

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

BULLETIN 745

JANUARY 14, 1947.

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

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JANUARY 14, 1947.

1. SEIZURE - FORFEITURE PROCEEDINGS - RESTAURANT OWNER'S EQUIPMENT AND STOCK ORDERED FORFEITED BECAUSE OF UNLAWFUL SALE OF ALCOHOLIC BEVERAGES - OWNER'S APPLICATION FOR RETURN OF EQUIPMENT DENIED - CLAIMANTS TO MUSIC BOX AND REFRIGERATOR ESTABLISHED THEIR GOOD FAITH AND ABSENCE OF KNOWLEDGE OF OR REASON TO SUSPECT SPEAKEASY ACTIVITIES AT ESTABLISHMENT - MUSIC BOX RETURNED - CLAIM FOR AMOUNT OF LIEN ON REFRIGERATOR ALLOWED.

In the Matter of the Seizure )  
on August 29, 1946, of a quantity )  
of alcoholic and other beverages )  
and foodstuffs, a music box, a )  
peanut vending machine, a )  
refrigerator, a cash register, and )  
other furnishings and fixtures at )  
premises located at Arnold and )  
Trenton Avenues, in the Borough of )  
Point Pleasant, County of Ocean and )  
State of New Jersey. )  
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Case No. 7041

ON HEARING  
CONCLUSIONS AND ORDER

Nicholas J. Cafarelli, Esq., Attorney for Nazzareno Giordano.  
Samuel M. Hollander, Esq., Attorney for Super-Cold New York Co., Inc.  
Casino Amusement Co., by Willard Ashmore, Vice-President.  
Harry Castelbaum, Esq., appearing for State Department of Alcoholic  
Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic and other beverages and foodstuffs, and furnishings and fixtures, described in a schedule attached hereto, seized on August 29, 1946 in a restaurant located at Arnold and Trenton Avenues, Point Pleasant, New Jersey, constitute unlawful property and should be forfeited.

This restaurant, owned by Nazzareno Giordano, is not licensed for the sale of alcoholic beverages. On August 29, 1946 an ABC agent entered the restaurant to check a specific complaint which the State Department of Alcoholic Beverage Control had received that wine was being sold there with meals.

The agent ordered a meal, including wine, from Giordano, who then served the agent with a cup of wine and accepted payment therefor. The agent then disclosed his identity and obtained a signed statement from Giordano in which Giordano acknowledged making the sale of wine to the agent, and further acknowledged that he had been selling wine in his restaurant during the summer.

Giordano was arrested and his stock of wine and other alcoholic beverages and foodstuffs and the equipment in the restaurant were seized.

The evidence clearly establishes that the seized wine was intended for sale at this unlicensed restaurant. It is probable that the other alcoholic beverages were likewise possessed for that purpose. Hence, such alcoholic beverages are illicit. R. S. 33:1-1(i). Such illicit alcoholic beverages, together with the other beverages, foodstuffs and the other personal property, the equipment of the restaurant, constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R. S. 33:1-2, R. S. 33:1-66.

When the matter came on for hearing pursuant to R. S. 33:1-66, counsel for Super-Cold New York Co., Inc. entered its appearance and sought return of a refrigerator; Willard Ashmore appeared for the

Casino Amusement Co. and sought return of a music box, and Nazzareno Giordano appeared with counsel and sought return of the balance of the seized property. All of these persons conceded that such seized property was legally subject to forfeiture, but sought to invoke my discretionary authority to waive such forfeiture.

Under R. S. 33:1-66(e) and (f), I have the discretionary authority to return property subject to forfeiture to a person who has established to my satisfaction that he acted in good faith and (1) that he unknowingly violated the law, or (2) that he had no knowledge of the unlawful use to which the property was put, or of such facts as would have led a person of ordinary prudence to discover such use.

Giordano rests his case for return of the property on the single ground that forfeiture thereof will impose a financial loss which he can ill afford to suffer. According to Giordano, he has been employed as a laborer for many years and this was his first business venture, in which he invested his entire savings of about \$3,000.00. He has had the restaurant for about a year, with himself and his wife as the only employees, and has earned a meagre living.

