Yes, sir.

Q. With whom did you search through the house?

A. Why, I was by myself, at the time.

Q. What did you find? A. Shot-gun, a rifle.

Q. Were you present at the time Sergeant Cohen and Lieutenant Roff—I think those were the two young men found the two bottles of liquor? A. No, sir, I was not. 10

Q. Where were you at that time? A. I was with Gambino.

Q. And where had he been taken? A. He was in the bed-room.

Q. You mean they found these two bottles before he came out of the bedroom? A. Yes, sir.

Q. Did you see them downstairs when you came down? A. Yes, sir. 20

Q. Where did you start from that day? A. From our sub-station at Pompton Lakes.

Q. What time did you start? A. I would say about 2:20, 2:25.

Q. And about how far, or rather, how long did it take you to get from your sub-station at Pompton Lakes to the Reichert Farm? A. I would say from ten to fifteen minutes. 30

*Cross-examination by Mr. Hegarty:*

Q. Did anyone go with you in the house? A. When I first went in?

Q. Yes. A. No, sir.

Q. Didn't you testify at the former trial in answer to a question by the Prosecutor that you entered the house with Detective Gebhardt? A. No, sir, not with him. 40

*Claude Patterson—Cross.*

Q. Did he enter the house? A. Yes, sir.

Q. How soon after you? A. About possibly ten minutes later.

Q. Did you immediately go upstairs? A. Yes, sir.

10 Q. You didn't look out in the kitchen? A. I went through the kitchen to get upstairs.

Q. How many rooms downstairs? A. I would say two rooms and an outer kitchen, what they call an out-kitchen.

Q. Does the stairway lead from the kitchen upstairs? A. Yes, sir.

Q. Is that the stairway near the entrance, the front of the house? A. Yes, sir.

Q. As you come in? A. Yes, sir.

20 Q. Didn't you observe Crisolissi cooking at the stove in the kitchen? A. I did not.

Q. Were there two kitchens? A. There were two kitchens—what Mr. Reichert called a kitchen.

Q. Well, where the stove is located is that the room where the stairway is? A. Yes, sir.

Q. You are sure about that? A. Positive.

Q. Did you run into the house and up the stairs? A. Yes, sir.

30 Q. And you say you did not observe Crisolissi working at the stove? A. No, sir, I did not.

Q. Do you recall testifying at the former trial that when you came out of the house you brought Arborelli and Crisolissi down to the still? A. No, sir, I did not.

Q. Did you bring anyone down to the still? A. No, sir.

Q. When was the first time you saw Crisolissi or Arborelli? A. At the still.

40 Q. You don't know who brought them there? A. No, sir.

*Claude Patterson—Redirect.*

Q. Did you hear them say at the still that they did not know how to turn it off? A. Yes, sir.

Q. Did they turn it off? A. Yes, sir.

Q. Under whose directions? A. Under Sergeant Cohen's orders.

Q. You don't know whether any of these men had been struck or not? A. No, sir. 10

Q. You were up in the house? A. Yes, sir.

Q. Was Gambino asleep when you entered the room? A. Yes, sir.

Q. What did you do? A. Woke him up.

Q. Shook him? A. Yes, sir.

Q. Did you take any statement from any of these men? A. No, sir.

*Redirect-examination by Mr. Holland:*

20

Q. You didn't testify in the other trial that there was anybody in the house except Gambino when you first went in, did you? A. No, sir.

Q. And you did not testify in the other trial that Detective Gebhardt went in with you, did you? A. No, sir.

Q. And you did testify at the other trial that Detective Gebhardt came in a few minutes afterwards, didn't you? A. Yes, sir. 30

Q. And was there anybody at the stove, anybody at the stove cooking or working in any other way? A. When I went in the house, no, sir.

Q. As a matter of fact there was nobody? A. No one except Gambino.

Q. And he was upstairs? A. Yes, sir.

(Witness excused.)

40

*Thomas Beddoe—Direct.*

THOMAS BEDDOE, called as a witness, having been duly sworn, testified as follows:

*Direct-examination by Mr. Holland:*

Q. Mr. Beddoe, were you the constable who on that day was requested to go along for further assistance? A. Yes, sir.

10 Q. And in whose car did you arrive? A. Mr. Gebhardt's.

Q. And you testified here in the other trial, too, didn't you? A. Yes, sir.

Q. Now, when you went there Mr. Beddoe were you working under previous instructions, had you been told what to do? A. Yes.

Q. Now, did any of the officers come around and place in your custody any of these defendants?  
A. Yes.

20 Q. Who came first, and with whom? A. Fred Roff.

Q. And who did he come with? A. The curley headed fellow in the middle.

Q. What did you do with him? A. Stuck to him.

Q. Who came next? A. Gebhardt.

Q. Who did he come with? A. The third fellow on the end.

30 Q. Arborelli? A. Yes.

Q. What did you do with both of them? A. Took them down to the still.

Q. Is that where Sergeant Cohen was? A. That's where Sergeant Cohen was.

Q. Did they both go with you? A. Yes, sir.

Q. When Detective Roff and Gebhardt turned their men over to you, what did Roff and Gebhardt do, did they stay there, or go out back and search?

40 A. They searched all over.

Q. Did they stay with these two men that you were watching or did they go back about their

*Thomas Beddoe—Direct.*

search? A. They stayed there.

Q. For how long? A. Until they got them to shut off—

Q. I don't think you understand my question—

Mr. Hegarty: I think the Prosecutor is asking a very leading question, I want to object. 10

Q. Who was the first detective who brought a man to you? A. Fred Roff.

The Court: It isn't disputed, is it?

Mr. Holland: No, sir, I am just starting in the line—

The Court: I don't see any need of repeating it over again. 20

Q. My next question is, what did Roff do when he turned a man over to you? A. Took care of him.

Q. What did Roff do? A. Went down to the still.

Q. Then, you said, Detective Gebhardt turned Arborelli over to you? A. Yes, sir.

Q. What did Gebhardt do? A. Went down the still. 30

Q. And what did you do? A. Went down the still.

Q. What happened when you got down there? A. Trooper told him to turn off the steam.

Q. And did they? A. Yes, sir, after a little while.

Q. Now, were you there when the still was being dismantled? A. Yes, sir.

Q. What happened next so far as you were concerned, did you ever go into the house, "House re- 40

*Thomas Beddoe—Direct.*

cently burned," on S-2? A. Yes.

Q. With whom? A. The curley headed fellow.

Q. Where did you go? A. Upstairs.

Q. Whereabouts upstairs? A. To his bedroom.

Q. And what if anything was done there? A. Changed his clothes.

10 Q. What clothes did he change from, and what clothes into? A. Put off his work clothes and put on another suit to go with the troopers.

Q. And were you there with him in the room which he did that? A. Yes, sir.

Q. And after he had changed his clothes, what did you do? A. Fetch him down, handed him over to the trooper, and the trooper took him away from us.

20 *Cross-examination by Mr. Hegarty:*

Q. So that at one time, Mr. Beddoe, you had two men in custody, is that correct? A. Yes, sir.

Q. You were in court this morning? A. Yes, sir.

Q. You heard Detective Roff testify? A. Yes, sir.

30 Q. Indicating a point back of the house and near the shed, I show you the cross that Lieutenant Roff indicated that he followed after he had turned the man over to you, and now you have testified he went right down to the still, which is correct? A. Why, after he turned the man over to me the first place I saw him down the still, whether they went around the house or which way, I couldn't tell you.

Q. You said he went down to the still? A. That is where I saw him.

40 Q. And if he went around the chicken yard and

*Thomas Beddoe—Direct.*

back of the building and around to the front again, he couldn't go direct to the still, could he? A. That is where I found him down the still.

Q. You also heard Detective Gebhardt testify here this morning? A. Yes.

Q. And you heard him testify after he turned the man over to you that he went right down here and examined the greenhouse, and then went over to these barns, or the barn marked "Recently burned" and searched it, which is correct? A. I saw him down to the still; he could have searched around unknownst to me after. 10

Q. You watched him? A. No, I was watching the men, the stuff they turned over to me, they turned everything over to me.

Q. As a matter of fact, you and Sergeant Cohen brought Crisolissi down to the still yourselves? A. Sergeant Cohen was there when I come down and Cohen took one of them in. 20

Q. Sergeant Cohen and yourself made that man go down to the still, did you not? A. Yes, that is right.

Q. Who took Arborelli down? A. I don't know.

Q. Was it Mr. Roff? A. Don't know, we took those two down, the Sergeant and I, who took the other man I don't know. 30

*By Mr. Holland:*

Q. Which other man, do you know? A. The stout fellow, this way, I didn't have nothing to do with him.

*By Mr. Hegarty:*

Q. Didn't bring him out and turn him over to you, did they? A. No.

Q. Had the other two men been taken down to the still in the meantime? A. He was taken down. 40

Q. Who took Arborelli? A. I took him.

*Thomas Beddoe—Cross.*

Q. Pointing to, or indicating the man on the end? A. I took him, and took the other one, too, Sergeant Cohen might have been with me.

Q. Took both of them at one time? A. Yes, both at one time.

10 Q. You were riding with the Prosecutor's man when you came to the place? A. First I was in one car, and then I got in the other; I got in one car to speak to the officer, and I got back to Roff's car.

Q. Was there a pause? A. No, I had a message to give to them in the car.

Q. In what car? A. The trooper's car.

Q. That is, you left the Prosecutor's car? A. Got in their car and got out of their car again in to the Prosecutor's car.

20

Mr. Holland: When was this?

Mr. Hegarty: I presume it was on Reichart's farm, is that when you mean?

The Witness: No, on the road, before we got there.

Q. How did the troopers know you wanted to speak to them? A. Put up my hand.

30 Q. The Prosecutor's car was leading? A. No, sir, trooper's car was leading.

Q. How could they see your hand if they were driving ahead of you? A. You are not blind when you are driving a car you are looking all around.

Q. When you drove in that driveway with the officers and got out what was the first thing you did? A. Fred Roff run after the curley headed fellow.

40 Q. Could you see the curley headed man? A. Yes, sir.

*Thomas Beddoe—Cross.*

Q. Where was the car, if you can show us on the map, where your car stood? A. I was there in the yard, I saw Fred Roff run after the man and he fetched that man back to me and turned him over to me; couldn't tell you where the car was; I was only there once in my life.

Q. Did you see the man Detective Gebhardt was running after? A. He fetched him back to me; I didn't see the other man Gebhardt got at all until he fetched him to me. 10

Q. Who brought a man to you first? A. Fred Roff.

Q. How long was that after you got on the premises? A. Wasn't very long, done very quick.

Q. Ten minutes? A. Not any more.

Q. You didn't go in the house at first? A. Not at first, no, sir, I didn't go in the house until the man wanted to change his clothes. 20

Q. Did you notice where Cohen went? A. No, he was down the still, and he hollered, "I got it."

Q. How long was that after you arrived on the place? A. Oh, it was five minutes.

Q. Was it before or after Fred Roff had given you the man? A. That I couldn't tell you.

Q. You remember Sergeant Cohen shouting, "I got it?" A. I remember, but you are asking before or after; I can't say, I never done it, he hollered "I got it," and we all went down. 30

Q. Were there any men in your custody at that time? A. Yes.

Q. Which men? A. The curley headed fellow.

Q. Was Arborelli in your custody? A. Not until a little after that. Gebhardt fetched him to me and turned him over, and we all went down to the still. 40

*Thomas Beddoe—Cross.*

Q. You heard Sergeant Cohen testify here this morning? A. Yes, sir.

10 Q. I call your attention to the part of the building marked "Boiler and tank" on roof on Exhibit S-2, Sergeant Cohen testified that immediately upon stopping his car he made a dash for that point of the building, is that true? A. Well, if he says so I wasn't watching him, I was watching Roff get this man he turned him over to me as soon as he got him, told me to take care of him, what I always does.

Q. He entered that portion of the building and stepped right in there and a still was where they say it was? A. That is where it was.

Q. He must have shouted immediately, "I found it?" A. Yes, sir.

20 Q. Were you down at the still at all? A. Yes, sir.

Q. How long? A. Was there while they were tearing it down and shut it off.

Q. You were there while they were dismantling it? A. Yes, sir.

Q. Did you assist either of the officers in securing kerosene to spread on the mash? A. No, sir.

30 Q. Did you observe the officers doing it? A. Yes, sir.

Q. And do you know where they got the kerosene from? A. From a shed.

Q. What shed? A. The men helped carry it over, those men there.

Q. Was it the shed in which a tractor had been stored? A. Yes, sir, over in that part.

Q. Did you go over and inspect the tractor? A. No, sir.

40 Q. Did you notice any tilled ground in the vicinity of the barns and house? A. No, sir, only

*Thomas Beddöe—Redirect.*

*Motion for Direction of Verdict of Acquittal.*

where there was some lettuce, lot of lettuce that wasn't fit to be sold, all burnt up by the sun, he said it wasn't no good no more, quite a lot of that.

Q. Did you notice any freshly plowed ground in the distance? A. Didn't go back that way.

Q. Did you look for any? A. No.

Q. Notice any woods in back of the barn? A. No, sir.

10

*Redirect-examination by Mr. Holland:*

Q. At one time in the proceedings, all these five gallon tin cans which were tied up in bundles of three, they were punctured were they not by all of the men involved? A. Yes, sir.

(Witness excused).

20

Mr. Holland: That is our case, may it please your Honor. State rests.

Mr. Hegarty: Now, if your Honor please, I desire at this time to move for the direction of a verdict of acquittal, first on the ground that there has been no proof offered by the State to show there was any overt act on the part of any of these defendants to accomplish the manufacture of intoxicating liquor.

30

The Court: That would go to the second count of the indictment.

Mr. Hegarty: The second count and as to the first count, there is no proof if your Honor please in this case that the defendants had control or dominion or possession of the liquors in question.

The Court: I think I will deny your mo-

40

*James Gambino—Direct.*

tion, and you may have an exception.

Mr. Hegarty: Exception.

The Court: Exception allowed. Exception allowed and sealed.

C. F. WILSON (Seal)

Judge.

10

(Mr. Hegarty, on behalf of defendants, opens to the jury).

JAMES GAMBINO, called as a witness, having been duly sworn, testified as follows:

*Direct-examination by Mr. Hegarty:*

20 Q. Mr. Gambino, were you at the Reichert farm on October 25th last? A. Yes, sir.

Q. What were you doing there? A. I was plow the ground.

Q. What were you using in plowing the ground? A. The tractor.

Q. The tractor? A. Yes, sir.

Q. And on this date in question were you using that tractor? A. Yes, sir.

Q. What time did you start work that day? A. Seven o'clock.

30 Q. Did you go out to the field? A. Yes, sir.

Q. About how many acres are under cultivation or plowed at that time? A. Two acres.

Q. And was there anyone else on the farm that day? A. No, sir.

Q. Did anyone come there? A. Those two fellows come there for work, the one I told them about.

40 Q. You told them to come, and what were they going to do? A. They were going to clean the ditches.

Q. How long had you been working on the

*James Gambino—Direct.*

farm? A. About four or five weeks.

Q. Are you married? A. Yes, sir.

Q. Did you ever have occasion to go in the building marked "Boiler," where an alleged still was supposed to be operating? A. No, sir.

Q. Were you ever in that building? A. No, sir.

Q. During the time you worked on the farm had you ever seen Crisolissi or Arborelli there before? A. No, sir. 10

Q. The state has offered in evidence certain exhibits, these cans and bottles? A. I never saw them.

Q. Do they belong to you? A. No, sir.

Q. Have you ever seen them before? A. No, sir.

Q. You saw them at the last trial? A. Yes, last trial when I was up here. 20

Q. When was the first time you saw Arborelli and Crisolissi that day? A. About half past eleven or eleven o'clock.

Q. Where were you at that time? A. Working.

Q. Where? A. In the fields.

Q. On the tractor? A. Yes, sir.

Q. Now, did you leave your tractor to come out to them, or did they come out to you? A. They come out to me, and I left the tractor, and I took him home and I told them to cook something until I come back. 30

Q. You went out to the tractor again? A. Yes.

Q. And later on you brought the tractor in? A. Later on I brought the tractor in.

Q. Why did you bring it in? A. Couldn't work no more she steam all the time, and I had a headache, and I went to lay down for a while.

Q. And when you came back to the house what 40

*James Gambino—Direct.*

did you observe Crisolissi and Arborelli doing? A. Cooking chicken.

Q. Was the chicken on the stove? A. Yes, sir.

Q. What was it doing, boiling, or what? A. No, they were making it with tomatie sauce.

Q. Was there a fire in the stove? A. Yes, sir.

10 Q. Who was the cook? A. The bigger fellow was doing the cooking.

Q. Crisolissi; where was Arborelli at that time? A. He sent him out outside to get some wood.

Q. You went upstairs to bed? A. Yes, sir.

Q. And so far as you know only Crisolissi and Arborelli and yourself were the only three on the farm? A. Yes.

20 Q. Did you tell them you were going to put them to work that day? A. No, I couldn't put to work, I was waiting for the boss.

Q. Who was the boss? A. Mr. Reichert.

Q. Reichert wasn't home was he? A. No, sir.

Q. Did you own the still that the officers claim to have found in that barn? A. No, sir.

Q. Did you have anything to do with the operation of that still? A. No, sir.

Q. Did you work it for anybody? A. No, sir.

30 Q. And do you own any of these liquors that were supposed to have been found there? A. No, sir.

*Cross-examination by Mr. Holland:*

Q. There was a still there, wasn't there? A. I don't know.

Q. Well, didn't the officers take you down there and didn't you see a still there? A. They took me after they break everything almost.

40 Q. Wasn't there a still there? A. It was there

*James Gambino—Cross.*

but I don't know nothing about it, I never saw that before.

Q. But it was there, wasn't it? A. If I see, they show it to me.

Q. Didn't they show it to you? A. Yes.

Q. You did see it? A. Yes.

Q. Then it was there, wasn't it? A. I seen it 10  
was there, sure.

Q. Did you see the barrels of mash? A. Yes.

Q. How many barrels of mash were there? A.  
I couldn't tell you.

Q. Were there so many you can't count them?  
Was there sixty of them? A. They make me stay  
there.

Q. You saw them? A. Yes.

Q. You saw the alcohol, too, didn't you see al- 20  
cohol dumped out? A. No, I see the cans they  
had on the car.

Q. Didn't you see them dump the alcohol out?  
A. Yes.

Q. And didn't you see them fill one of these cans  
with alcohol? A. No.

Q. You were there, weren't you, when they were  
filling it with alcohol? A. No, I didn't see them.

Q. Were you there when they were putting holes  
in the other cans? A. That was outside. 30

Q. Did you ever see the other cans? How many  
five gallon cans were there on the farm, 60 or 70?  
A. I don't know how many, I see them outside  
broke.

Q. Ever see those before? A. No.

Q. Never? A. No, sir.

Q. Didn't you see them all tied up in bundles  
of three? A. No.

Q. Didn't you see those there in the place mark- 40  
ed "Barn recently burned?" A. No.

*James Gambino—Cross.*

Q. That is where you used to keep your tractor?

A. Where I keep my tractor this barn was open no doors.

Q. You kept your tractor right in here (indicating on map)? A. Yes, sir.

10 Q. Didn't you see right over in here all these cans, 60 or 70 of them, tied up in bundles of three?  
A. No, sir, the big barn was open, no doors.

Q. I am talking about the cans that were in this one barn, in the big barn? A. I never saw them; he was put ten cans with gasoline and kerosene.

Q. What is your business? You are a lather, aren't you? A. I was a lather about twenty years ago.

Q. And you said at the last trial you were a laborer, didn't you? A. I didn't.

20 Q. You didn't? A. I say I was working on farm.

Q. Didn't you say you were a laborer? A. No.

Q. Didn't you answer my question when I asked you what your business was, and didn't you say laborer? A. No, sir.

Q. You were also a florist once, too, weren't you? A. No, sir.

30 Q. Didn't you ever raise flowers? A. No, sir, I had a poultry market once, about nine years in Lodi.

Q. I am not asking about the poultry market. You were a florist? A. No, sir.

Q. You say that you worked for Mr. Reichert, was he the owner of the farm; he was the boss, was he? A. Yes.

Q. Did he stay in the same house, did he sleep in that house, marked "House recently burned," on S-2? A. Yes.

40

*James Gambino—Cross.*

- Q. And you slept in that house, too, didn't you?  
A. Yes.
- Q. When did you go to work for him? A. First days about 15th of September.
- Q. And you have been working for him steadily since the 15th of September, 1927? A. Yes, sir.
- Q. Sure about that? A. Sure. 10
- Q. 15th of September—now, how did you come to meet Mr. Reichert? You lived in—where did you live? A. Lodi.
- Q. That is in Bergen County, isn't it? A. Yes, sir.
- Q. How did you come to meet Mr. Reichert, did you go and ask him for a job? A. Yes, sir, I asked him before when I went down there hunting every year.
- Q. So you asked him for a job? A. Yes, sir. 20
- Q. What was your job, a farm-hand? A. I don't ask him for job, I ask him to give me chance, partnership on share.
- Q. Were you his partner? A. On share.
- Q. Were you his partner? A. No, he told me he said, you can work on share.
- Q. You worked on shares with him? A. Yes.
- Q. What did you put in for your share of the work, was the tractor yours? A. No, sir. 30
- Q. Was the farm yours? A. No, sir.
- Q. Was the house yours? A. No, sir.
- Q. Was the barn yours? A. No, sir.
- Q. Did you buy the seeds? A. Not yet.
- Q. So you went to work for him on shares and you started on September 15th? A. You got to get the ground ready.
- Q. Now, where were you on September the 28th?  
A. On the farm.
- Q. Weren't you supposed to be tried in court? 40

*James Gambino—Cross.*

Mr. Hegarty: I object.

The Court: Wait until he finishes.

Q. Weren't you supposed to be tried in Court on September 28th and didn't appear and forfeited your bail? A. No, sir.

10 Mr. Hegarty: I object, it has no bearing on the question at issue whether this man and others with him are owners of certain liquors.

Mr. Holland: I want to apologize to the Court, because I framed my question with the wrong facts.

The Court: He answered no.

Mr. Holland: I withdraw that.

20 The Court: It is too late, it is on the record.

Q. Weren't you arrested on or about September 28th by Prohibition Agents in Lodi and placed in custody?

30 Mr. Hegarty: I object, it has no bearing whatever on this issue; it is a question whether on October 28, 1927 this defendant or any others were in possession of certain alleged liquors and the still and engaged in manufacture of liquor.

40 Mr. Holland: If your Honor please, it isn't because it is in particular reference to this cause, this man has already sworn before this jury on September 15th he went to work for Reichert and worked continually from then on until his arrest October 25th, and I am asking him now to test his veracity, to find out whether he has stated the truth or not, whether on September

*James Gambino—Cross.*

28th he was arrested by Prohibition Agents.

Mr. Hegarty: The Prosecutor knows he has no right to ask such a question.

The Court: Objection sustained.

Mr. Holland: Is it because your Honor is ruling I have no right to ask such a question.

10

The Court: You may proceed if you wish.

Q. Isn't it a fact you were arrested after September 15th, and that you were not on Reichert's farm after September 15th continually until October 25th?

Mr. Hegarty: I object, and further move the Court to instruct the Jury to disregard the statement of the Prosecutor as to the arrest of this man.

20

The Court: Objection is sustained; you cannot prove an arrest; you can prove a conviction.

Mr. Holland: I am not trying; I am demonstrating the fact this man was not on the farm, I don't care anything about the arrest.

The Court: Suppose you leave out the word "arrest" then; ask him where he was on this particular day.

30

Q. Where were you on September 28, 1927? A. I went down to see my aunt.

Q. What aunt? A. My aunt.

Q. What is her name? Don't you know your aunt's name? A. Yes.

Q. What is her name? A. Audela Carta.

Q. What is it? Where does your aunt live? A. Forman Avenue.

40

*James Gambino—Cross.*

Q. What town? A. Garfield.

Q. What number? A. I don't know the number.

Q. What is her name? A. My name?

Q. What is your aunt's name?

10 Mr. Hegarty: Now, if your Honor please, I am going to object as it does not appear to be proper cross-examination, and I don't see what materiality it is to this issue.

The Court: Well, Mr. Hegarty, I think it is proper cross-examination because if I understood his testimony correctly, he testified he was on the farm from the 15th of September until the 25th of October; objection is overruled. Proceed.

20

Q. Where were you on November 25, 1927?

Mr. Hegarty: I object, that is after the date on which the alleged offense is supposed to have happened and that these men are on trial for today.

30

Mr. Holland: That is true, but it is part of this very same thing, and I am going to ask him in order to test his veracity whether or not on that day a certain bail was forfeited.

Mr. Hegarty: I move that the Prosecutor refrain from making such statements to the Court when he knows it is improper.

The Court: That statement is prejudicial; please don't do that.

40

Mr. Holland: It seems to me I have a perfect right to show it seems to me I have a fair right to show that while this man says he was here on the farm during all this

*James Gambino—Cross.*

time, that there was another proceeding pending again him in which he was absent from the farm.

The Court: As far as I know there has been no question except from September 15th to October 25th; you are asking him about some date in November? 10

Mr. Holland: Yes, sir.

The Court: Objection is sustained.

Q. On September 28, 1927 weren't you before Commissioner Agnew in Hackensack, September 28th, 1927?

Mr. Hegarty: Objected to.

The Court: Sustained.

Q. Now, you say you came there on September 15th? A. Yes, sir. 20

Q. There was two acres in back of the house that was plowed, is that what you said? A. On the front of the house.

Q. Will you take that pointer please and show us where the two acres were that were plowed? A. Right here.

Q. Is that where you were doing the plowing? A. Yes, sir.

Q. Is that the only place you plowed? A. That day. 30

Q. Did you plow any place else? A. That day?

Q. Did you plow any place else any other day? A. Yes.

Q. Where? A. About four acres on the back of the house.

Q. How long does it take you to plow four acres with the tractor?

Mr. Hegarty: I object, all of this is im- 40

*James Gambino—Cross.*

material to the issue, we are here to answer an indictment charging the defendant with the illegal possession of intoxicating liquors and with the manufacture, what has time necessary to plow fields to do with the essence of the charge here?

10

The Court: That objection is overruled, he may answer.

Mr. Holland: Repeat the question, please.

(The first preceding question repeated.)

The Witness: I don't know.

Q. How long did it take you to plow the two acres with the tractor? A. I don't know.

20

Q. How many acres altogether did you plow?

Mr. Hegarty: What day.

Q. Any time since September 15th until October 25th? A. I don't know how many I plowed.

Q. What were you doing when you weren't plowing? A. Farming.

Q. What were you farming on October 25th and September 15th, on what were you farming? A. Carrying dirt on the greenhouse.

30

Q. In or out of the greenhouse? A. In.

Q. How many loads of dirt did you carry? A. Whatever I can.

Q. How many days did you carry dirt in? A. Well, when the ground was frozen I carried dirt in.

Q. The ground wasn't frozen on October 25th? A. It was some froze in the morning.

Q. How many loads of dirt did you carry into the greenhouse? A. About twenty-five loads.

40

*James Gambino—Cross.*

Q. What kind of loads? A. It is an empty wagon.

Q. Who pulled the wagon? A. The tractor.

Q. And you carried 25 loads of dirt into the greenhouse? A. On one side of greenhouse.

Q. Did you carry more than twenty-five loads in? How long did it take you to do that? A. I was doing so much a day when I wasn't plowing the ground I carry the dirt in. 10

Q. How many days did it take you altogether? A. I didn't work steady carrying dirt in there.

Q. What did you do when you weren't working steady? A. I was plowing the ground with the tractor.

Q. You didn't plow the ground with the tractor from September 15th to October 25th, did you? A. Yes, sir. 20

Q. So that you spent 45 days, more or less, in plowing the ground, 40 days more or less? A. That aint working steady every day.

Q. What were you doing the rest of the time when you weren't working steady? A. Sometime cutting the trees, sometimes dig the spinach.

Q. Where was the spinach planted, show me where on the map? A. All the way on the back of the house. 30

Q. You slept in this house marked "House recently burned," that is where you slept? A. Yes, sir.

Q. You were on this farm for five weeks? A. Yes, sir.

Q. And you never went into the barn? A. No, sir.

Q. You never knew what was in the barn? A. No, sir.

Q. Why didn't you go in the barn? A. Didn't 40

*James Gambino—Cross.*

have no tools in.

Q. Didn't you walk through the barn? A. No, sir.

Q. Didn't you know they had a fire in the barn in the furnace? A. No, sir.

10 Q. Couldn't you smell the alcohol distilling? How far is it from this house to this barn? A. About 150 feet.

Q. And you never went from this house into this barn? A. No, sir.

Q. Did you ever go by the barn? A. No, sir.

Q. Never even passed by the barn? A. No, sir.

Q. What was the nearest you ever came to the barn? A. This barn here (indicating on map).

20 Q. This barn here what is nearest you ever got to this barn, didn't you have some fields in back here plowed? A. Yes, but too much swamp, too much water, couldn't work.

Q. Have any fields plowed in back of the barn? A. Not yet.

Q. How do you know too much water if you didn't try to plow? A. Because it was a hole there.

Q. How do you know, did you walk back there to test the ground? A. Don't have to walk because you see it is flooded all the time.

30 Q. You could see it is flooding all the time, but you didn't know there was a still here? A. No.

Q. How could you see it was flooded all the time from the house unless you got behind the barn? A. Up here when I was digging my spinach.

Q. You mean, you looked right in back of the barn? A. No, that is chicken was down there.

Q. And your spinach was here? A. All the way up.

40 Q. How much spinach did you have? A. Oh, about four blocks square.

*James Gambino—Cross.*

Q. Did you plant it? A. No.

Q. Now, was Mr. Reichert on the farm every day, most every day? A. Most.

Q. What was he doing while you were plowing?  
A. Doing something else.

Q. What? A. Sometime clean the ditches, some-  
time cut the weeds. 10

Q. Cut weeds in October, September; clean  
ditches in October and September? Did you ever  
clean any ditches? A. Yes, sir.

Q. Which ditches did you clean, just show me on  
the map? A. You can't see them.

Mr. Holland: If your Honor please, the  
offer of these this morning, they are the  
buildings shown right near the house, &c.

The Court: I do not understand the map  
pretended to show all the ditches. 20

Mr. Holland: It doesn't, but I am asking  
him to show—

The Court: He says they are not on the  
map.

Mr. Holland: You notice there is a ditch  
marked here back of the boiler.

Mr. Hegarty: It is not so marked.

Mr. Holland: It certainly is so marked,  
one here and look at it and you can see it  
is marked. 30

Q. You know where that ditch is? A. No.

Q. You don't know where that ditch is? A. No,  
sir.

Q. Don't you know this is the ditch where the  
boiling grain waste is sloughed off into that ditch?

Mr. Hegarty: I object; he has already 40

*James Gambino—Cross.*

testified he don't know of the existence of the ditch.

Mr. Holland: I suppose it is academic; I will withdraw it.

Q. What time did you go to work that morning?

10 A. Seven o'clock.

Q. Was Mr. Reichert there that morning when you went to work? A. No, sir.

Q. Had he left before you? A. He left after me.

Q. Did you see him that morning? A. Sure.

Q. You say you took the tractor? A. Yes, sir.

Q. And where was the tractor at that time, where was it standing? A. In this barn.

20 Q. Marked, "Barn recently burned?" A. I don't know which barn is burned now.

Q. I mean marked on the map, "Barn recently burned?" A. Right here (indicating on map).

Q. Now, how many acres did you plow that morning? A. About two acres.

Q. And how long did it take you to plow it with the tractor? A. I don't know how long that took.

30 Q. But you just said you quit work about eleven or twelve o'clock, what time did you quit work that morning? A. I quit work about half past twelve to one o'clock.

Q. Half past twelve, one o'clock you quit. You had been plowing since seven o'clock in the morning, that is right? A. Yes.

Q. And the only time you stopped was when you saw these two men coming? A. Yes.

Q. You plowed steadily from seven to half past one with the tractor and only got two acres plowed up? A. I not sure it was two.

40 Q. Well, how many was there, why did you

*James Gambino—Cross.*

stop? A. I stopped because the tractor gets hot, steam all the time.

Q. The tractor started to steam, what made the tractor steam? A. Since they fix it was no good no more.

Q. What do you mean? A. They ground the valve. 10

Q. After they ground the valves it was steaming? A. Yes.

Q. Why didn't you put more water in if it was steaming? A. I couldn't get near it, water shoots right out.

Q. When did that start, after they fixed it up that day you were using your tractor from seven in the morning until half past one, or one, six or seven hours, you were using the tractor? A. Yes, sir. 20

Q. What time during that six or seven hours did your tractor start to steam up? A. After twelve.

Q. Why didn't you put some water in it? A. I do put water but she steams up right away again.

Q. How many times did you put water in? A. Two times.

Q. Was that after twelve o'clock? A. I fill it up in the morning with water and oil, and then I fill it up again. 30

Q. You filled it up when? A. After twelve when she first start to steam I filled it up again.

Q. Is that the first time you put water in? A. I put water in every day before I go to work.

Q. Then you used it from seven in the morning when you put water in until twelve o'clock when it started to steam, and you put water in again, and didn't do any good? A. No, steams all the time.

Q. What was making it steam? A. I don't 40

*James Gambino—Cross.*

know I aint no mechanic.

Q. Then what did you do? A. I went home, and I went to sleep.

Q. Took your clothes off? A. Yes, sir.

Q. But you weren't finished work, were you? A. Yes.

10 Q. You were finished work? A. I didn't feel good, I had a headache.

Q. Well, you don't go to sleep every time you have a headache? A. I got to go, I couldn't stay.

Q. How long were you getting to sleep? A. After I sleep an hour or two hours.

Q. How long did you expect to sleep? A. Until they call me, it was time to eat.

Q. When were they supposed to call you? A. When they get through with the dinner.

20 Q. And when you awoke up, was it the trooper woke you up? A. Yes, sir.

Q. And did you put on your clothes? A. I did.

Q. Are they your work-clothes or other clothes? A. My new suit.

Q. Why didn't you put your work-clothes on back again, you just took them off? A. He told me, dress up you got to go to court.

Q. What did you tell him? A. All right.

30 Q. Now, wasn't there ever a time during the four or five weeks that you were there at the house that you walked into that barn? A. No, sir.

Q. Never? A. Never.

Q. Who had the fire going in the furnace? A. I don't know.

Q. Who had the still working? A. I don't know.

Q. Who was filling up the cans? A. I don't know.

40 Q. What is your aunt's name? A. Altady.

*James Gambino—Redirect.*

Q. And what is her first name? A. Anthony.

*Redirect-examination by Mr. Hegarty:*

Q. During the time you were at the farm were there any rainy days? A. Plenty.

Q. And you don't work on rainy days, do you? 10  
A. No.

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

JOSEPH ARBORELLI, called as a witness, having been duly sworn, testified as follows:

*Direct-examination by Mr. Hegarty:*

Q. Where do you live Mr. Arborelli? A. 36 20  
Main Street, Lodi, New Jersey.

Q. Are you married? A. Yes.

Q. Any children? A. Five.

Q. Do you remember October 25th last? A.  
What you mean by that.

Q. Do you remember the day October 25th? A.  
I don't keep record of the date.

Q. Were you at any time out to a farm on which  
Gambino was working? A. I can't tell you now 30  
if it was on 25th or when, I know one Saturday  
morning I met Jim down Lodi and he talk to me  
about job cleaning ditch on the farm, say me and  
other fellow that we come up and see him about  
the job, how the job was, so we went up and me  
and other fellow was up there, and I don't know,  
I can't make sure what time we get there, it was  
about eleven, half past eleven.

Q. When you got there who did you see? A. 40  
Jim was in the field, Jim Gambino was in the field.

*Joseph Arborelli—Direct.*

Q. What was Jim doing? A. Plowing the ground with the tractor.

Q. Did you go out to Jim? A. Yes.

Q. And who was with you? A. Mr. Crisolissi.

10 Q. What did Jim do after you went out to see him? A. He stop work, he came with us to show us where the house was, and show place to hang our clothes, and to wait there until boss came in and talk about the job.

Q. Did he tell you to do anything else? A. He told us to prepare something to eat, and same time we get it while the boss was out.

Q. Did you begin to prepare a meal? A. Yes, sir, he start to light up the fire, and he told me to go out and get some wood.

20 Q. Did you go out and get some wood? A. Yes, sir.

Q. What did Jim do after he left you in the house? A. He went right out and get the tractor and take her in, and told us I am lay down in the bed, and as soon as you are ready with the dinner call me up.

30 Q. Had you ever been down to the barn marked "Boiler and tank," Exhibit S-2? Had you ever been in this building? A. This far as we went here.

Q. To the house? A. To the house.

Q. And any time you were on the premises that day, up to the time the officers arrived, had you visited any of the buildings on the premises other than the house? A. Only the house.

Q. Do you remember the officers coming there? A. The officer that came in to get me.

40 Q. The officers that arrived there and State Troopers, the other men? A. I remember two of them.

*Joseph Arborelli—Direct.*

Q. Where were you when you first saw the officers? A. I saw the old man take me out in the yard—in the house, and I find the Sergeant and other officer.

Q. Were you in the house or outside of the house? A. Outside, on this side of the house, where the pile of wood was there. 10

Q. Were you out there then, or come out? A. Come out, and the old man says what I am doing there, and I told him; he see me, take me, and he said all right, come with me, and he took me on the front of the house and I find the bunch in the house.

Q. Do you remember this man saying that he ran around the house and caught you? A. Yes; but the old man got me.

Q. The old man is the one who caught you? A. Yes. 20

Q. Where was Crisolissi when you were caught? A. Right inside the house.

Q. How long had you been outside the house before you were caught by the old man? A. It was a few minutes, not quite.

Q. Were you picking up wood? A. Because it is so near, I walk by the door right there and pick wood, and while I was pick wood the old man got me, he say what I was doing. 30

Q. Do you own any cans or bottles offered in evidence here today? A. I got nothing.

Q. Did you ever own them? A. No, sir.

Q. Did you know or have anything to do with the still mentioned here? A. Nothing.

Q. Or cans of liquor and mash mentioned here today? A. No, sir.

Q. Never, at any time? A. No, sir. 40

*Joseph Arborelli—Direct.*

Q. Were you ever employed by anybody to have anything to do? A. No, sir.

Q. So that all you did was to go there to the house? A. Yes, sir.

Q. And you were to wait until the boss came home? A. Yes.

10 Q. What did Jim tell you you were going to do on the farm? A. Clean the ditch.

Q. Were you out of work at that time? A. Yes, sir, I was laid off from United Piece Dye Works, and I am working there now.

*Cross-examination by Mr. Holland:*

Q. Where do you live? A. 36 Main Street, Lodi, New Jersey.

20 Q. That is in Bergen County? A. I guess it is.

Q. And is that where you have your wife and children? A. Yes.

Q. What is your business? A. Laborer and burner, I was a burner in the ship-yard.

Q. You mean furnace tender? A. Acetylene burner.

Q. Acetylene burner, with a torch? A. Yes.

30 Q. Did you ever work with sheet copper, ever burn sheet copper with an acetylene torch? A. Always in ship-yard, that is the only place I been, I work for Gray Company, but that is in Lodi, New Jersey.

Q. Where does Crisolissi live? A. On the house I live, he live upstairs, and I live downstairs.

Q. Both live in the same house? A. Yes, sir.

Q. How did you know you were going to get a job over here with Jim Gambino? A. We met Gambino on the Sunday morning by the house.

40 Q. And what time did you leave your house? A.

*Joseph Arborelli—Direct.*

When we left I can't tell you, but it was in around in the morning.

Q. What time in the morning? A. I didn't keep my time.

Q. You were going to get a new job? A. We had to go up to arrange the job, to talk about the job.

Q. And how much were you to be paid? A. We didn't say nothing, we had to look the job first. 10

Q. You were out to look at the job first; you were out of work and didn't care what kind of job it was? A. I was work United Piece Dye Works always lay men off two or three weeks, I am a man with five children, I don't want to hang around the house four or five weeks.