Even if Giordano's story, with its sympathetic aspects, is accepted at face value, it cannot relieve him from forfeiture of the seized property. The background of the operator of a speakeasy and the extent to which he will suffer by loss of the seized property are immaterial in deciding his application to be relieved of forfeiture. See Seizure Case 7002, Bulletin 731, Item 2, and Seizure Case 7003, Bulletin 731, Item 3, which set forth in detail the reasons underlying this principle. Mr. Giordano's application for return of the seized property is therefore denied.

The claimants for the return of the music machine and the refrigerator assert that they are innocent parties.

According to Mr. Ashmore, of the music company, the music machine was placed in Giordano's restaurant about September, 1945, after he visited the place and observed that it was a small restaurant. Thereafter he was there on a few occasions and other employees went there to service the machine. The income from the machine was a little below the average for similar locations. There were no alcoholic beverages on display when Mr. Ashmore was at the restaurant and he had no knowledge, or reason to suspect, that alcoholic beverages were being sold there.

The evidence presented on behalf of the Super-Cold New York Co., Inc. is to the effect that in June, 1945, one of its salesmen contacted Giordano when he was about to open his restaurant and sold him the refrigerator in question, on a conditional sales contract, for the sum of \$835.00, of which \$100.00 was paid in cash, the balance to be paid in installments of \$30.00 a month.

When making the sale, the salesman obtained from Giordano various details of his new venture, in the form of a signed statement, which included the fact that Giordano did not have a liquor license.

The refrigerator was delivered on June 28, 1945. The salesman had lunch at the restaurant on several occasions during the summer and fall of 1945, and did not witness any sales of alcoholic beverages or have any reason to suspect that Giordano was selling alcoholic beverages.

Both claimants have established to my satisfaction that they placed their respective equipment in Giordano's restaurant in good faith and without any reason to suspect that he would ultimately engage in the unlawful sale of alcoholic beverages. The place was a typical small restaurant. Giordano does not appear to have had a reputation for unlawful alcoholic beverage activity or a criminal record for violating any liquor laws. The music box will therefore be returned to the Casino Amusement Co. upon payment of the costs of its seizure and storage.

The unpaid installments on the conditional sales contract of the refrigerator from the date of the seizure total \$315.00. I will recognize its claim against the refrigerator to that amount. The value of the refrigerator appears to exceed the amount of the lien and the Director of Purchase and Property of the Department of Taxation and Finance advises that it is interested in retaining such refrigerator for the use of the State. Hence, an order will be entered retaining the refrigerator for the use of the State, conditioned upon the payment of the lien claim thereon of \$315.00.

Accordingly, it is DETERMINED and ORDERED that the refrigerator described in Schedule "A" attached hereto constitutes unlawful property and the same be retained for the use of the State of New Jersey, conditioned upon payment to Super-Cold New York Co., Inc. of its lien claim in the amount of \$315.00; and it is further

DETERMINED and ORDERED that, if upon or before the 13th day of January, 1947, Casino Amusement Co. pays the costs of seizure and storage of the music box, it will be returned to such company; and it is further

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

ERWIN B. HOCK  
Deputy Commissioner.

Dated: January 3, 1947.

SCHEDULE "A"

- 15 - gallon jugs of wine
- 6 - bottles of other alcoholic beverages
- 9 - tables
- 32 - chairs
- 1 - Wurlitzer music box, Serial No. 207782, Model 616A and currency therein
- 1 - peanut vending machine
- 1 - refrigerator, Serial No. S8287M52R
- 1 - National cash register
- 1 - heater
- 261 - bottles of soda
- 3 - cases Premier Raviola
- 19 - packages capelleni
- 6 - cans orange juice
- 24 - cans tomatoes

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

In the Matter of Disciplinary Proceedings against )  
 ANTONI IVANOWSKI )  
 T/a OLLY'S CAFE )  
 623 Van Houten Avenue )  
 Clifton, N. J., )  
 Holder of Plenary Retail Consumption License C-37 issued by the )  
 Municipal Council of the City of )  
 Clifton. )

CONCLUSIONS AND ORDER

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

The defendant pleaded non vult to a charge alleging that he possessed one 4/5 quart bottle of "Old Overholt Straight Rye Whiskey", one 4/5 quart bottle of "Calvert Special Blended Whiskey" and one 4/5 quart bottle of "Schenley Reserve Blended Whiskey", all of which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

On October 16, 1946, an inspector of the Alcohol Tax Unit, Internal Revenue Service, seized the bottles mentioned in the charge when his preliminary tests indicated that the contents thereof were not genuine as labeled. Subsequent analyses by the Federal chemist disclosed that the contents of the three bottles varied substantially in solids and acids from the contents of genuine samples of the same product, and that the "Old Overholt" contained only 5% natural coloring instead of 100% natural coloring.