Q. I didn't ask you about your five children; you don't know what time you left? A. No. 20

Q. You were willing to work in the ditch, weren't you? A. We will take anything, sure, that is because I don't do that steady, I was waiting for my chance to go back to the shop.

Q. You could always leave any new job you got? A. I don't understand that.

Q. I will withdraw it. Mr. Arborelli, you and Crisolissi started out to come here together? A. Yes.

Q. And what time did you get to the farm? A. I think it was around eleven, half past eleven, or half past ten, around that time. 30

Q. You don't know? You think it was around half past ten? A. I don't think that, but it was before twelve, that is one sure thing.

Q. How do you know it was before twelve? A. You could tell when it is twelve o'clock or when it is before or after.

Q. You mean you didn't hear any twelve o'clock whistle? A. You can tell when it is twelve o'clock. 40

*Joseph Arborelli—Redirect.*

Q. Did you hear the twelve o'clock whistle? A. Didn't hear nothing.

Q. And then you went into the house, did you?  
A. We met him in the field first.

Q. And Jim took you in the house? A. Took us in the house.

10 Q. Did he take you upstairs? A. Upstairs where we hang our clothes; he said you can hang your clothes here.

Q. Did you take off your clothes? A. Yes, we had our clothes, yes.

Q. Did you take off your pants? A. Yes, took off all good clothes and put on old clothes.

Q. You didn't know you had the job? A. We had to cook, and I had to go out for wood, why keep good clothes on?

20 Q. You never left the house; the house was the only building you went in? A. Yes.

Q. You didn't go in any other house? A. No, sir, in the farmhouse.

Q. But you did not go in any other building at all? A. No.

Q. Just in here? A. Yes.

Q. Don't you remember in the other trial you went into the chicken coop and got the chicken?

30 A. Not me.

Q. Who did? A. Jim.

Q. Weren't you the one who said it? A. Nobody asked me that question; first time you asked me that.

*Redirect-examination by Mr. Hegarty:*

Q. But somebody did get a chicken? A. Yes.

40 Q. Who brought the chicken in? A. Jim, he

*Joseph Arborelli—Recross.*

said, "You go cook this and when you ready call me up."

Q. Who cooked the chicken? A. Charley was cooking the chicken right on the stove, and he had him right in the pot.

*Recross-examination by Mr. Holland:* 10

Q. You said Detective Gebhardt didn't catch you, but, as you say, the old man caught you? A. Yes.

Q. What difference does that make?

Mr. Hegarty: Objected to as calling for a conclusion.

The Court: Objection sustained.

A Juror: May I ask a question, your Honor? 20

The Court: Yes, you may.

*By a Juror:*

Q. You are a burner? A. Yes.

Q. How long did you work at that? A. Since last summer.

Q. Did you have steady work for any length of time at that business? A. Down here in Brooklyn is a railroad.

Q. How long, one year? A. Couple of months in the summer. 30

Q. How many children you say you have? A. Five.

Q. None work, all too young? A. No.

Q. And from the money you got as a burner could you save any of that up? A. No, sir.

(Witness excused).

*Salvatore Crisolissi—Direct.*

SALVATORE CRISOLISSI, called as a witness, having been duly sworn, testified as follows:

*Direct-examination by Mr. Hegarty:*

- Q. Where do you live? A. 84 Main Street, Lodi.
- Q. And do you live upstairs from Mr. Arborelli?
- 10 A. Yes, sir, I think it is make a mistake of the number of the house.
- Q. Are you married? A. Yes, sir.
- Q. Any children? A. One, one or two weeks ago another coming next month.
- Q. Did you go with Joseph Arborelli out to the farm where Jim Gambino was working? A. Yes, sir.
- Q. Where was Jim when you arrived at the farm?
- 20 A. He plow the ground.
- Q. Out in the field? A. Yes, sir.
- Q. What was he doing? A. Plow the ground with the tractor.
- Q. With the tractor? A. Yes.
- Q. Did you go out and talk with Jim? A. Yes, we go find him first before we go in the house, we go to him, after he stop take him in the house Joe, take him upstairs, that is room you got to sleep and where you got to put your clothes.
- 30 Q. Did you change your clothes? A. No, just one I get the pants.
- Q. What did you do next? A. He is go to work, he is go take a chicken, bring it in the house, clean him up and cook.
- Q. Did you clean the chicken? A. Yes.
- Q. Get it ready for cooking? A. Yes.
- Q. Did you start a fire in the stove? A. Yes, sir.
- 40 Q. Was the food cooking? A. No food cooked yet.

*Salvatore Crisolissi—Direct.*

- Q. Was it on the stove cooking? A. Oh, sure.
- Q. Where were you when the officers arrived that day? A. Right in the house.
- Q. What part of the house? A. On the kitchen.
- Q. Where the stove was? A. Yes.
- Q. Was there a fire in the stove? A. Yes, sir.
- Q. Which officer did you see first that day? A. 10  
That fellow just go out, the Sergeant.
- Q. Sergeant Cohen? A. Yes.
- Q. And who was with him? A. And the other fat fellow.
- Q. Mr. Roff? A. The man over in the corner come first after the trooper come.
- Q. The other trooper came after that? A. Then the old man come took Joe and bring in the house.
- Q. Did you see Trooper Patterson run through the kitchen? A. Yes. 20
- Q. When was that, before Mr. Cohen and Roff came in? A. Yes, but Cohen and the other gentleman down there after he was coming.
- Q. He came after Mr. Cohen? A. Yes.
- Q. What did they do to you that day? A. Just only he say, "What are you doing there?"
- Mr. Holland: Which one is that?
- Q. Did Sergeant Cohen or Mr. Roff say anything to you? A. Yes; "Hands up, stay there." I say, "All right." "Sit down." After Joe come, the old man bring Joe, he say, "Sit over there, too." 30
- Q. The old man brought Joe? A. Yes.
- Q. Where did the old man bring Joe to? A. On the house.
- Q. In the kitchen? A. Yes.
- Q. What else did they say to you? A. "Sit there." After want to take me down on the barn 40

*Salvatore Crisolissi—Direct.*

I say, "What are you going to do?" They say, "Come on down." I don't want to go.

Q. Did they do anything to you then? A. Punch in the mouth.

Q. Who did? A. Sergeant Cohen.

Q. Did you go down? A. Sergeant hold me like that and pull me.

Q. Pulled you down to the barn? A. Yes.

Q. And when you got down to the barn what did you say? A. Shut off steam and I say, "I don't know anything about that, I just come this morning."

Q. Had you ever seen the still there before? A. No, sir.

Q. Do you own the still that they mention here today? A. What do you mean?

Q. Was that still your property? A. That still my property? No, sir.

Q. Were you employed by anybody to do anything in connection with that still? A. No, sir.

Q. Had you done any work on the place that day other than start cooking of the dinner? A. Yes, sir, I just start.

Q. They asked you to turn off the still? A. Yes, sir.

Q. Did you do it? A. Yes, sir.

Q. Why did you do it? A. I am afraid to lock up.

Q. Are these cans and bottles your property? A. No, sir.

Q. Never owned them? A. No, sir.

Q. Did you have anything to do with the large barrels of mash mentioned here today? A. No, sir.

Q. Had you ever seen Mr. Reichert before that day? A. No, sir.

*Salvatore Crisolissi—Cross.**Cross-examination by Mr. Holland:*

Q. The last time you said the old man slapped you? A. No.

Q. The last time you said the old man slapped you?

Mr. Hegarty: I object to that, that is not the testimony at the other trial. 10

The Court: He says he didn't say it.

Mr. Holland: I submit, may it please your Honor, that is my recollection—

The Court: All right, you say there was and Mr. Hegarty says there was not.

Q. Didn't you sit there on the stand last time and say it was the old man who slapped you on the face? A. No, I don't say the old man slapped me in the face, I say Sergeant Cohen slapped me in the face. 20

Q. Why did he slap you?

Mr. Hegarty: I object, it calls for a conclusion.

The Court: Objection sustained.

Q. Did you do what you were told to do, what he asked you to do? A. I don't know what I got to do. 30

Q. He told you to go down to the barn? A. Yes.

Q. Did you go? A. He pulled me.

Q. Did you want to go? A. No, sir.

Q. Why? A. I am afraid. I don't know what he got in there.

Q. You didn't know what he had in the barn? A. He took me down. 40

Q. You didn't want to go? A. He say stop the

*Salvatore Crisolissi—Cross.*

steam, I am afraid to look at that thing.

Q. So you were afraid of the steam, too? A. Sure I am afraid of the steam.

Q. What is your business? A. Laborer.

Q. Do any kind of special work? A. No.

10 Q. Who did you work for last? A. I work on the summer time, sometime I work make street in place.

Q. Who did you work for on October 15th? A. Bosch.

Q. What is his business? A. Contractor from Lodi.

Q. And where were you working? A. In Lodi.

Q. Doing what? A. Make a cellar.

Q. Did you have any more work for that man?

A. No.

20 Q. When did that work stop? A. We stop that week before.

Q. And week before you stopped? A. Yes.

Q. And for a whole week you weren't doing any laboring work? A. I look around for a job, and I couldn't find a job, and I met Jim and he say want to come over may be three or four day a week and clean a ditch.

30 Q. So you knew it was only for three or four days? A. Sure if you ain't got no job that is better than nothing.

Q. Didn't you just hear Arborelli say he didn't know whether he would take it or not, because he hadn't seen the job and didn't want a job that would last too long? I withdraw it. What time did you start that day? A. What time?

Q. On October 25th, left Lodi? A. I don't know, I remember we start in the morning.

40 Q. How did you go? A. With the jitney.

Q. Didn't you say last time you came with a

*Salvatore Crisolissi—Cross.*

bus, the Paterson bus? A. Bus and jitney, that is a bus.

Q. Where did the bus or jitney take you to? A. I can't remember good, he has got address, he ask the driver where he got to stop.

Q. Where did you get on the bus? A. Lodi.

Q. And where did you get off the bus? A. With the first bus I got off Paterson. 10

Q. Then you took a bus from Paterson? A. Took another jitney bus.

Q. Where did you get off that one? A. I don't know.

Q. How much fare did you pay? A. I don't remember.

Q. Who paid it? A. He pay, I pay; he paid first I paid second. 20

Q. How much did you pay? A. Fifteen cents, Lodi to Paterson.

Q. From Paterson over to this place, you don't know? A. No.

Q. When you got off the bus how far did you have to walk? A. I don't know.

Q. Did you have to walk a mile or five miles? A. I don't know.

Q. Isn't it so Crisolissi that you got off the bus at this place? A. No, I don't remember. 30

Q. You took a bus at Paterson, and that is the last bus you took? A. I don't remember; took two or three busses.

Q. Don't know whether you took two or three? A. No, I don't remember.

Q. Didn't you say at the other trial you got on a bus at Paterson and got off at Pompton Turnpike? A. After get off the jitney bus you walk on main road. 40

Q. You walked on the main road? A. Yes.

*Salvatore Crisolissi—Cross.*

Q. How far? A. How far?

Q. Yes, a mile? A. I don't know.

Q. How did you know where this place was? A. He has got address, he is asked somebody, he talk good English.

Q. He asked somebody? A. Sure.

10 Q. Where? A. On the main road, or on this small road the Jacksonville Road, when we get off the jitney bus he ask two or three people.

Q. All right, when you got in the house did you go upstairs? A. Yes, sir.

Q. Did you take off your clothes? A. Just my sweaters, that's all.

Q. Just took off your sweater? A. Yes.

Q. Didn't put on your overalls? A. No.

20 Q. Did you have overalls? A. I got work-clothes upstairs.

Q. Did you have your overalls on? A. I got overalls, I leave them upstairs.

Q. You didn't put them on? A. No.

Q. He did put them on? A. No.

Q. Didn't you just hear Arborelli say he put his overalls on? A. He put his overalls on, I no put mine on.

30 Q. You were doing the cooking, you were the one to get splashed? A. If you cook?

Q. Did you go any other place except the house? A. No.

Q. Didn't you go in the chicken-coop? A. No.

Q. Did you hear Arborelli say you—swore in the last trial, you were the one went in the chicken coop and got a chicken? A. No.

Mr. Hegarty: That is a statement of what he testified to at the last trial.

*Salvatore Crisolissi—Cross.*

The Court: He said did you hear; he says he did not.

Q. You didn't go in the chicken coop? A. I did not.

Q. Where did you get the chicken from? A. Jim.

Q. Jim got it? A. Yes, sir, Jim bring the chicken in the house; I clean him up and cook him.

10

(Witness excused).

Mr. Hegarty: Mr. Arborelli, I overlooked asking you one question while you were on the stand.

*By Mr. Hegarty:*

Q. Did anyone strike you on the Reichert farm on October 25th last? A. They slap me.

20

Q. Yes. A. The old man, but that was right in the barn when they dragged us, me and him, down.

*By Mr. Holland:*

Q. How many busses were you on that day? A. I can't figure,—

Mr. Hegarty: I object.

30

The Court: Objection sustained.

Mr. Holland: Now, may it please your Honor, this situation did not develop before, and perhaps I overlooked this witness.

The Court: He is recalled for just one question, that is as far as you can go.

Mr. Holland: If I state to your Honor I overlooked in my main questioning as to

40

*Gottheil Reichert—Direct.*

his means of transportation may I not ask your Honor's permission to develop that for the jury's benefit?

The Court: You may, but in the face of an objection I am compelled to sustain it.  
(Witness excused).

10

GOTTHEIL REICHERT, called as a witness, having been duly sworn, testified as follows:

*Direct-examination by Mr. Hegarty:*

Q. Mr. Reichert, you are the owner of the farm that has been mentioned here today? A. Yes, sir.

Q. How many acres does that comprise? A. 42  
20 acres, more or less.

Q. Did you live on the farm? A. Yes, sir.

Q. In the house? A. In the house.

Q. Had you anyone working with you on the farm? A. Yes, sir, Jim.

Q. The first gentleman? A. Yes, sir.

Q. What was your business? A. Farmer.

Q. What were you doing? A. Raising vegetables.

Q. What kind? A. Celery, lettuce, spinach,  
30 beets, carrots, radish, cucumbers, onions.

Q. How many acres did you have under cultivation? A. Between 25 to 27.

Q. Was there any woodland on your farm? A. Yes, sir.

Q. Can you take the pointer and indicate if you can on the map marked S-2 just about how far  
down on your property the woodland extended?  
A. It isn't half of the farm on that map.

40 Q. Does it run down anywhere near to the barn

*Gottheil Reichert—Direct.*

of S-2, marked "Chicken Yard?" A. Yes, sir.

Q. When was the first time that you saw Crisolissi and Arborelli? A. Over in the police station.

Q. What police station? A. State troopers.

Q. Was that the first time you had ever seen either of these two men? A. Yes, sir.

Q. Did anyone tell you two men were going there to work? A. Jim told me he come up. 10

Q. That he had told two men to come to work? A. Yes.

Q. What were you going to have them do on the farm? A. Clean ditches.

Q. How often do you clean your ditches? A. Twice a year.

Q. What seasons? A. Spring and Fall.

Q. What do you do with the produce you raise on your farm? A. Sell it. 20

Q. Retail? A. Wholesale and retail.

Q. Where do you wholesale it? A. New York.

Q. Send it in in large quantities? A. Yes, sir.

Q. Were you paying Jim by the day on the farm? A. No, I want Jim for a partner for next year.

Q. Took him in on shares? A. Yes, sir.

Q. Had you any vegetables out in October? A. Yes, sir. 30

Q. What did you have? A. Spinach, iceberg, peas and onions out in the field.

Q. Iceberg what? A. Lettuce.

Q. And that is the lettuce the officer spoke about being burned up here today? A. I give some to the State Troopers after the raid.

Q. Now, during October, 1927, did you carry on any business transaction with a man by the name of Presqa? A. That gentleman who came there. 40

*Gottheil Reichert—Direct.*

Mr. Holland: I object, the answer can be yes or no.

The Court: Answer yes or no.

The Witness: No.

10 Q. Didn't you have a business transaction with a man by the name of Presqa? A. Yes, sir.

Q. When was that? A. Around the first part in October.

Q. Did you have any further business transaction with him? A. Yes.

Q. When? A. About 5th of October.

Q. I show you a paper writing and ask you if that is your signature on it? A. Yes, sir.

Q. Do you know what this paper is? A. This is supposed to be a lease.

20 Q. It is a lease, isn't it? A. Yes, sir.

Q. Can you describe to the Court and Jury what sort of man this fellow Joseph Presqa was? A. Yes, sir; well, he was a skinny, tall fellow with a black moustache.

Q. Tall and thin? A. Tall, skinny with a black moustache, very small black moustache.

Q. Pointed at the ends? A. No, no, pointed like a French moustache.

30 Q. The Joseph Presqa now in this lease, he isn't either one of these three men, is he? A. No, sir.

Q. What did you lease to Joseph Presqa?

Mr. Holland: I object, the lease will speak for itself.

The Court: Is the lease offered?

Mr. Hegarty: I will offer the lease.

The Court: Any objection?

Mr. Holland: No.

*Gottheil Reichert—Direct.*

The Court: It will be received and marked Exhibit D-1.

Q. When did you buy the farm? A. Three years ago.

Q. At the time you bought the farm was there a boiler? A. Yes, sir.

Q. Anything else on the premises? A. And the pump.

Q. After you leased—what did you lease to Mr. —what part of your premises did you lease to Mr. Presqa? A. I had three barns there on the north side barn I leased out to Mr. Presqa.

Q. And after you leased the premises do you know what the premises were to be used for? A. For dyeing.

Q. Clothes dyeing? A. Dyeing clothes.

Q. After you leased the barn in question to Mr. Presqa did you ever have occasion to go there again? A. I was once there.

Q. Did you see any one around there? A. I see a colored man there.

Q. Did you ask him what he was doing there? A. Yes.

Q. What did he say to you?

Mr. Holland: I object.

The Court: That is a conversation, Mr. Hegarty, I suppose?

Mr. Hegarty: Being the owner of the premises he had a right to inquire what the man was doing there.

The Court: He was under some duty to inquire if he found some man there.

Mr. Holland: I don't think the question is what did the colored man say to him,

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*Gottheil Reichert—Direct.*

and it seems to me that certainly is hearsay testimony. How can we cross-examine the colored man?

The Court: Isn't he entitled to show that he inquired what his tenant was doing?

Mr. Holland: No, sir.

10 The Court: He may answer.

Q. What did he say? A. I asked him, "What are you doing here?" He said, "He worked for Mr. Presqa." I said "Is Presqa here?" He said, "No, he is going to be here."

Q. Be here later? A. Yes, sir.

Q. After the signing of the lease did you ever see Presqa again? A. No.

20 Q. Were you paid for your month's rent? A. No, he skinned me out of \$15 yet.

Q. How much did he pay you? A. Ten dollars.

Q. Are you the owner of the alleged still that was found in that barn? A. No, sir.

Q. Are you the owner of the mash or liquors? A. No, sir.

Q. Are you the owner of these two cans? A. No, sir.

Q. The two jars or bottles? A. No.

30 Q. Did you have any liquors of any kind in your home? A. No, sir.

Q. Were you employed by anybody, Presqa or anyone to operate a still? A. No, sir.

Q. You weren't home when the raid was conducted? A. No, I wasn't home.

Q. Were you ever called upon to make a statement in reference to this alleged still and liquors? A. No.

40 Q. By any of the officers? A. No.

Q. Did you tell any of the officers you had a

*Gottheil Reichert—Direct.*

lease with a man by the name of Presqa? A. No.

Q. When you were arrested you went to the Pompton Police Station? A. Correct, I went there myself.

Q. And you were released on your own bail? A. Yes, sir.

Q. Did you ever employ James Gambino or Salvatore Crisolissi or Arborelli to operate a still on your premises? A. No, sir. 10

Q. Or have anything to do with the manufacture of liquor? A. No, sir.

Q. And you are positive that until you visited the Police Headquarters at Pompton Plains that you had never seen Crisolissi or Arborelli before? A. I never see them two fellows before.

Q. How many acres of tilled land were there about your house and premises? A. You mean the high weeds? 20

Q. Plowed land? A. Plowed ground between 25 and 27 acres.

Q. How many of them had been plowed by Jim or yourself? A. That includes that.

Q. Do you plow them in the Fall? A. We plow them and disk them, that is muck land, not upland, all black ground.

Q. Did you ever have occasion to use the boiler and pump that was on the premises when you bought them? A. I did two years ago; I was raising celery I used that for the wash house in there and that pump had to pump my water. 30

Q. You pumped the water to the tank? A. Yes.

Q. And took your merchandise to the market clean? A. Yes.

Q. Where did you get the water for your house? A. Drove a point down in the ground.

Q. Did you have a handpump for the house? A. 40

*Gottheil Reichert—Cross.*

For the house I got two pumps and one in the greenhouse.

*Cross-examination by Mr. Holland:*

10 Q. And the first time you said anything about this lease to the officers or the Prosecutor's office was when you brought it into court on the other trial, isn't that so? A. I want to show it to Sergeant Cohen, and he didn't want to see it and I put it in my pocket.

Q. When? A. I was over there the same day he give the raid.

Q. Did you bring your lease with you that same day? A. Over to Sergeant.

20 Q. This is the day you were arrested? A. I wasn't arrested, please.

Q. You went over to the Pompton Plains Police station? A. I went there myself.

Q. And they took you over to Trooper's Headquarters? A. Nobody took me there.

Q. You went there with the Chief, didn't you? A. Yes.

Q. You were placed under arrest, weren't you? A. No.

30 Q. Weren't you released on bail? A. And then they released me on bail, but not before.

Q. You had to be placed under arrest before you could be released on bail, who placed you under arrest? A. Nobody.

Q. Was that the night of the raid? A. Correct.

Q. Was that when you wanted to show Sergeant Cohen a lease? A. Yes.

40 Q. How did you know you had to bring your lease with you that day? A. I always got my papers in my pocket.

*Gottheil Reichert—Cross.*

- Q. All your papers? A. Mostly.
- Q. You carried your lease in your pocket all the time? A. Might be.
- Q. Got your deed in your pocket? A. Right here, too.
- Q. When did you put this in your pocket? A. Long time, since the time my wife was dead. 10
- Q. And where did you keep them before your wife died? A. In my wife's room.
- Q. Now, you say this place was rented by you on October 5th? A. Not by me by Presqa.
- Q. It was rented by you to him? A. Correct.
- Q. And he came from Bergen County? A. I don't know, I don't ask him.
- Q. Didn't ask him? A. No.
- Q. Don't you know your lease said he came from the Borough of Wallington, Bergen County? 20
- A. If it says so in there in the lease.
- Q. Ever read your lease? A. I had a man to write it for me.
- Q. When? A. The same day that lease is signed.
- Q. Then you know Presqa came from Bergen County, didn't you? A. He told me there, I don't know where Bergen County and where is Hudson County, all I know I live in Morris County. 30
- Q. From October 5th to October 25th what were you doing, working up on the farm? A. Certainly.
- Q. What did you have to work with, what were you working on? A. You got ditch—
- Q. What did you have planted, you said you had some things planted? A. Yes, iceberg lettuce and spinach.
- Q. And what else? A. And beets. 40

*Gottheil Reichert—Cross.*

Q. Yes, that is beets, spinach, what else? A. And cabbage.

Q. Cabbage? A. And small celery.

Q. How many acres did you have in beets? A. Don't talk about the acres, take it by the blocks.

Q. How many blocks in an acre? A. One block.

10 Q. One block in an acre? A. No, 37 feet wide and 600 foot long, that is all I know that is the way the blocks are laid out.

Q. Thirty-seven feet wide and 600 feet long? A. Yes.

Q. And one block of beets? A. Yes, then comes ditches.

Q. How much spinach? A. About two acres altogether.

20 Q. And how many blocks of lettuce, three or four blocks or acres? A. Blocks.

Q. And how many of celery? A. Half a block.

Q. Now, from October 5th to October 25th you were in and on the farm tending to these various things, weren't you? A. Yes.

Q. And you never went into this barn over here (indicating on the map)? A. No.

Q. And didn't you know they were building this still? A. No.

30 Q. Didn't you know they were moving in seventy big barrels of mash? A. No.

Q. And didn't you know that down in here were sixty or seventy tin cans tied up in bundles of three? A. No.

Q. You knew your tractor was in here? A. Yes.

Q. But you didn't know he had 60 or 70 of those? A. No.

40 Q. Why didn't you go in there? A. I can't, this man was in there, and he paid me the rent.

*Gottheil Reichert—Cross.*

Q. You said he didn't pay the rent? A. That is the reason I was after him, I want the \$15.

Q. Did you go in after him? A. No, I was down and listened and nobody was there, I went down into the barn.

Q. And nobody was there? A. No.

Q. Was the still there? A. No.

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Q. When was the still put up? A. I don't know.

Q. You knew there was a still there? A. No, sir.

Q. Don't know even now there was a still there? A. No, sir.

Q. Didn't you see the still that is introduced in evidence downstairs? A. No, sir.

Q. Didn't you see all of the five gallon cans on the farm that the officer put holes in? A. I seen them in the yard when I came home, yes, sir.

20

Q. That is the first time you ever saw them? A. Yes, sir.

Q. What time did you get home? A. I think it was around between six and seven.

Q. Did you go into the barn at all? A. That was the time I got busy, yes, sir.

Q. Then you went in the barn? A. Yes, sir.

Q. What did you see there, was the fire still going? A. No, sir.

30

Q. The fire was out? A. Yes.

Q. Had the still been taken out? A. I don't know what they had there.

Q. Was the still there or was it out? A. I don't know.

Q. Did you see the mash? A. No.

Q. The mash was still there and had been destroyed with kerosene, did you see the barrels there the next day? A. Yes.

40

*Gottheil Reichert—Cross.*

Q. How many barrels were there? A. Oh, there was around 40 or 50.

Q. But you didn't see them move in? A. No.

Q. Now, I show you Exhibit S-a for identification, and ask you— A. I don't look on no picture

10 Q. I am asking you if you won't please look at it and tell me if it doesn't look the same as it did, or then? A. I don't look on no picture.

Mr. Holland: Will your Honor direct the witness to look.

The Court: Is the picture in evidence?

Mr. Holland: It is marked for identification.

20 The Court: Are those the pictures I ruled out?

Mr. Holland: I had them marked for identification.

The Court: I ask you if those were the pictures I ruled out?

30 Mr. Holland: Your Honor didn't rule them out; I offered them in evidence and your Honor said they were not admissible at that time, and I had them marked for identification. They are now a part of the record.

The Court: They are not in evidence, and the witness does not have to look at them.

Mr. Holland: And is it your Honor's ruling the I cannot even question this witness as to the condition of his barn?

The Court: No, not by a picture.

40 Q. Is the barn the same today? Is the barn itself which is designated by the word "Shed" and

*Gottheil Reichert—Cross.*

the "Boiler and Tank on roof" is that the same to-day as it was on October 25th? A. No, sir.

Q. What changes have there been? A. Half is burned down.

Mr. Hegarty: I object to all this as immaterial; he is now bringing us down right to the day.

10

The Court: Objection is sustained.

Q. Now, where is Presqa? A. I don't see him here.

Q. Did you try to subpoena him, did you go to look for him? A. I want the State to hunt him up.

Q. Did you try to hunt him up? A. I never see him.

Q. Where did you look for him? A. I thought I could catch him some place in Paterson or Passaic.

20

Q. Did you look in Paterson and Passaic? A. I did.

Q. And you looked in Paterson and Passaic and you knew he came from Wallington, Bergen County, and you looked in Paterson and Passaic? A. Yes.

Q. Did you have any chickens in the coop? A. I did.

30

Q. Did you say after the other trial as you were going out of the room, "I didn't have any chickens in the coop, they brought a chicken with them?"

Mr. Hegarty: Objected to.

The Court: Objection sustained.

Mr. Holland: That is the very same proposition your Honor ruled on in the Kramer case, when they were asked, a witness on

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*Gottheil Reichert—Cross.*

10 the stand, did you say such and such a thing after the trial, and I objected to it, and your Honor overruled me on that occasion and stated that anything which might show his bias or tend to impeach his integrity would be admissible, and I am asking now, after the last trial, if this man did not go out to somebody in the hall and say they did not take a chicken out of the coop, they brought it with them.

Mr. Hegarty: I did hear two of the States witnesses and the man who has been called to serve on the panel for this term, joshing this man about the chicken, and I came up and told him to stop. They were kidding about it.

20 The Court: I have ruled on the question, proceed.

Mr. Holland: That is all, it is useless for me to proceed any further.

The Court: That remark is uncalled for. (Witness excused.)

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30 SAMUEL D. DAVIDSON, called as a witness, having been duly sworn, testified as follows:

*Direct-examination by Mr. Hegarty:*

Q. Where do you live? A. East Rutherford, Bergen County.

Q. What is your business? A. Real estate and insurance.

Q. And are you also a notary public? A. Yes, sir.

40 Q. Do you recall the occasion when Gottheil

*Samuel D. Davidson—Direct.*

Reichert and a man by the name of Presqa came to your place? A. I do.

Q. Did they bring anything with them? A. Well, they brought in two leases, and they want me to execute them.

Q. Original and duplicate lease? A. Yes, sir.

Q. I show you a paper writing purporting to be a lease between Gottlieb Reichert and Joseph Presqa, and ask you if that is your signature there as a subscribing witness? A. That is my signature. 10

Q. Did Gottlieb Reichert sign this lease and duplicate in front of you? A. Yes.

Q. Did Joseph Presqa sign it? A. Yes.

Q. And did Reichert acknowledge it before you? A. He had to acknowledge it.

Q. Do you recall who got the original copy that day? A. I don't know anything about it. 20

Q. Or which of the men took a copy? A. Both of them got a copy, the original I don't know.

Q. Did you read this lease in English, or in what language to Reichert? A. Well, as a rule—

The Court: Not as a rule, question is, did you?

The Witness: I did.

Q. In what language? A. I read it in German. 30

Q. You read it to whom? A. Mr. Reichert.

Q. Did he understand English? A. He understands English, but he asked me if I could interpret it in German a few words that wasn't quite clear to him.

*Cross-examination by Mr. Holland:*

Q. How long have you known Mr. Reichert? A. That is the first time I saw Mr. Reichert. 40

*Samuel D. Davidson—Cross.*

Q. Who is Mr. Presqa? A. Well, as I took him at that time a man lives on East Rutherford or Wallington.

Q. Did you know him? A. I don't know him direct, but I think I saw him.

10 Q. Did you know his first name was Joseph? A. No, I didn't.

Q. Did you know his first name was Joseph? A. He told me that was his name.

Q. Did anybody introduce you to Presqa? A. Well, that lease I thought was enough introduction to me.

Q. Did anybody introduce you to Reichert? A. No.

20 Q. Do you mean to say that as a notary public you took his acknowledgement without knowing who he was? A. He came in with that lease, and he was looking for a notary.

Q. Suppose he came in with a lease on which my name was, how would you know? A. I wouldn't know exactly; people wouldn't pay a fee unless they are getting benefit of it.

Q. How much of a fee did he pay you? A. One dollar.

Q. For an acknowledgment? A. Yes.

30 Q. Didn't you know the legal fee is 25 cents? A. I beg your pardon, the legal fee is 25 cents for each signature, I was entitled to get \$2.00.

Q. Where is that? A. I am not much of a lawyer, but the legal fee is one dollar for a notary. I was entitled to get \$4.00.

Q. So you executed this and did not ask any questions? A. I did ask what the lease was for.

Q. Why did you ask that? A. I always do that; didn't execute it, didn't know anything about it.

40 Q. Who did you ask what it was for? A. I ask-

*Samuel D. Davidson—Cross.*

ed both parties. I asked, "Do you know the contents of this lease?" And Mr. Reichert told me that he wanted me to read for him, explain to him in German, so I did.

Q. And did you read to him that the premises were to be occupied for clothes dyeing purposes only? A. I read just what is in the lease; I haven't seen it since, so I don't know what is in the lease. 10

Q. What day did you take this acknowledgment on? A. Just the day the lease is dated, I have no record of it.

Q. Did you draw this lease? A. I did not.

Mr. Hegarty: The Prosecutor says the lease speaks for itself, and I say he should be bound as we are. 20

Q. Did you draw the lease? A. No.

Q. Do you know who drew it? A. I don't know; just came to me as acknowledgment as notary public.

Q. But you don't know where this Presqa is now? A. No.

Q. Did you ever see him after this? A. I believe this man—I will explain, Wallington runs on Paterson Avenue where it comes from East Paterson to Passaic, on one side of the street, the north side, is Wallington, and the other side is East Rutherford, there is a lot of Italians, and the name is very familiar to me, and I took it for granted he was one of these people. 30

Q. You don't know what Presqa's business is? A. No.

Q. You don't know whether Presqa is a boot- 40

*Herman C. Seffker—Direct.*

legger or not, do you? A. May be he is, I don't know.

(Witness excused).

Mr. Hegarty: That is our case.

10 HERMAN C. SEFFKER, called as a witness, having been duly sworn, testified as follows:

*Direct-examination by Mr. Holland:*

Q. What is your full name? A. Herman C. Seffker.

Q. And where do you live? A. I am residing at Riverdale, New Jersey.

20 Q. What is your occupation? A. I am superintendent, Butler-Newark Bus Line.

Q. Are you acquainted with the buses and routes that the busses take from Paterson to Pompton Lakes, &c.

Mr. Hegarty: I object. I don't see what materiality this has with the case in issue, we are asked to meet two charges, one possession of liquor, and the other manufacture.

30 Mr. Holland: Two of the defendants, Arborelli and Crisolissi, testified they came over by bus. I have the bus superintendent here who is ready to testify there is no bus that runs from Paterson to Pompton Plains, I am producing testimony as to what they say as to their means of transportation on the day in question.

40 Mr. Hegarty: There is no testimony by either of these men they got off at Pompton Plains.

*Herman C. Seffker—Direct.*

The Court: You say you are offering to prove there is no bus line from Paterson to where?

Mr. Holland: To Pompton Plains, or anywhere which would bring them near the Jacksonville Road; they testified they got off the main road and walked in the Jacksonville Road. I desire to call your Honor's attention to the testimony of Crissolissi, when there was even a doubt as to the meaning of the word he was trying to say, he was saying he walked along Main Road, if your Honor recalls that there was difficulty in getting him straightened out on that, and it was finally settled that he said, "Main Road."

The Court: He may answer.

The Witness: Fairly well.

Mr. Hegarty: Now, if your Honor please, I want to object to it unless the Prosecutor shows where these men got off was at a point served by this man's busses.

The Court: This witness is saying now he is fairly familiar with the bus lines running from Paterson to Pompton Plains, or some other place, &c, you may proceed.

Q. Is there any bus line that runs from Paterson to Pompton Plains? A. No, sir.

Q. Is there any bus line that leaves Paterson that would leave anybody off on the Pompton Lakes Road anywhere near the Jacksonville Road?

A. Within a radius of three miles.

Q. That is the nearest your line goes? A. That is the nearest point he could get off.

Q. And where would that leave him off? A. At

*Herman C. Seffker—Cross.*

the junction of the Hamburg Turnpike and Pompton Turnpike.

Q. And he would have to walk how far down the Turnpike? A. The Plains, I should judge, is three and a half miles

10 Q. And then from Pompton Turnpike in to Jacksonville Road? A. I don't know where the Jacksonville Road is.

Mr. Hegarty: I submit that the testimony be stricken out if the witness doesn't know.

The Court: Let it stand for what it is worth. Is there a bus line running from Boonton to Paterson?

The Witness: Yes.

20

*Cross-examination by Mr. Hegarty:*

Q. A bus line running from Singac to Boonton near the Jacksonville Road? A. There is a bus line coming down the Pompton Turnpike.

Q. Coming down the Pompton Turnpike? A. Absolutely.

Q. How near to Pompton Plains does that run? A. Right through Pompton Plains.

30

Q. Where are the terminals, anywhere near Paterson? A. No, our bus line runs from Butler to Newark, and the Paterson line runs from Paterson to Boonton, and they do cross, and in order to go from Pompton Plains to a Boonton bus he must get off and get another one.

(Witness excused).

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Mr. Hegarty: Now, if your Honor please, I desire to renew my motion for a direction of a verdict of acquittal, first, on the ground

*Motion for Direction of Verdict of Acquittal.*

that there is no testimony in this case that shows that either of these defendants had anything to do with the possession of the intoxicating liquor, and alleged still mentioned here today, and further, that there is no proof of any overt act on the part of the four defendants tending to accomplish the manufacture of intoxicating liquor. I desire to quote in support of my motion, State vs. Griggs. (Argument). 10

Now, if your Honor please, I say that our case is even stronger than the case cited in 110 Southeastern 877, for the simple reason the State hasn't offered a single bit of proof to show these men were doing anything. I would just like to make one point further, if I may, and that is that the proof in this case stands uncontradicted that the premises wherein the still was located were under lease, and as a matter of fact, they are still under lease to a man by the name of Presqa. 20

Mr. Holland: That of course is matter of defense and cannot be passed upon.

The Court: I don't see any proof at all that any of these four men were running this still; however, the jury may view it in a different way. I will let it go to the Jury and allow you an exception. 30

Mr. Hegarty: Exception.

Exception allowed and sealed.

C. F. WILSON (Seal)

Judge.

(Mr. Hegarty on behalf of the defendants, and Mr. Holland on behalf of the State, having sum- 40

*Charge of the Court.*

med up to the Jury, the Court charged the Jury as follows:)

## CHARGE OF THE COURT.

Ladies and Gentlemen of the Jury:

10 The defendants, Reichert, Gambino, Aborelli and Crissolisi, are on trial before you upon an indictment which contains two counts. The first count charges that on the 25th day of October, 1927, and from that day on, in the Township of Pequannock, and within this jurisdiction, they did possess intoxicating liquor for beverage purposes, which said act of possessing intoxicating liquor was then and there prohibited and unlawful, contrary to the form of the Statute in such case made and provided.

20 The second count charges the same defendants on the same date and place with the manufacture of intoxicating liquor for beverage purposes, which said act of manufacturing intoxicating liquor was then and there prohibited and unlawful contrary to the form of the Statute in such case made and provided.

30 Notwithstanding the finding of the indictment on which the defendants are on trial they are presumed to be innocent, and they must be proven beyond a reasonable doubt guilty of the crime charged, and on each and all of its elements.

40 The burden of so proving the defendants guilty rests upon the State throughout the whole case and never shifts. This rule is the ultimate one surviving all others, and it is an independent and final protection of the defendants, and notwithstanding all other presumptions and burdens, if any arise in this case, it remains upon the State

*Charge of the Court.*

until and after all the evidence is in, and then the jurors must consider, upon all the evidence in the case, whether or not this burden has been sustained. If the jurors are then satisfied from all the evidence that the defendants are proven guilty beyond a reasonable doubt, the verdict must be guilty; if not so satisfied the verdict must be, not guilty. 10

A reasonable doubt is not a mere possible doubt, it is that state of the case which, after the entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition, that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.

On behalf of defendants I am requested to charge you certain requests:

Number One. I decline to charge other or further than as already charged. 20

Number Two. I decline to charge other or further than I have already charged.

Number Three. The mere number of witnesses testifying upon one side of a case is no guide for the determination of the weight of the evidence." I so charge you.

Number Four. "The credibility of a witness and the weight to be given to his or her testimony involve the consideration of many other matters, such as, his or her personal interest in the subject matter in controversy; his or her opportunity of observation or knowledge of the subject about which he or she is testifying, the influence under which he or she may be testifying; his or her demeanor on the witness-stand, etc., all of which are circumstances for you as a jury who see the witness to consider in determining what credit and weight should be given to the witness and his or 30 40

*Charge of the Court.*

her testimony." I so charge you.

Number Five. "Unless the State proves that the alleged liquors were the property of and in possession of the defendants, the verdict of the jury should be, not guilty." I so charge you.

10 Number Six. "Unless the State proves that the defendants engaged in some overt act tending to accomplish the manufacture of intoxicating liquor, the verdict of the Jury should be, not guilty." I so charge you.