Defendant alleges that he did not tamper with the seized bottles, but a licensee, even if personally innocent, must nevertheless be held responsible for any "refills" possessed on his licensed premises. Re Kurian, Bulletin 517, Item 2.

Defendant has no prior adjudicated record. Defendant's license will be suspended for a period of twenty days. Five days will be remitted for the plea, leaving a net suspension of fifteen days. Re Zeidner, Bulletin 680, Item 2; Re Gelb, Bulletin 741, Item 8.

Accordingly, it is, on this 6th day of January, 1947,

ORDERED that Plenary Retail Consumption License C-37, issued by the Municipal Council of the City of Clifton to Antoni Ivanowski, t/a Olly's Cafe, for premises 623 Van Houten Avenue, Clifton, be and the same is hereby suspended for fifteen days. Pursuant to Notice of August 23, 1946, Bulletin 727, Item 12, the effective date of said suspension is reserved for future determination.

ERWIN B. HOCK  
 Deputy Commissioner.

3. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - SALE AND SERVICE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS (SUNDAY), IN VIOLATION OF MUNICIPAL ORDINANCE - SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION DURING PROHIBITED HOURS - SALE OF ALCOHOLIC BEVERAGES CONTRARY TO TERMS OF LICENSE - HINDERING AND FAILING TO FACILITATE AN INVESTIGATION - PREVIOUS RECORD - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against )  
 THIRTEENTH WARD ITALIAN AMERICAN )  
 CITIZENS DEMOCRATIC CLUB )  
 1300 Decatur Street )  
 Camden, N. J., )  
 Holder of Club License CB-6, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden. )

CONCLUSIONS AND ORDER

Malandra & Tomaselli, Esqs., by Angelo D. Malandra, Esq.,  
 Attorneys for Defendant-licensee.  
 Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant-licensee, through its attorney, pleads non vult to (1) sales and service of alcoholic beverages on Sunday, October 13, 1946, in violation of a municipal ordinance; (2) sales and delivery of alcoholic beverages in original containers for off-premises consumption on Sunday, October 13, 1946, in violation of Rule 1 of State Regulations No. 38; (3) sale of alcoholic beverages for off-premises consumption in violation of Rule 8 of State Regulations No. 7, and (4) hindering and failing to facilitate the investigation made herein, in violation of R. S. 33:1-35.

The file herein discloses that on Sunday, October 13, 1946, at about 2:00 p.m., two ABC agents observed a man carrying a carton leave defendant's premises and place the carton in an automobile parked at the curb. Upon examination of the carton it was found to contain eight 4/5 quart sealed bottles of wine. After some persuasion, according to the investigators' reports, the owner of the wine was induced to return to the licensed premises. Upon arrival at the club entrance, the door was opened from the inside and the owner of the wine was admitted, but immediately thereafter the door was closed and locked so that the investigator who had accompanied the man was precluded from gaining admission. Some time thereafter the door was opened and both investigators were admitted.

The investigators observed several men in the premises. Although there were no drinks to be seen, the ABC investigators found a carton containing ten empty beer bottles, several of which were still cold, and several glasses which indicated that they had just been washed.

Aside from the other charges mentioned herein, this is the third violation for Sunday sales. Defendant's license was suspended for five (5) days by the local issuing authority, effective June 19, 1939, when found guilty of sales of alcoholic beverages on Sunday and sales to non-members and again for thirty-five (35) days, effective December 18, 1944, by the State Commissioner for Sunday sales and sales of alcoholic beverages to non-members. Inasmuch as the defendant has already been penalized twice for sales during prohibited hours, it is quite apparent that utter disregard and disrespect for the law have been shown. In addition to being guilty

in the instant case of Sunday sales, it has committed other offenses as well. Under the circumstances, I have no alternative but to revoke the defendant's license.