20 So, Ladies and Gentlemen, you will see from those propositions of law which I have charged you, that if you are satisfied from all of the evidence in the case beyond a reasonable doubt that the defendants, or one, or any of them, were in possession of liquor at the time and place mentioned in the indictment, then your verdict on the first count would be guilty, and if you are not so satisfied that the possession was with all the defendants, or one, or some of them beyond a reasonable doubt as to the first count your verdict will be, not guilty.

30 As to the second count, the manufacture of liquor, if you are satisfied from all the evidence beyond a reasonable doubt that the defendants named in the indictment were engaged in the manufacture of liquor at the time and place mentioned in the indictment, then, as to the second count, your verdict will be, guilty. And if you are not so satisfied beyond a reasonable doubt that the defendants, or one, or some or all of them were manufacturing liquor at the time and place mentioned in the indictment, then your verdict will be, not guilty.

40 As to both counts, it is possible, I charge you, for you to find one, or two, or three, or four of the

*Charge of the Court.*

defendants named, guilty; or one, or two, or three, or four, not guilty. And the same is true as to the second count of the indictment, because you can separate them if you find that the evidence in the case separates them. And as to the evidence you are the sole judges.

Let an officer be sworn.

10

(The Jury retired).

Mr. Haggerty: I take a general exception to the Court's charge, and also to those requests to charge which your Honor declined to charge other or further than already charged.

The Court: Exception allowed.

Exception allowed and sealed.

20

C. F. WILSON (Seal)

Judge.

(The Court instructed the Clerk to take the verdict).

#### DEFENDANT'S REQUESTS TO CHARGE.

The Requests to charge as originally submitted to the Court were as follows: 30

"1. Notwithstanding the finding of an indictment, the defendant is presumed innocent and the burden of proving guilt is upon the State."

The Court: I decline to charge other or further than as already charged.

"2. Charge 'Reasonable Doubt.'"

The Court: I decline to charge other or further than I have already charged.

40

*Defendants' Requests to Charge.*

“3. The mere number of witness testifying upon one side of a case is no guide for the determination of the weight of the evidence.” Charged.

10 “4. The credibility of a witness and the weight to be given to his or her testimony involve the consideration of many other matters, such as, his or her personal interest in the subject matter in controversy, his or her opportunity of observation or knowledge of the subject about which he or she is testifying, the influence under which he or she may be testifying, his or her demeanor on the witness stand, etc., all of which are circumstances for you, as a jury, who see the witness, to consider in determining what credit and weight should be given to the witness and his or her testimony.” Charged.

20 “5. Unless the State proves that the alleged liquors were the property of and in possession of the defendants, the verdict of the Jury should be, not guilty.” Charged.

“6. Unless the State proves that the defendants engaged in some overt act tending to accomplish the manufacture of intoxicating liquors, the verdict of the Jury should be, not guilty.” Charged.

30

---

**PROSECUTOR'S REQUESTS TO CHARGE.**

The following Requests to Charge were submitted in behalf of the State by the Prosecutor:

“1. The Jury is entitled to draw a reasonable inference from the evidence in the case. The law permits juries to draw reasonable inferences from circumstantial or other evidence.

40

*Prosecutor's Requests to Charge.*

"2. If these defendants or any of them exercised any duty, control or supervision over the alcohol or the apparatus, or the process of distillation, or acted as watchers or helpers, the Jury would be justified in finding them, or such of them as the Jury believe are implicated, to be guilty of possession on the first count, and manufacture on the second count. 10

"3. The liquor found in the house was in the possession of the owner of the house or its occupants, and the Jury is entitled to consider that fact in returning its verdict."

---

**Certification of Stenographer.**

20

I, George Smith, do hereby certify that the foregoing is a true and correct transcript of the evidence given February 21, 1928 before Honorable C. Franklin Wilson, Judge of the Quarter Sessions Court, Morris County, in the case of The State vs. Gottheil Reichert, James Gambino, Joseph Arborelli and Salvatore Crisolissi, Defendants.

In witness whereof I have hereunto set my hand and seal this 7th day of March, 1928.

GEORGE SMITH,  
Stenographer.

30

40

**Certification of Judge.**

**MORRIS QUARTER SESSIONS.**

	<p style="margin: 0;">THE STATE</p> <p style="margin: 0;">vs.</p> <p style="margin: 0;">GOTTHELF REICHERT and JAMES GAMBINO.</p>	<p style="margin: 0;">} On Indictment } Judge's } Certificate.</p>
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20

I, C. Franklin Wilson, Judge of the Court of Quarter Sessions in and for the County of Morris, before whom the above stated indictment was tried, do hereby certify that the foregoing is the entire record of the proceedings including the testimony of the witnesses had and taken upon the trial of the indictment in the above stated case of the State vs. Gotthelf Reichert and James Gambino.

Dated March 14th, 1928.

C. F. WILSON, L. S.  
Judge &c.,

30

40

**Exhibit D-1.**

This Indenture, made the Fifth day of October,  
One Thousand Nine Hundred Twenty-seven,

Between Gottlieb Reichert, of Pompton Plains,  
County of Morris and State of New Jersey, and  
Joseph Presqa, of the Borough of Wallington,  
County of Bergen and State of New Jersey, party  
of the second part. 10

Witnesseth, That the said party of the first part  
hath Let and by these presents do grant, demise,  
and to farm let, unto the said party of the Second  
Part,

The barn situated in the rear of the premises oc-  
cupied by the party of the first part, being on the  
north side of Schlingling Avenue, in Pompton  
Plains, Morris County, New Jersey. Said prem-  
ises to be occupied for clothes dyeing purposes on-  
ly, with the appurtenances, for the term of one  
year from the Fifth day of October, One Thousand  
Nine Hundred twenty-seven, at the Yearly Rent or  
Sum of Three Hundred (\$300.00) Dollars, to be  
paid in equal monthly payments in advance. 20

And it is agreed that if any rent shall be due and  
unpaid, or if default shall be made in any of the  
covenants herein contained, then it shall be lawful  
for the said party of the first part to re-enter the  
said premises, and to remove all persons therefrom. 30

And the said party of the second part does cov-  
enant to pay to the said party of the first part, the  
said yearly rent as herein specified

The sum of Twenty-five (\$25.00) Dollars, com-  
mencing on the fifth day of October 1927, and on  
the fifth day of each and every month thereafter  
during the term of this lease.

And that at the expiration of the said term, the  
said party of the second part will quit and surren-  
der the premises hereby demised, in as good state 40

*Exhibit D-1.*

and condition as reasonable use and wear thereof will permit, damages by the elements excepted.

10 And the said party of the first part does covenant that the said party of the second part on paying the said yearly rent, and performing the covenants aforesaid shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

GOTTLIEB REICHERT, (L.S.)

JOSEPH PRESQA, (L.S.)

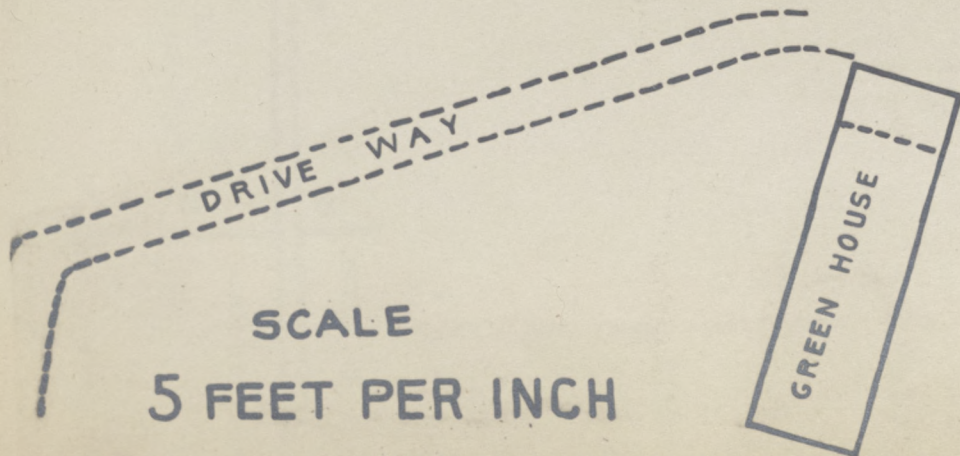
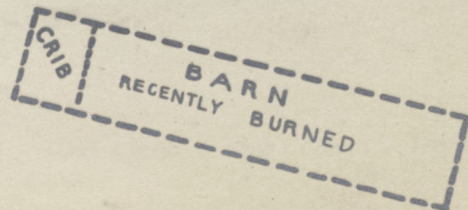
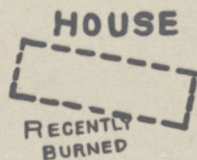
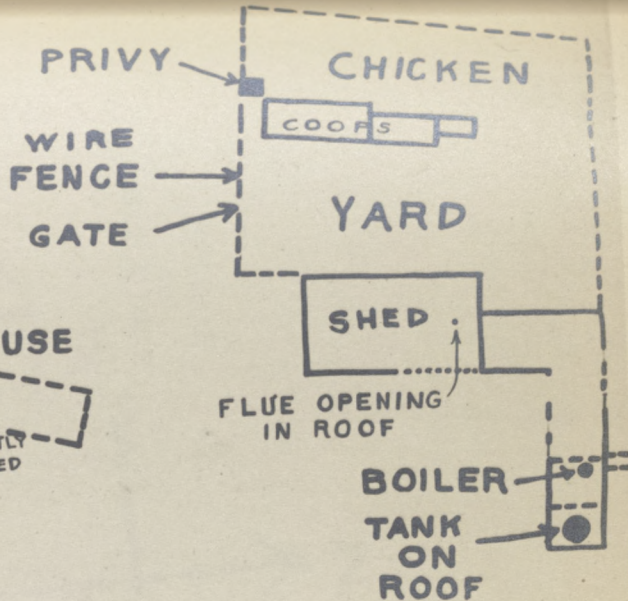
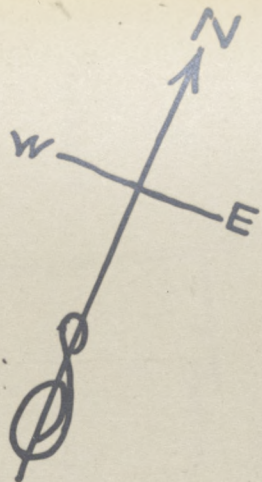
20 Signed, sealed and delivered in the presence of:  
Samuel T. Davidson.

State of New Jersey, }  
County of Bergen. } ss.:

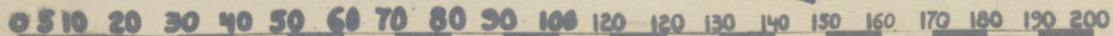
30 Be it Remembered, That on this Fifth day of October in the year of our Lord One Thousand Nine Hundred and twenty-seven before me, the subscriber, a Notary Public of New Jersey, personally appeared Gottlieb Reichert who, I am satisfied is the Lessor in the within Indenture of Lease named; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

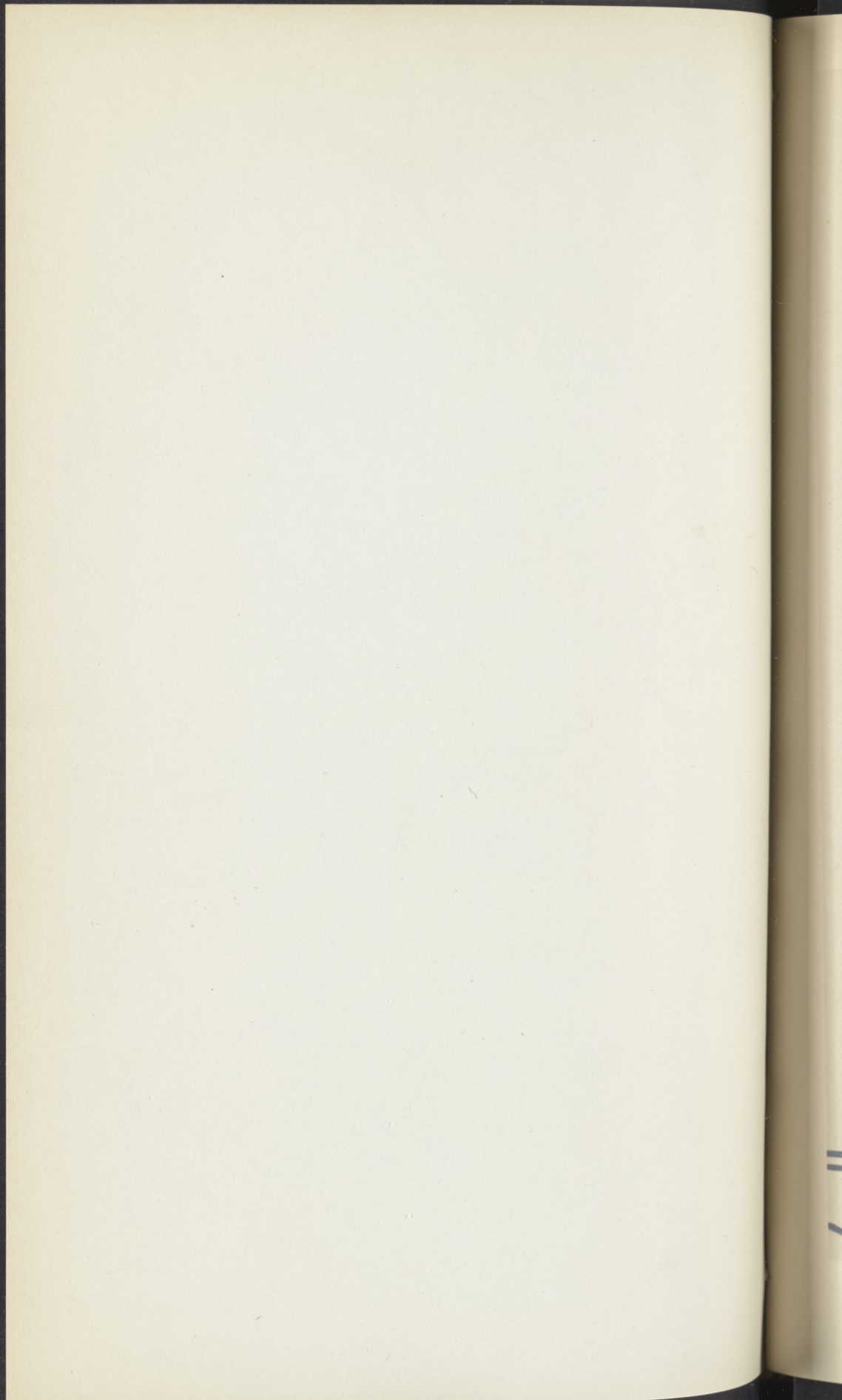
(Seal) Samuel T. Davidson,  
Notary Public, N. J.

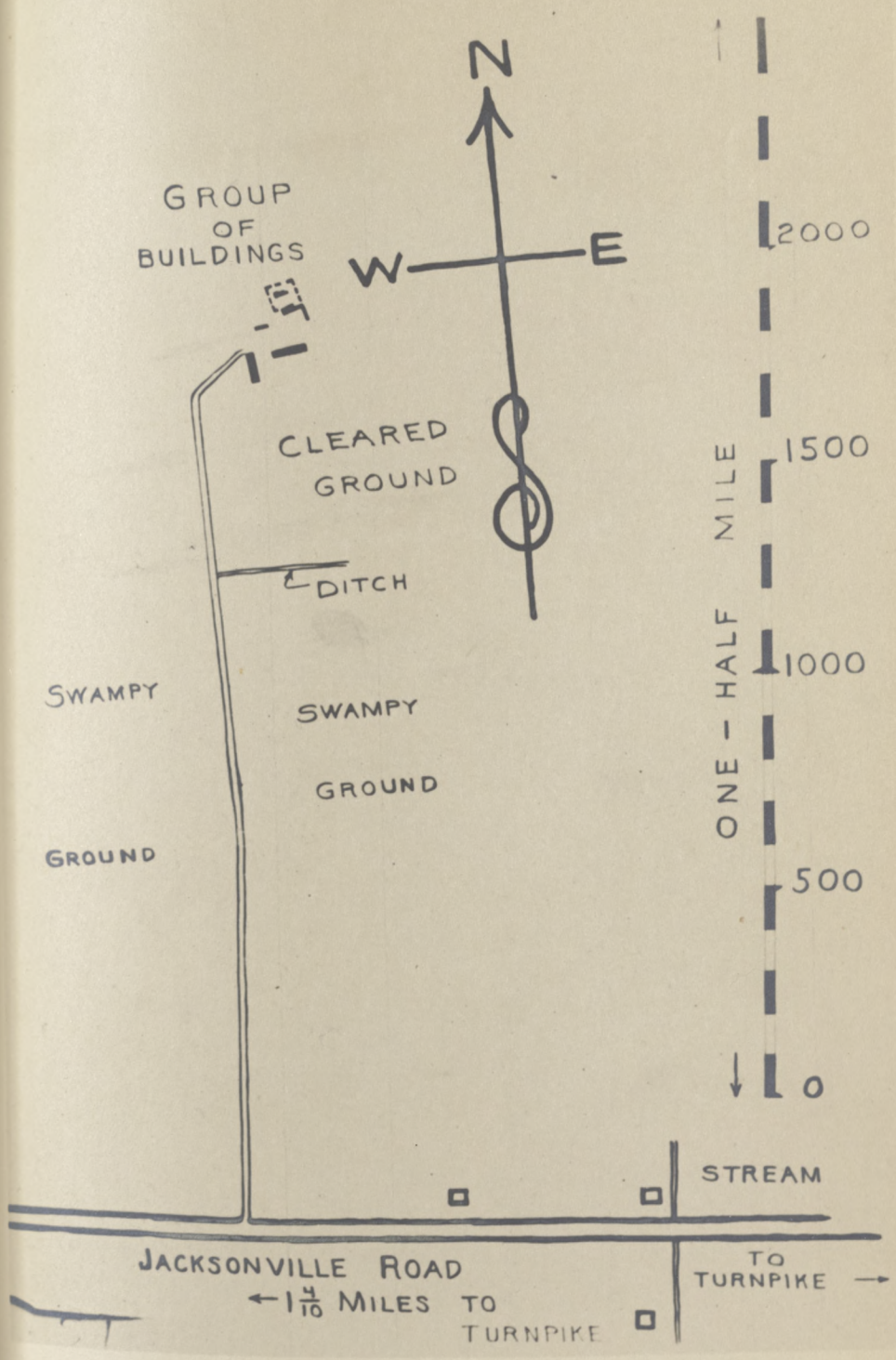
40 Endorsed—Lease. Gottlieb Reichert to Joseph Presqa. Dated, October 5, 1927.

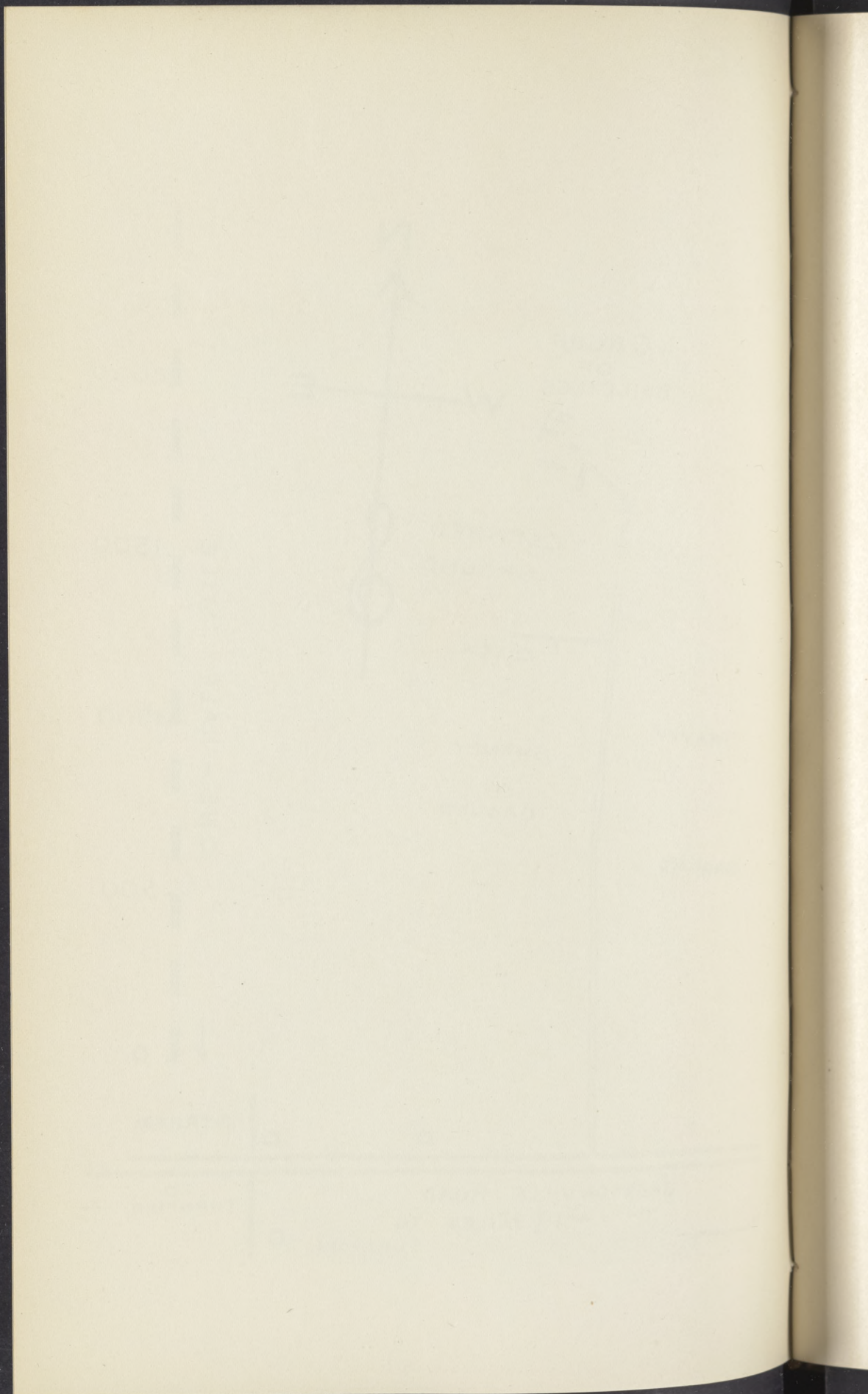


SCALE  
5 FEET PER INCH









**Exhibit S-7.**

G. S.

Examination of liquors.

Name Reichert-Gambino-Arborelli. Date 11/4/27.

Ward

- Ana. #A-202. From 1 gal. glass jug.  
Alcohol percentage—90.00  
Wood alcohol—None found. 10
- Ana. #A-203. From 1 gal. glass jug, dark  
amber colored liquid.  
Alcohol percentage—42.60  
Wood alcohol—None found.  
Contains-alcohol-water and  
caramel (coloring matter)
- Ana. #204. From 5 gal. tin. Mash.  
Alcohol—None found.  
T. B. CHRISTIAN, M. D.  
Pathologist. 20

Referred by Dr Prosecutor Holland.

30

40

**Petition for Certificate of Reasonable Doubt.**

Filed March 2, 1928.

MORRIS QUARTER SESSIONS.

10	THE STATE OF NEW JERSEY, Complainant,  vs.  GOTTHEIL REICHERT and JAMES GAMBINO, Defendants.	}	On Conviction.  Petition for Certificate of Reasonable Doubt.
----	---	---	--

The petition of Gottheil Reichert and James Gambino, by William A. Hegarty, Esq., one of their attorneys, respectfully shows that:

20

1. They were convicted before this Court by a jury on an indictment charging them with the manufacture and possession of liquor for beverage purposes, on February 21st, 1928.

2. On March 1st, 1928, a writ of error was procured in the New Jersey Supreme Court to review said conviction.

30

3. They have been advised by their attorneys that a reasonable doubt exists as to the validity of their conviction, because the verdict was contrary to the weight of the evidence, inconsistent with the proof offered by the state and because the court refused to grant the motion of the defendants, and in other respects.

Petitioners respectfully pray that this Court shall grant to them a certificate of reasonable

40

*Petition for Certificate of Reasonable Doubt.*

doubt admitting them to bail pending the prosecution of said writ of error.

GOTTHEIL REICHERT  
and JAMES GAMBINO,

By WILLIAM A. HEGARTY,  
Attorney. 10

State of New Jersey }  
County of Morris. }<sup>ss.:</sup>

William A. Hegarty being duly sworn upon his oath according to law deposes and says that he has read the foregoing petition and believes the statements made therein to be true.

(Signed) WILLIAM A. HEGARTY.

Sworn and subscribed to before me }  
this first day of March, 1928. } 20

Roy S. Tinney,  
An Attorney at Law  
of New Jersey.

30

40

**Certificate of Reasonable Doubt.**

Filed March 2, 1928

MORRIS QUARTER SESSIONS.

10	THE STATE OF NEW JERSEY, Complainant,  vs.  GOTTHEIL REICHERT and JAMES GAMBINO, Defendants.	}	On Conviction.  Certificate of Reasonable Doubt.
----	---	---	--

20 Upon reading and filing the petition of the defendant, duly verified, and it appearing to the court that reasonable doubt exists as to the validity of the conviction procured in this cause;

It is Hereby Ordered, on this 2d day of March, 1928, that the defendants be admitted to bail pending the prosecution of a writ of error procured in this cause, this certificate being given in pursuance of Chapter 125, of the laws of 1927 of the State of New Jersey.

30 C. FRANKLIN WILSON,  
 Judge of the Court of Quarter  
 Sessions of Morris County.

**Acknowledgment by Court Stenographer for  
transcript of evidence.**

Filed

**MORRIS QUARTER SESSIONS.**

<p style="text-align: center;">THE STATE OF NEW JERSEY, Complainant,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">GOTTHEIL REICHERT and JAMES GAMBINO, Defendants.</p>	}	<p>On Conviction.</p> <p>Acknowledg- ment by Court Stenographer for transcript of evidence.</p>	<p>10</p>
---	---	---	-----------

This is to acknowledge that Leon E. Cone and William A. Hegarty, attorneys for the defendants, have requested of me, in writing, a transcript of the testimony in the above cause tried before Honorable C. Franklin Wilson, in which a conviction was procured against the defendants. 20

A. L. ROBINSON,  
Official Stenographer.

Dated March 1, 1928.

30

40

**Assignments of Error.**

NEW JERSEY SUPREME COURT.

10	<p style="text-align: center;">THE STATE OF NEW JERSEY, Defendant in Error,  vs.  GOTTHEIL REICHERT and JAMES GAMBINO, Plaintiffs in Error.</p>	<p style="font-size: 3em; line-height: 1;">}</p> <p>On Writ of Error.</p> <p>Assignments of Error.</p>
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20 Afterwards, to wit, etc., in the Supreme Court of Judicature of the State of New Jersey, comes the said Gottheil Reichert and James Gambino, by their attorneys, and say that in the record and proceedings aforesaid, and also in the giving of the verdict and judgment aforesaid, there is manifest error in this, to wit;

1. Because the Court refused to direct a verdict to which exception was taken in favor of the defendants below, the plaintiffs in error here, at the close of the State's case on motion of the defendants' attorney, as follows:

30 "Now if your Honor please, I desire at this time to move for the direction of a verdict of acquittal, first on the ground that there has been no proof offered by the state to show there was any overt act on the part of any of these defendants to accomplish the manufacture of intoxicating liquor.

40 (b) "As to the first count there is no proof, if your Honor please, in this case, that the defendants had control or dominion or possession of the liquors in question."

*Assignments of Error.*

2. Because the Court refused at the end of the entire case to direct a verdict of acquittal in favor of the defendants to which exception was taken, on motion of defendants' attorney, as follows:

"Now if your Honor please, I desire to renew my motion for a direction of a verdict of acquittal, first on the ground that there is no testimony in this case that shows that either of these defendants had anything to do with, the possession of the intoxicating and alleged still mentioned here today and further, that there is no proof of any overt act on the part of the four defendants, tending to accomplish the manufacture of intoxicating liquor." 10

(c) "I would just like to make one point further if I may, and that is that the proof in this case stands uncontradicted that the premises wherein the still was located were under lease, and as a matter of fact, they are still under lease to a man by the name of Presqa." 20

3. Because in view of the Court's statement as follows:

"I don't see any proof at all that any of these four men were running this still" it became the duty of the Court to direct a verdict of acquittal in favor of the defendants. 30

4. Because the verdict was against the weight of the evidence.

5. Because the verdict was illogical and inconsistent.

6. Because the jury rendered a verdict in favor of the State and against the defendants, when it should have been in favor of the defendants. 40

*Assignments of Error.*

7. Because the verdict was against the law.
8. Because the verdict was contrary to the facts.
9. Because the Court charged the jury improperly.
- 10 10. Because the Court should have charged the jury to acquit the defendants.
11. Because the Court refused to charge the jury as requested by defendants charge No. 1 as follows:
- 20 (1) "Notwithstanding the finding of an indictment, the defendant is presumed innocent and the burden of proving guilt is upon the State." To which refusal exception was taken.
12. Because the Prosecutor insisted and persisted in asking illegal and improper questions for the purpose of prejudicing the jury as follows:
- (a) "Weren't you supposed to be tried in Court."
- 30 (b) "Weren't you supposed to be tried in Court on Sept. 28th, and didn't appear and forfeited your bail?"
- (c) "Weren't you arrested on or about Sept. 28th, by Prohibition Agents in Lodi and placed in custody?"
- (d) "Isn't it a fact you were arrested after Sept. 15th, and that you were not on Reichert's farm after Sept. 15th, continually until Oct. 25th?"
- 40 (e) "I am going to ask him in order to test his

*Assignments of Error.*

veracity whether or not on that day a certain bail was forfeited?"

(f) "On Sept. 28th, 1927 weren't you before Commissioner Agnew in Hackensack, Sept. 28th, 1927?"

All of which questions were improper and asked for the purpose of bringing before the jury an alleged arrest at some other time and at some other place, by other authorities for the purpose of creating, in the minds of the jurors an adverse opinion to the defendants. 10

13. Because the Court failed to instruct the jury to disregard statements of the Prosecutor on motion of defendants' attorney, as follows:

"I object, and further move the Court to instruct the jury to disregard the statement of the Prosecutor as to the arrest of this man." 20

14. Because the Court should, on its own motion, have withdrawn a juror and declared a mistrial after making the following statement "That statement is prejudicial; please don't do that."

LEON E. CONE,  
WILLIAM A. HEGARTY, 30  
Attorneys of Plaintiffs in Error.

Service of the within assignments of error acknowledged this March 23, 1928.

ALBERT H. HOLLAND,  
Prosecutor of the Pleas.

**Specification of Causes of Reversal.**

NEW JERSEY SUPREME COURT.

10	<p style="text-align: center;">THE STATE OF NEW JERSEY, Defendant in Error,  vs.  GOTTHEIL REICHERT and JAMES GAMBINO, Plaintiffs in Error.</p>	<p style="font-size: 3em; line-height: 1;">}</p> <p>On Writ of Error. Specification of Causes for Reversal.</p>
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20 Gottheil Reichert and James Gambino, the plaintiffs in error, by Leon E. Cone, Esq., and William A. Hegarty, Esq., their attorneys, hereby specify the causes in the record relied upon for relief or reversal in the aforesaid cause as follows:

1. Because the Court refused to direct a verdict to which exception was taken in favor of the defendants below, the plaintiffs in error here, at the close of the State's case on motion of the defendants' attorney, as follows:

30 "Now if your Honor please, I desire at this time to move for the direction of a verdict of acquittal, first on the ground that there has been no proof offered by the state to show there was any overt act on the part of any of these defendants to accomplish the manufacture of intoxicating liquor.

(b) "As to the first count there is no proof, if your Honor please, in this case, that the defendants had control or dominion or possession of the liquors in question."

40

*Specifications of Causes of Reversal.*

2. Because the Court refused at the end of the entire case to direct a verdict of acquittal in favor of the defendants to which exception was taken, on motion of defendants' attorney, as follows:

"Now if your Honor please, I desire to renew my motion for a direction of a verdict of acquittal, first on the ground that there is no testimony in this case that shows that either of these defendants had anything to do with, the possession of the intoxicating and alleged still mentioned here to-day and further, that there is no proof of any overt act on the part of the four defendants, tending to accomplish the manufacture of intoxicating liquor." 10

(c) "I would just like to make one point further if I may, and that is that the proof in this case stands uncontradicted that the premises wherein the still was located were under lease, and as a matter of fact, they are still under lease to a man by the name of Presqa." 20

3. Because in view of the Court's statement as follows:

"I don't see any proof at all that any of these four men were running this still" it became the duty of the Court to direct a verdict of acquittal in favor of the defendants. 30

4. Because the verdict was against the weight of the evidence.

5. Because the verdict was illogical and inconsistent.

6. Because the jury rendered a verdict in favor of the State and against the defendants, when it 40

*Specifications of Causes of Reversal.*

should have been in favor of the defendants.

7. Because the verdict was against the law.

8. Because the verdict was contrary to the facts.

10 9. Because the Court charged the jury improperly.

10. Because the Court should have charged the jury to acquit the defendants.

11. Because the Court refused to charge the jury as requested by defendants charge No. 1 as follows:

20 (1) "Notwithstanding the finding of an indictment, the defendant is presumed innocent and the burden of proving guilt is up to the State." To which refusal exception was taken.

12. Because the Prosecutor insisted and persisted in asking illegal and improper questions for the purpose of prejudicing the jury as follows:

(a) "Weren't you supposed to be tried in Court?"

30 (b) "Weren't you supposed to be tried in Court on Sept. 28th, and didn't appear and forfeited your bail?"

(c) "Weren't you arrested on or about Sept. 28th, by Prohibition Agents in Lodi and placed in custody?"

40 (c) "Isn't it a fact you were arrested after Sept. 15th, and that you were not on Reichert's farm after Sept. 15th, continually until Oct. 25th?"

*Specifications of Causes of Reversal.*

(e) "I am going to ask him in order to test his veracity whether or not on that day a certain bail was forfeited?"

(f) "On Sept. 28th, 1927 weren't you before Commissioner Agnew in Hackensack, Sept. 28th, 1927?"

All of which questions were improper and asked for the purpose of bringing before the jury an alleged arrest at some other time and at some other place, by other authorities for the purpose of creating, in the minds of the jurors an adverse opinion to the defendants. 10

13. Because the Court failed to instruct the jury to disregard statements of the Prosecutor on motion of defendants' attorney, as follows: 20

"I object, and further move the Court to instruct the jury to disregard the statement of the Prosecutor as to the arrest of this man."

14. Because the Court should, on its own motion, have withdrawn a juror and declared a mistrial after making the following statement "that statement is prejudicial; please don't do that."

LEON E. CONE, 30  
WILLIAM A. HEGARTY,  
Attorneys of Plaintiffs in Error.

Service of the within specification of causes for Reversal acknowledged this March 23, 1928.

ALBERT H. HOLLAND,  
Prosecutor of the Pleas.

THE HISTORY OF THE UNITED STATES

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## Opinion.

## NEW JERSEY SUPREME COURT.

# 6 May Term, 1928.

THE STATE OF NEW JERSEY, Defendant-in-Error,	}	10
vs.		
GOTTHEIL REICHERT and JAMES GAMBINO, Plaintiffs-in-Error.	}	

Submitted May Term, 1928.

Decided October , 1928.

20

Before—Justices TRENCHARD, KALISCH and LLOYD.

For the Plaintiffs-in-Error: LEON E. CONE,  
WILLIAM A. HEGARTY.For the Defendant-in-Error: ALBERT H.  
HOLLAND.*Per Curiam:*

This is an appeal by the defendants from a conviction on an indictment charging the possession of intoxicating liquors and its unlawful manufacture. The case is here both on bills of exception and on a certificate under the 136th section of the Criminal Procedure Act.

30

In the assignments of error and in the specifications of causes for reversal the defendants urge that the judgment should be reversed on three grounds.

1. That the learned trial judge improperly de

40

*Opinion.*

nied the defendants' motion for the direction of a verdict of not guilty, which motion was made both at the close of the State's case and again at the conclusion of the entire case.

2. That the verdict is against the weight of the evidence.

10 3. That the court should have withdrawn a juror on motion of defendants' counsel because of certain questions propounded to the appellant Gambino.

An examination of the record convinces us that none of these grounds of appeal or causes for reversal are sufficient to justify disturbance of the verdicts and judgments rendered thereon.

20 The appellant Reichert is the owner of a small farm situate in a remote section of Morris County, distant about fifteen hundred feet from any public road and on which was located a residence and barn adjoining. A portion of the farm was operated as a truck farm and in its operation Gambino was a partner. On October 25, 1927, a raid was made on the premises by County officials and members of the State Police. In the barn was found a still of 150 gallons capacity in active operation. In the house behind a trunk in a bed room two jugs  
30 of intoxicating liquor were found. From the still fumes were emanating which could be readily detected by their odor a distance of one hundred feet. Gambino was found in bed in the house at the time. Reichert was absent. When the raid was made another man, seeing the detectives, started to run but was caught. At the direction of the officers, Gambino and two others, also found on the place, disconnected and dismantled the still. The explanation given by Gambino of his presence on the  
40 place was that he was engaged in the joint business

*Opinion.*

of trucking on the farm with the owner and had been since September 15th, and that from that time until the raid was made had been engaged in preparing the ground for the crops.

These facts we think combined to make a *prima facie* case justifying its submission to the jury at the conclusion of the State's proofs. These proofs were measurably increased by the improbable story told by Gambino and Reichert as to the cultivation of soil for trucking purposes from the middle of September until the latter part of October, and the like improbable story of Reichert that he had leased the barn on October 1st to a man named Presca, a man he had never seen before or since. It is incredible that on a small place so situated those in charge of its operation should have known nothing of the existence of a still in the barn, a building ordinarily used in conjunction with farming purposes, and that still emitting odors detectable at the distance named. 10  
20

The conclusion we reach is that the trial judge was right in refusing to take control of the case from the jury and we think that the jury did no violence to the evidence in finding the defendants guilty.

The questions objected to were directed to the defendant Gambino on cross-examination and were to ascertain his whereabouts in view of his previous statements that he had worked constantly at the farm from September 15th. In view of these statements, the questions were not objectionable. 30

The judgment is affirmed.

**Rule of Affirmance and Remittitur.**

## NEW JERSEY SUPREME COURT.

10	<p style="text-align: center;">THE STATE OF NEW JERSEY, Defendant-in-Error,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">GOTTHEIL REICHERT and JAMES GAMBINO, Plaintiffs-in-Error.</p>	}	<p>On Error.</p> <p>Rule of Affirmance and Remittitur.</p>
----	---	---	--

20 The above entitled cause was heard before this Court at the May Term 1928, and the Court having considered the same and finding no error in the record and proceedings in the Morris County Court of Quarter Sessions—

30 It is thereupon Ordered and Adjudged that the judgment of the said Morris County Court of Quarter Sessions removed by writ of error in this cause be and the same is hereby affirmed with costs and that the record be remitted to the said Morris County Court of Quarter Sessions to be proceeded with in accordance with this judgment and the practice of said Court.

Entered Nov. 28th, 1928.

On motion of ORVILLE V. MESLAR, Prosecutor of the Pleas, Attorney for Defendant-in-Error.

**Writ.***New Jersey, ss.:*

The State of New Jersey to the  
 Chief Justice and other Justices of  
 our Supreme Court of Judicature,  
 GREETING:

For as much as in the record and proceedings  
 and also in the giving of judgment in a certain 10  
 case, which was in our said Supreme Court of Jud-  
 icature, before you, between the State of New Jer-  
 sey and Gottheil Reichert and James Gambino,  
 impleaded on a judgment and conviction rendered  
 on a certain indictment, manifest error has inter-  
 vened, to the great damage of the said defendants,  
 as it is said, we being willing that the error, if any  
 there be, should, in due manner, be corrected and  
 full speedy justice done to the parties aforesaid 20  
 in this behalf, do command you, that if judgment  
 be thereupon given and affirmed then you distinct-  
 ly and openly send, under your seal, the record  
 and proceedings aforesaid, with all things touch-  
 ing the same, to our Judges of our Court of Errors  
 and Appeals in the last resort in all causes at  
 Trenton, on the Twenty-sixth day of December  
 next, together with this writ, that the record and  
 proceedings aforesaid being inspected, we may  
 cause to be further done thereupon, for correcting 30  
 that error, what of right, and according to the law  
 of the State of New Jersey, ought to be done.

WITNESS, our Chancellor and President Judge of  
 our said Court of Errors and Appeals at Trenton

*Writ.*

aforesaid, the Fifth day of December A. D. 1928.

JOSEPH F. S. FITZPATRICK,  
Clerk.

LEON E. CONE,  
WILLIAM A. HEGARTY,  
Attorneys.

10

Service of the within Writ acknowledged this  
7th day of December A. D. 1928.

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**Return.**

20 The answer of the Justices of the Supreme Court  
of the State of New Jersey within named. The  
record and proceedings whereof mention is within  
made, with all things touching and concerning the  
same, we do certify to the Court of Errors and Ap-  
peals of said State, in a certain schedule to this  
writ annexed, as within we are commanded.

WM. S. GUMMERE,  
C. J.

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**Assignment of Error and Reasons for Reversal.**

Filed Dec. 20, 1928.

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

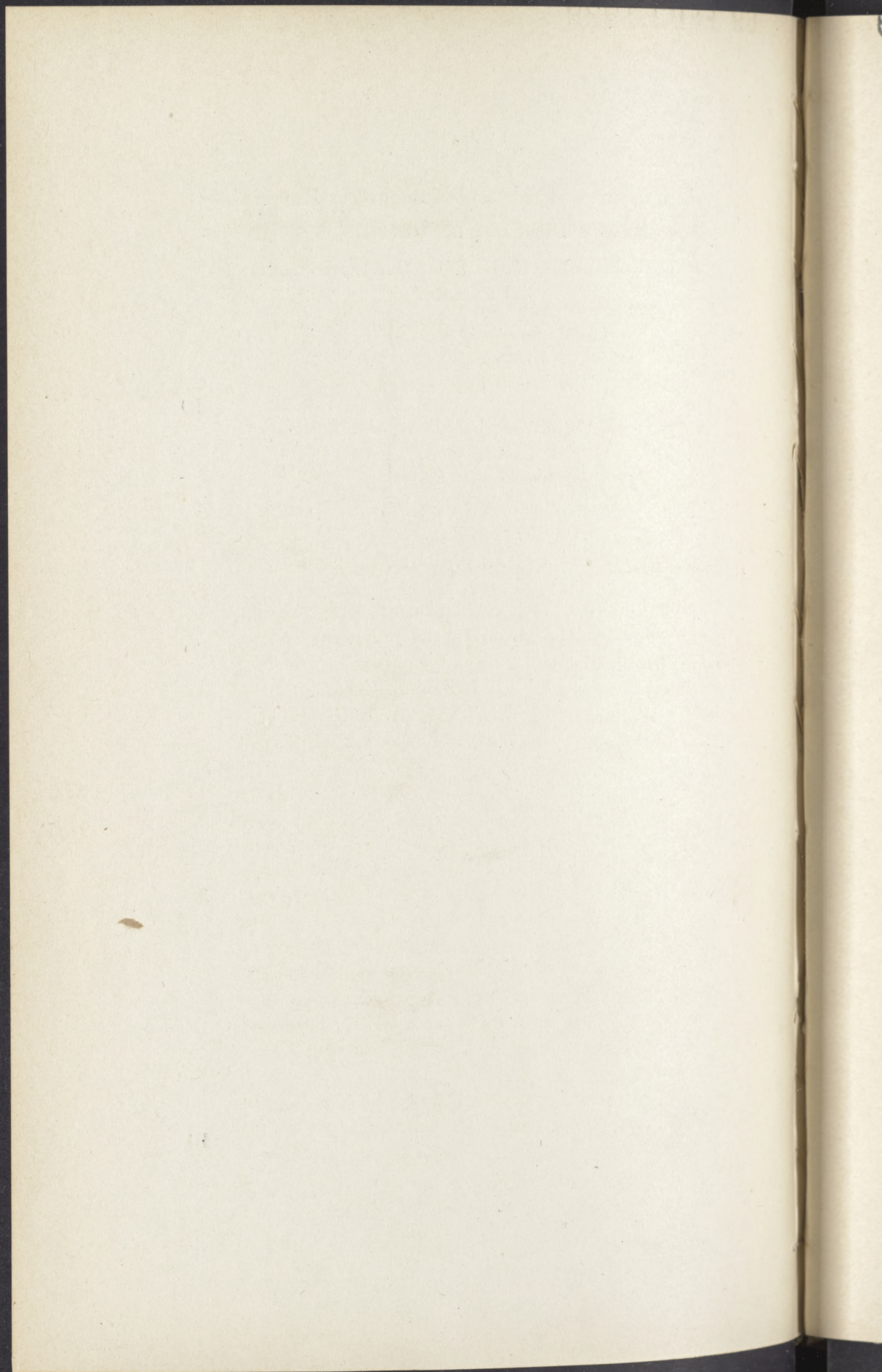
<p style="text-align: center;">THE STATE OF NEW JERSEY, Defendant-in-Error,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">GOTTHEIL REICHERT and JAMES GAMBINO, Impleaded, &amp;c., Plaintiffs-in-Error.</p>	}	<p>Assignment of Error and Reasons for Reversal.</p>	10
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The Supreme Court erred in confirming the conviction instead of reversing the judgment of conviction under review. 20

LEON E. CONE,  
WILLIAM A. HEGARTY,  
Attorneys for Plaintiffs-in-Error.

30

40



## New Jersey Court of Errors and Appeals

<p style="text-align: center;">THE STATE OF NEW JERSEY, Defendant-in-Error,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">GOTTHEIL REICHERT and JAMES GAMBINO, Plaintiffs-in-Error.</p>	}	<p>On Writ of Error.</p>
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### BRIEF OF PLAINTIFFS-IN-ERROR.

Plaintiffs-in-error seek reversal of their conviction for the illegal possession and manufacture of intoxicating liquors for beverage purposes.

The entire case comes up for review under Sections 136 and 137 Criminal Proceedings.

The Supreme Court sustained the conviction.

#### Facts.

Gottheil Reichert is the owner of a farm situate in the Township of Pequannock, County of Morris, consisting of 42 acres more or less. About two-thirds of the farm is kept under tillage (pp. 100, 105) and it was necessary for Reichert to employ help. Gambino had been engaged by Reichert to assist him (pp. 68, 69) and had instructed Gambino to get two more men to clean out ditches—the farm being located in a section that was swampy and mucky (pp. 85, 92, 68, 101).

The buildings on the farm included a house, two barns, shed, coops and green house.

On October 5th, 1927, Reichert and one Joseph

Presqa, of the Borough of Wallington, County of Bergen, executed a lease (Exhibit D-1, pp. 127-128) whereby Presqa entered into possession of the barn shown on map (Exhibit S-2, p. 128B) marked boiler, &c. (pp. 101, 102, 103, 104).

On October 25th, State Police and Prosecutor's detectives made a raid on barn above mentioned.

Proof shows that Reichert was not on the farm, (pp. 35-68, 104). Gambino was asleep in bed, in the house, when the officers arrived (pp. 34-56-84).

When the raid was made, the officers found James Gambino, Joseph Arborelli and Salvatore Crisolissi on the farm. Reichert was not there but subsequently when he found out that he was wanted, surrendered himself, voluntarily. At the time of the raid, Gambino was asleep in bed in the farm house (State of Case, pages 34, 56, 84). Crisolissi was cooking in the kitchen and Arborelli was out in the yard gathering wood for the kitchen fire (State of Case, pages 92-93, 86-87). None of the men were in or near the barn where the still was found and which the evidence shows was leased to one Presqa.

There is no testimony that any of the men arrested had anything to do with the operation or maintenance of the still or had any control or dominion or actually possessed the alleged liquor; there is no evidence of any overt act on the part of these defendants-(plaintiffs-in-error herein) nor any facts which might possibly lead to the logical conclusion that the plaintiffs-in-error had done anything which might lead to the possession or manufacture of liquor.

No evidence appeared against any of the four men on trial under the indictments, and the trial judge said, "I don't see any proof at all that any of these four men were running this still; how-

ever, the jury may view it in a different way" (State of Case, page 119, line 29).

The jury returned a verdict of not guilty as to Arborelli and Crisolissi and a verdict of guilty against the plaintiffs-in-error, and this writ of error is to review that conviction, and the sentence of \$500.00 fine on each and three months imprisonment in the county jail; which conviction was sustained by the Supreme Court.

## ARGUMENT.

### POINT I.

**The Trial Court erred when it refused to direct a verdict of acquittal on motion of the plaintiffs-in-error.**

At the close of the State's case counsel for the accused moved for a direction of verdict of acquittal, on the ground that there had been no proof offered by the State to show that there was any overt act to accomplish the manufacture of liquor or that there was any proof that the defendants had any control or dominion of the liquors in question. The motion was denied and an exception taken. (State of Case, page 67, line 23 et seq.)

At the close of the whole case defendant's counsel again moved for a direction of a verdict of acquittal on the ground that there was not any testimony to show that any of the defendants at the trial had anything to do with the possession of the liquor or its manufacture; or the proof of any overt act tending to accomplish the manufacture of liquor.

In denying this motion, it is significant that the

trial judge said, "I don't see any proof at all that any of these four men were running this still" (State of Case, page 119, line 29). In view of this statement by the trial court, it was incumbent upon the presiding judge to direct a verdict of acquittal, in all fairness to the defendants, and in accord with the Anglo-Saxon spirit of fair play to the defendant who is supposed to be entitled to receive the benefit of every doubt, resolved in his favor.

"Where the whole case, leaving out disputed facts, requires an acquittal, a direction to acquit is not only proper, but right" Whartons Criminal Pleading & Practice, 9th Ed., page 579, paragraph 812.

In the case of *People vs. Bennett*, 49 N. Y. 141 and which is also cited with approval by Wharton in his work on Criminal Practice and Pleading, 9th Ed. page 579, the court said, "I can see no reason, therefore, why the court may not, in a case presenting a question of law only, instruct the jury to acquit the prisoner, or to direct an acquittal and enforce the direction nor why it is not the duty of the court to do so."

The latter portion is exactly the contention of the plaintiffs-in-error, that the court owes as great a duty to the accused as to the state, and that it is imperative upon the court to direct a verdict in defendants favor if, in the court's own opinion, there is no evidence upon which to convict. The defendant is not supposed to be left at the mercy or vagaries of the jury unless sufficient evidence has been presented against him, to present a case warranting allowing the same to go before the jury.

In *State vs. Raymond*, 78 N. J. L. 61, Justice Garrison held that if upon the trial of an indictment the state fails to make a *prima facie* case of

the charge against the defendant it is legal error to deny a motion for the direction of a verdict made at the close of the case.

Saylor vs. Commonwealth, (Court of Appeals of Kentucky), 166 S. W. 254, at page 256, paragraph 4:

“The trial judge has the same right and authority to give a peremptory instruction in a criminal proceeding that he has in a civil action. And if the evidence introduced in behalf of the Commonwealth fails to incriminate the defendant, or is wholly insufficient to show that he is guilty of the offense charged, it is not only the right, but the duty of the trial judge to instruct the jury to return a verdict of not guilty.”

State vs. Bass, (Supreme Court of Missouri), 157 S. W., page 782 at page 787, paragraph 6:

“It is a rule often announced that the Court will not in a criminal case weigh the evidence; that is for the jury. The rule as thus stated is too general. What is really meant is that where a record discloses that there is a conflict between material testimony, the Court will not undertake to decide which is of the greater probative force, because this is the exclusive province of the jury; but where the Court finds upon an analysis of the testimony, which it must of necessity make in every case, that there is an absence of substantial evidence to convict, then the question becomes one exclusively for the Court which it must decide as any other assignment of error.”

State vs. Gordon, 199 Mo. 561; 98 S. W.  
39.

State vs. Francis, 199 Mo. 671; 98 S. W.  
11.

The power of the trial court to direct a verdict of acquittal for insufficiency of the evidence to sustain a criminal charge is unquestioned.

17 A. L. R., page 910, par. II.

State vs. Young, (1903), 56 Atl. 471

State vs. Jagers (1904), 71 N. J. L. 281,  
108 Am. St. Rep. 746; 58 Atl. 1014.

State vs. Brown (1905), 72 N. J. L. 354;  
60 Atl. 1117; affirmed in opinion below  
in (1906); 73 N. J. L. 679; 63 Atl. 1119;

State vs. Terry (1905), 72 N. J. L. 375,  
61 Atl. 148, affirmed without discussion  
of this point in (1906) 73 N. J. L. 554;  
64 Atl. 113.

State vs. Raymond, (1909) 78 N. J. L.  
61; 78 Atl. 761.

State vs. Martini (1910) 89 N. J. L.  
685; 78 Atl.

State vs. Schoor (1911) 81 N. J. L. 263;  
80 Atl. 22.

State vs. Metzger (1911) 82 N. J. L. 749;  
82 Atl. 330.

The rule as laid down in 17 A. L. R., page 914,  
paragraph III, is:

“The decided weight of authority supports the rule that it is the duty of the trial court, in a criminal case, to direct an acquittal where there is no substantial evidence of the guilt of the accused, and that the refusal to perform this duty constitutes

grounds for the reversal of a judgment of conviction.”

State vs. Raymond (1909) 78 N. J. L. 61;  
78 Atl. 761.

State vs. Martini (1910) 80 N. J. L. 685;  
78 Atl. 12.

The law is well established that the failure to direct a verdict in favor of the defendant, if the motion is well founded, is legal error.

State vs. Contarino, 92 N. J. L. 381,  
State vs. Oliver, 3 N. J. Misc. 1018,  
State vs. Burnett, 63 N. J. L. 510,  
State vs. Lieberman, 80 N. J. L. 506,  
affirmed 82 L. 748,  
State vs. Bacheller, 89 N. J. L. 433.

## POINT II.

**There is no evidence to sustain the verdict of guilty and the verdict is against the weight of the evidence.**

The basis for the arrest of Reichert is the fact that he was the owner of the farm, on which the alleged still was found. Gambino, was an employee of Reicherts on the farm. On the day of the raid, Gambino was actually engaged in using a tractor and Reichert was not on the farm.

The uncontradicted evidence is that the barn where the still is alleged to have been found was leased to one Presqa and out of the possession or control of the plaintiffs-in-error.

The mere fact of ownership or that the defendants were found near the premises, or found running away from the premises (which latter is not the fact in this case) is not sufficient to base a conviction.

“Neither presence or flight, nor both together, without more is conclusive of guilt” Griffin vs. State, 2 Ga. Appeals 534; 58 S. E. 781 cited with approval in Griggs vs. State, 102 S. E. 877 where defendant was on the premises and started running upon the approach of officers of the law. The Georgia Court of Appeals said “This is all the evidence that in any way connects the defendant with the offence of making liquor and is not sufficient to authorize his conviction. The most that can be said of it is that it shows ‘presence and flight’.”

In Alexander vs. State, 102 S. E. 878, the same court of appeals said, “There was no evidence which authorized a finding that the land upon which the apparatus was discovered was owned,

controlled or possessed by the defendant. His conviction therefore was contrary to law and evidence". To exactly the same effect was held in *Atkinson vs. State*, 102 S. E. 878.

*Griggs vs. State*, *supra*, is cited with approval in *McFadden on Prohibition*.

"A verdict against the evidence, unlike one against law, which will be set aside as of course appeals rather to the judicial discretion. It is difficult to perceive how in a criminal case wherein, on a broad view the state is even more prejudiced by an unjust conviction than the defendant, the judicial mind can be satisfied with a verdict of guilty which, after giving the opinion of the jury all due weight creates still the distinct and not unreasonable apprehension that it was a great wrong, though the showing of this is not absolute, alike to both parties in the controversy. That such a verdict cannot stand reasonably accords with the utterances of some of the courts. 2 *Bishops New Criminal Procedure*, page 1114.

In this case, the court was satisfied that these men were innocent, and that no testimony had been adduced against them; but the court misconstrued its function and permitted the matter to go to the jury, which, manifestly was error and harmful to the defendants.

It has always been the theory of our jurisprudence that the defendant is entitled to every protection which has been woven around him by law; and that it is the court's duty to see that every defendant is accorded that protection and the privileges granted to him by legislatures, custom and precedents. Juries are supposed only to get those cases where a case beyond a reasonable doubt has been established by the state, and where no such case has been established, it is not discretionary, but mandatory upon a judge to direct a verdict.

## POINT III.

**The Court should have withdrawn a juror and directed a mistrial after the remarks of the prosecutor.**

For the purpose of prejudicing the jury against the defendants the prosecutor asked a number of leading questions over the objection of the defendants; questions which were irrelevant, improper and illegal; questions attempting to prove the commission of the crime charged in the indictment by proof of the commission of other crimes at other places, of like nature.

The Prosecutor asked the following questions:

“Weren’t you supposed to be tried in Court?”

“Weren’t you supposed to be tried in court on September 28th and didn’t appear and forfeited your bail?”

“Weren’t you arrested on or about September 28th, by prohibition agents in Lodi and placed in custody?”

“Isn’t it a fact that you were arrested after September 15th, and that you were not on Reichert’s farm after September 15th continually until October 25th?”

“On September 28th, 1927 weren’t you before Commissioner Agnew in Hackensack September 28th, 1927?”

Defendant objected and asked the court to direct the jury to disregard these questions, which the court failed to do.

The prosecutor stated that the above questions

were put to test the veracity of the witness. (State of Case, page 74, line 32; page 76, line 27).

The prosecutor also stated as a reason for asking such questions that he desired to prove the pendency of another criminal proceeding. (State of Case, page 76, line 37 &c.) This was clearly bringing before the jury the alleged commission of another crime at some other time and place with the intention of prejudicing the jury.

The questions put by the prosecutor in this case, were put for the purpose of leading the jury to believe by inference and innuendo that the defendants were criminals and had been arrested at other times and places. Such evidence was improper, and the questions were put with the knowledge of their impropriety. Under a similar situation the Court, in *State vs. Young*, 93 N. J. L. 405, line 20, and page 406, line 13, said, Justice Swayze, speaking for the court, "No doubt, the question was so put for the very purpose of getting before the jury a suggestion which, however inadmissible as proof, might influence them in favor of the State. \* \* \* The ruling that the evidence was proper was an approval by the judge of a mere suggestion of guilt by the State without any proof, and must have been understood by the jury as meaning that it was of value as bearing on the present indictment, when in fact it was of no value, but was immaterial and irrelevant. That the defendant suffered manifest wrong and injury is obvious."

"Under section 1 of the Evidence Act (2 Comp. Stat., p. 2217), a person offered as a witness may only be asked, on cross-examination, if he has been convicted of a crime, for the purpose of effecting his credibility."

State vs. Quinlan, 86 N. J. L. 129 citing  
Roop vs. State, 58 N. J. L. 479.

In *Roop vs. State*, 58 N. J. L. 480, the defendant was asked, "Were you and Knopper indicted for keeping a disorderly house at Gloucester?" The question was allowed over objection. *Magie, J.* for the court said, "The question admitted against objection was plainly improper. It called for response as to a mere charge of a crime, in respect to which there was a presumption of innocence, while proof of the actual commission of a crime was inadmissible." See also *Fodor vs. Fuchs*, 79 N. J. L. 529. In 40 Cyc. 2603, par. II the rule is laid down that "It is not permissible for a party to bring out the fact that a witness has been accused of or arrested or indicted for a crime of which he is not shown to have been convicted, for the purpose of affecting his credibility."

See also *Pullen vs. Pullen*, 43 N. J. Equity 136; 6 Atl. 887.

In 40 Cyc. 2615 it is also held that it may not be shown that a witness is a violator of liquor laws.

The Court should have withdrawn a juror and directed a mistrial after its own statement that "That statement is prejudicial; please don't do that" (*State of Case*, page 76, line 35).

It is settled law that remarks of this nature are improper, and that the court should caution the jury to disregard them, when requested so to do by the defendant.

See *State vs. Hernia*, on page 304 of 68 N. J. L., where the matter is discussed, although in that particular case the court did caution the jury. The case is however, interesting as it treats of the subject matter.

The law seems to be that the court should be requested to caution the jury, and upon such request, and subsequent failure on the part of the court, error has been committed. In *State vs. Kroll*, 87 N. J. L. 331, the fact which prevented a reversal was the failure on counsel's part to request that the judge caution the jury; otherwise, by inference, it would appear that the Court of Errors and Appeals would have reversed the cause.

In *Hahn vs. D. L. & W. R. R.*, 93 N. J. L. 463 the Court of Errors and Appeals had the same question before it and cited the above cases in its opinion with approval. The opinion of the Supreme Court in the same case, 92 N. J. L. 277, goes into detail regarding the facts.

See also *Smith vs. Brunswick Laundry*, 93 N. J. L. 436, where the court said in regard to the failure of the trial judge when requested to instruct the jury: "A failure to do so, by the trial court, and exception thereto, would lay the basis for a valid assignment of error. It is the plain duty of the court, upon objections made, to interpose and a refusal of the court to interpose, where otherwise the right of the party would be prejudiced, is grounds for legal error" (Page 437, fifth line from bottom).

The Supreme Court in its opinion said that the defendant's story as to the cultivation of the land was improbable.

The attention of the Court is respectfully directed to the proof and corroboration of those facts as to the plowing of ground, and growing of vegetables. It is to be noted that some of the witnesses who corroborate this are State's witnesses.

Page 30, line 38, State of Case: Detective Geb-

hardt, on cross-examination, testified that part of the ground was tilled.

P. 66, line 39, State of Case. Thomas Beddoe, on cross-examination:

Q. Did you notice any tilled ground in the vicinity of the barns and house? A. No, sir, only where there was some lettuce, lot of lettuce that wasn't fit to be sold, all burnt up by the sun, he said it wasn't no good no more, quite a lot of that.

P. 67, State of Case. Thomas Beddoe on cross-examination:

Q. Did you notice any freshly plowed ground in the distance? A. Didn't go back that way.

P. 82, line 23. James Gambino, on cross-examination:

Q. Now, how many acres did you plow that morning? A. About two acres.

P. 86, line 1, State of Case. James Arborelli, on direct-examination:

Q. What was Jim doing? A. Plowing the ground with the tractor.

P. 92, line 21, State of Case. Salvatore Crissolini. Direct-examination:

Q. What was he doing? A. Plow the ground with the tractor.

P. 107, line 37, State of Case. Gottheil Reichert on cross-examination:

Q. What did you have planted, you said

you had some things planted? A. Yes, iceberg lettuce and spinach.

Q. And what else? A. And beets.

Q. Yes, that is beets, spinach, what else?  
A. And cabbage.

Q. Cabbage? A. And small celery.

## CONCLUSION.

### **Plaintiffs-in-error contend that this conviction should be reversed because**

(1) The Court should have directed a verdict of acquittal

(a) on motion of defendants at close of State's case.

(b) on motion of defendants on close of whole case.

(c) on the court's own motion, because of its personal expression of innocence.

(2) The verdict is improper because it

(a) is against the weight of the evidence.

(b) is contrary to the evidence.

(c) is illogical and inconsistent.

(d) is contrary to the law.

(3) The prosecutor asked improper and illegal questions

(a) in order to prejudice the jury against the defendants.

(b) in order to make the jury believe the defendants had been arrested for a similar crime previously.

(c) in order to influence the jury in favor of the State.

(d) in order to get before the jury statements inadmissible as evidence and not subject to proof in the trial.

(4) The Court should have declared a mistrial

(a) because of its statement "That statement is prejudicial".

**For these reasons the plaintiffs-in-error respectfully submit that the affirmance of the Supreme Court and the verdict of guilty should be reversed and the cause remanded to the Morris Quarter Sessions for a new trial.**

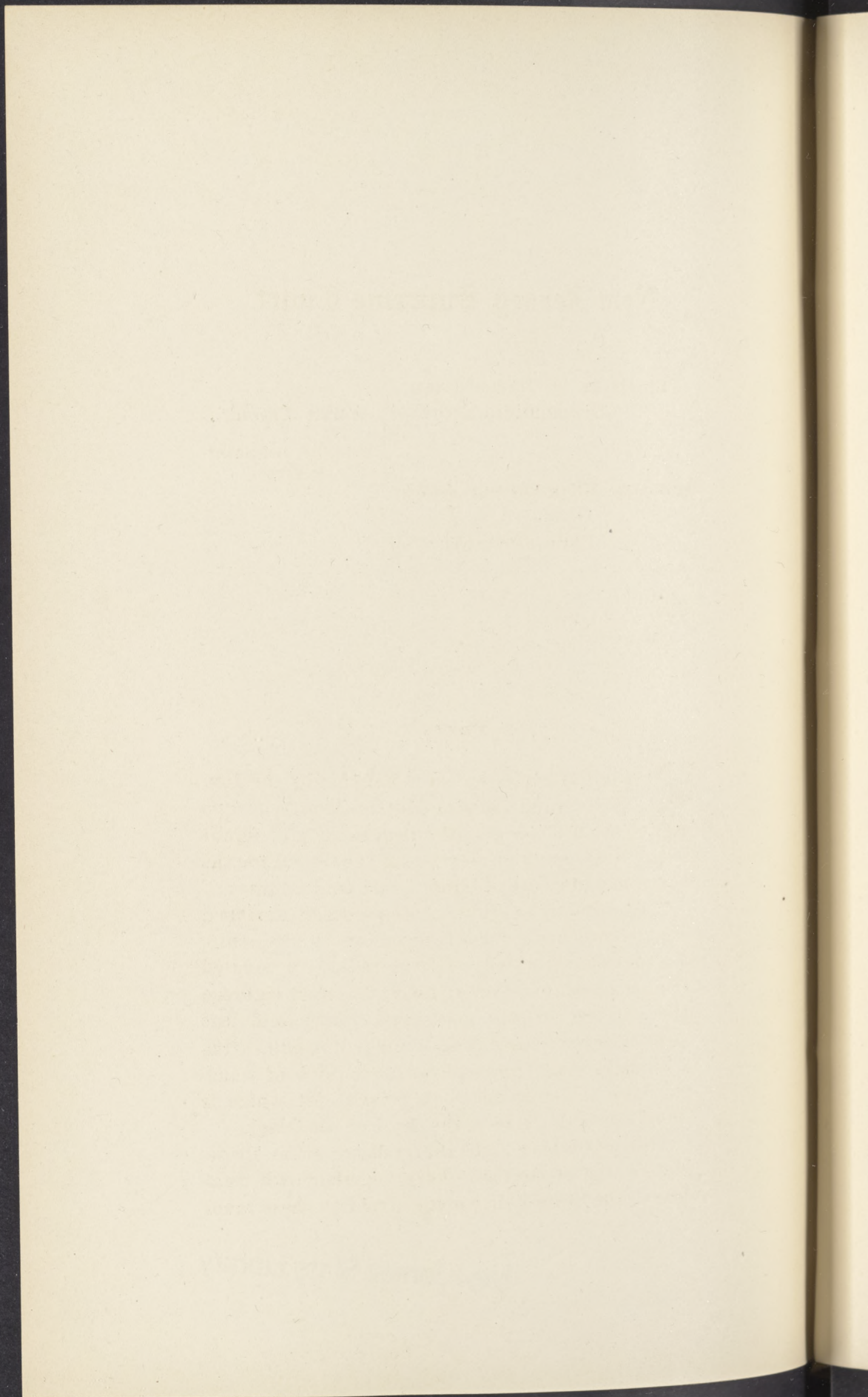
Respectfully submitted,

LEON E. CONE, and  
WILLIAM A. HEGARTY,  
Attorneys for and of Counsel with  
Plaintiffs-in-Error.

## New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY, Defendant-in-Error,	} On Writ of Error. } Brief of Defendant- } in-Error.
VS.	
GOTTHEIL REICHERT and JAMES GAMBINO, Plaintiffs-in-Error.	

The following brief was submitted to the New Jersey Supreme Court at the May Term of Court, 1928, and is herewith submitted to the Court of Errors and Appeals:



## New Jersey Supreme Court.

THE STATE OF NEW JERSEY,  
 Defendant-in-Error,  
 VS.  
 GOTTHEIL REICHERT and JAMES  
 GAMBINO,  
 Plaintiffs-in-Error.

On Writ of Error.

Brief of Defendant-  
 in-Error.

ORVILLE V. MESLAR,  
 Prosecutor of the Pleas,  
 Attorney for Defendant-in-Error.

### Facts.

The Plaintiffs-in-Error were indicted by the January, 1928, Grand Jury of Morris County on two counts, the first for the illegal possession of liquor in the said County of Morris and the second for the illegal manufacture of liquor in the said County.

The testimony shows that the defendant, Reichert, was the owner of a farm in Pequannock Township, Morris County, which was situated in an isolated spot on a private driveway about fifteen or eighteen hundred feet from a side road, which said last mentioned road was one and four tenths miles from a turnpike road (for a better description of which reference is hereby made to Exhibit S-1 which is found opposite p. 128 of the State of the Case).

That on October 25th, 1927, officers of the Prosecutor's staff of Morris County, together with members of the State Police made a raid on these prem-

ises and found after a search of the house, behind a trunk in a bed room, two jugs of liquor (Printed Case, p. 33, line 35). A search of the barn adjoining the house showed a still of a capacity of 150 gallons daily, in operation (Printed Case, p. 23, line 13). The defendant, James Gambino, was found in bed in the house adjoining the said barn, but defendant, Reichert, was not at the farm when the raid took place. Two other persons were found about the premises and were indicted with the plaintiffs-in-error, but at the trial the testimony showed that they had only arrived at the premises on the morning of the raid, and no connection could be shown with the operation of the still and they were acquitted at the trial.

Gambino, who had been on the premises since September 15, 1927 (P. C., p. 77, lines 20-21), offered as an explanation that he had come to the premises to work the land on a partnership basis with Reichert, as a truck farm, on that date and had been preparing the ground for the crops (in September and October) with a tractor and up to the time of the raid had plowed about six acres (P. C., p. 77, lines 23-25). That he slept in the house in said premises but had not been in the barn nor did he know anything about the still in the barn or the liquor in the house (P. C., p. 79, lines 30-40). The defendant Reichert offered as an explanation that he had leased the three barns to a man who he called Presca, who he had never seen before October 1st, 1927 for twenty-five dollars per month rent, not one month of which rent had ever been entirely paid (P. C., p. 104, lines 16-22), that Presca had told him, Reichert, that the place was to be used for a dyeing establishment (which would at least seem unbelievable considering the location of the premises), that since the rental he had not seen Presca around the barn, that he, Reichert, had never seen the still or the alcohol cans, although his house was

only eighty-five feet from the shed where the still was brought in and set up (P. C., p. 17, line 5), and there was nothing to obstruct the view from the house to said barn or shed.

At the trial in the Morris Quarter Sessions on February 21, 1928, the defendants were tried and found guilty as charged in the indictment, and on February 24, 1928, were each sentenced to serve three months in the county jail at hard labor and pay a fine of Five Hundred Dollars.

## ARGUMENT.

### POINT I.

The Trial Court did not err when it refused to direct a verdict of acquittal on the motion of the Plaintiffs-in-Error, because

1. As to the count of illegal possession there is certainly a *prima facie* case established by the following elements:

- (a) the finding of the liquor in the house.
- (b) the ownership of the house and buildings by Reichert.
- (c) the occupation of the house by Gambino.
- (d) the legal presumption as to the alcoholic content of the liquor as provided in the Hobart Act.

2. As to the count of illegal manufacture of liquor, the second count of the indictment, the following elements were before the Court:

- (a) the finding of the still in operation on the premises in question.

(b) the ownership of the premises by the defendant Reichert.

(c) the occupancy of the premises by Gambino.

All of the above elements were present when the State closed its case and when the first motion for a direction of a verdict of acquittal was asked, and the State respectfully submits that there was no error committed in refusing to direct the verdict at that time.

There was another motion for a direction of a verdict of acquittal made at the close of the entire case and it is the State's contention that there was no error committed in refusing to grant this request because there was present, besides the elements already enumerated under the first portion of this argument the fact that the defendant, Gambino, admitted that he was on the premises as a partner of Reichert, and that he had been there since September 15, 1927, and there is also the rather incredible statement by both defendants that, although they lived in the house on the premises in question, only eighty-five feet from the barn in which this large still was erected and was being operated, and from which still fumes exuded, which, according to the witness Cohen (P. C., p. 38, lines 20-35), could be detected one hundred feet from the public road which was 1,500 feet from the still, and there being no adjoining premises from which the fumes could come, and that although both defendants were about the premises most of the time, they did not know anything of the still nor had they seen it or did they know that such a thing was in operation.

It is a well settled principle of law that a motion for a direction of a verdict is a matter within the discretion of the Court and the State respectfully

contends that no error has been committed in view of the following cases:

- State vs. Brown*, 72 N. J. L. 354.  
*State vs. Terry*, 72 N. J. L. 375.  
*State vs. Lieberman*, 80 N. J. L. 506.  
*State vs. Metzgar*, 82 N. J. L. 749.  
*State vs. Morehous*, 97 N. J. L. 285.  
*State vs. Bricker*, 1 N. J. Adv. Rep. 122.  
*State vs. Rubin*, 1 N. J. Misc. 506.  
*State vs. Catania*, 134 Atl. (N. J.) 110.  
*State vs. Plough*, 88 N. J. L. 425.

## POINT II.

That there was evidence sufficient to sustain a verdict of guilty and that the verdict was not against the weight of evidence.

The State's case is substantially as set forth heretofore in the statement of facts and supplemented in Point I of the Argument, and reference is thereunto made and the State contends that it has proved the following elements:

1. The finding of the liquor.
2. The finding of the still in operation.
3. Both of the above found on the premises owned by the defendant Reichert.
4. The occupation of the house by Reichert and Gambino at the time of the commission of the offense.
5. The partnership between Gambino and Reichert.

The defendants' case is mainly an effort by the defendants to show that they knew nothing of the operation of the still, which is rather incredible

when the odor from the same could be detected nearly a quarter of a mile away, and an effort to place the blame on a lessee, who they did not produce.

It is respectfully submitted that the State presented a *prima facie* case to the jury and that the verdict was not against the weight of the evidence and should be sustained.

“It might very well be that the testimony tending to establish the guilt of the plaintiff-in-error is of such meagre and attenuated character that tested by a strict analysis it is not clearly convincing of the guilt of the plaintiff-in-error; and even though it may appear to us that on a motion for a new trial, in the trial court, such a motion might properly prevail, nevertheless, such a situation affords no legal ground for disturbing the verdict in this case here so long as there is some testimony, no matter how slight, tending to support the finding of the jury.”

*State vs. Young*, 93 N. J. L. 397.

### POINT III.

The Plaintiffs-in-Error complain that certain questions were asked by the Prosecutor which were improper and prejudicial to them.

The first question which was “Weren’t you supposed to be tried in Court?” was embodied in the second question which was, “Weren’t you supposed to be tried in Court on September 28th and didn’t appear and forfeited your bail?”

This question was answered by the defendant in the negative (P. C., p. 73, line 40; p. 74, lines 1-9) without objection being made by the counsel of the defendants until after the question had been answered.

The 3rd question “Weren’t you arrested on or about September 28th by Prohibition Agents in Lodi and placed in Custody?”

This question was objected to and the Prosecutor made the following statement:

"If your Honor please, it isn't because it is in particular reference to this cause, this man has already sworn before this jury on September 15, he went to work for Reichert and worked continually from then on until his arrest October 25th, and I am asking him now to test his veracity to find out whether he stated the truth or not, whether on September 28th he was arrested by Prohibition Agents."

This statement clearly shows that the purpose of the question was not to prejudice the defendant but for the reason stated.

The other questions complained of were along the same line and were asked to test the credibility of the witness and were objected to and not answered and were therefore not prejudicial to the defendants.

The rule of law in respect to the above state of facts is clearly set forth in the case of the *People vs. Stilwell*, 148, N. Y. S. 59, in which case the appeal was dismissed in the N. Y. Court of Appeals in 108 N. E. 1104.

"The action of the Court in permitting the District Attorney to ask questions which he knew were incompetent and for the purpose of getting before the jury indirectly what he could not do directly was not ground for reversal, where objections to most of the questions were sustained, and as to the others, the answers were favorable to accused."

The State contends that no reversible error has been committed and that the conviction should be affirmed.

Respectfully submitted,

ORVILLE V. MESLAR,  
Prosecutor of the Pleas,  
County of Morris.

The following is a copy of the Supreme Court opinion rendered during the May Term, 1928.

<p style="text-align: center;">"THE STATE OF NEW JERSEY, Defendant-in-Error,  vs.  GOTTHEIL REICHERT and JAMES GAMBINO, Plaintiffs-in-Error.</p>	}
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Before Justices Trenchard, Kalish and Lloyd.

For the Plaintiffs in Error, Leon E. Cone and William A. Hegarty.

For the Defendant in Error, Albert H. Holland.

*Per Curiam.* This is an appeal by the defendants from a conviction on an indictment charging the possession of intoxicating liquors and its unlawful manufacture. The case is here both on bills of exception and on a certificate under the one hundred and thirty-sixth section of the Criminal Procedure Act.

In the assignments of error and in the specifications of causes for reversal the defendants urge that the judgment should be reversed on three grounds.

1. That the learned trial judge improperly denied the defendants' motion for a direction of a verdict of not guilty, which motion was made both at the close of the State's case and again at the conclusion of the entire case.

2. That the verdict is against the weight of the evidence.

3. That the Court should have withdrawn a juror on motion of defendants' counsel because of certain questions propounded to the appellant Gambino.

An examination of the record convinces us that none of these grounds of appeal or causes for reversal are sufficient to justify disturbance of the verdicts and judgments rendered thereon.

The appellant Reichert is the owner of a small farm situate in a remote section of Morris County, distant about fifteen hundred feet from any public road and on which was located a residence and barn adjoining. A portion of the farm was operated as a truck farm and in its operation Gambino was a partner. On October 25, 1927, a raid was made on the premises by county officials and members of the State police. In the barn was found a still of one hundred and fifty gallons capacity in active operation. In the house behind a trunk in a bedroom two jugs of intoxicating liquor were found. From the still fumes were emanating which could be readily detected by their odor a distance of one hundred feet. Gambino was found in bed in the house at the time. Reichert was absent. When the raid was made another man, seeing the detectives, started to run but was caught. At the direction of the officers, Gambino and two others, also found on the place, disconnected and dismantled the still. The explanation given by Gambino of his presence on the place was that he was engaged in the joint business of trucking on the farm with the owner and had been since September 15th, and that from that time until the raid was made had been engaged in preparing the ground for crops.

These facts we think combined to make a *prima facie* case justifying its submission to the jury at the conclusion of the state's proof. These proofs were measurably increased by the improbable story told by Gambino and Reichert as to the cultivation

of soil for trucking purposes from the middle of September until the latter part of October, and the like improbable story of Reichert that he had leased the barn on October 1st to a man named Presca, a man he had never seen before or since. It is incredible that on a small place so situated those in charge of its operation should have known nothing of the existence of a still in the barn, a building ordinarily used in conjunction with farming purposes, and that still emitting odors detectable at the distance named.

The conclusion we reach is that the trial judge was right in refusing to take control of the case from the jury and we think that the jury did no violence to the evidence in finding the defendants guilty.

The questions objected to were directed to the defendant Gambino on cross-examination, and were to ascertain his whereabouts in view of his previous statements that he had worked constantly at the farm from September 15th. In view of these statements, the questions were not objectionable.

The judgment is affirmed."

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**The State contends that no reversible error has been committed and that the conviction should be affirmed.**

Respectfully submitted,

ORVILLE V. MESLAR,  
Prosecutor of the Pleas, County of Morris.