Accordingly, it is, on this 6th day of January, 1947,

ORDERED that Club License CB-6, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to the Thirteenth Ward Italian American Citizens Democratic Club, for premises 1300 Decatur Street, Camden, be and the same is hereby revoked, effective immediately.

ERWIN B. HOCK  
Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES FROM AN UNLAWFUL SOURCE - ILLICIT LIQUOR BEARING COUNTERFEIT FEDERAL TAX STAMPS - LICENSE SUSPENDED FOR A PERIOD OF 60 DAYS.

In the Matter of Disciplinary Proceedings against

CHARLES FORTENBACHER  
T/a SPRING LAKE GOLF & COUNTRY CLUB  
Warren Avenue  
Spring Lake Heights, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Spring Lake Heights.

John J. Meehan, Esq., Attorney for Defendant-licensee.  
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleaded not guilty to the following charges:

"1. During the months of May and June, 1946, you, a New Jersey retail licensee, without authority of special permit, purchased alcoholic beverages from a person who was not the holder of a New Jersey manufacturer's or wholesaler's license, in that you purchased various cases of simulated Scotch whisky during said period from Burnest G. Jones, a non-licensee; one of said purchases being in or about the month of May, 1946, and the other of said purchases being in or about the month of June, 1946; both such purchases being in violation of Rule 15 of State Regulations No. 20.

"2. On or about July 9, 1946, you possessed illicit alcoholic beverages at your licensed premises, viz., 1 - 4/5 quart bottle labeled 'Canadian Club Blended Canadian Whisky', and 1 - 4/5 quart bottle labeled 'Ballantine's Blended Scotch Whisky', which bottles contained alcoholic beverages not genuine as labeled, and upon which bottles of alcoholic beverages the federal tax had not been paid and which bottles had affixed thereto counterfeit federal tax stamps; such possession being in violation of R. S. 33:1-50."

Two investigators of the Alcohol Tax Unit, Bureau of Internal Revenue, testified that on July 9, 1946 they seized a 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky" and a 4/5 quart bottle labeled "Ballantine's Blended Scotch Whisky" on defendant's licensed premises because the tax stamps on the bottles appeared to

be counterfeit. A Federal Secret Service Agent testified that he examined the tax stamps in question and that the stamps on the bottle of "Canadian Club" whiskey and those on the neck of the bottle of "Ballantine's Scotch" were counterfeit.

Burnest G. Jones, a non-licensee, testified that he made deliveries of Scotch whisky to defendant on two separate occasions. Jones further testified that, during May, 1946, he delivered four cases or 48 bottles of "Scotch" whisky to defendant, and that about the first of June or the last of May, 1946, he again delivered two cases of liquor to defendant. On each occasion, according to Jones' testimony, defendant was present, accepted the delivery of the whiskey and paid Jones for it.

Defendant testified that Jones called at his place of business for the purpose of selling liquor to him. On that occasion Jones had in his possession two open bottles of whiskey, one labeled "Scotch" and the other "Rye". Defendant, however, contends that, being busy at the time, he advised Jones he was not interested in purchasing any liquor from him and warned Jones that he would be involved in trouble with the "ABC". Further, defendant testified that he could not account how the two bottles of liquor displayed by Jones on the aforementioned visit got into his stock of liquor.

I am satisfied from the evidence in the instant case that defendant purchased liquor from Jones in the manner described. Discovery by the Federal agents of two bottles of whiskey bearing counterfeit stamps in defendant's stock of liquor adequately confirms the illegal transaction. I find defendant guilty of charge (1) preferred against him.

Chemical analyses by a Federal chemist of the two bottles of liquor in question disclosed that each contained alcoholic beverages not genuine as labeled. I therefore find defendant guilty of charge (2).

The defendant's record, except for the violations cited herein, is clear. This is an unusual case and differs from that wherein one retailer purchases tax-paid alcoholic beverages from another retailer. Under all of the circumstances, I shall suspend the license for a period of sixty (60) days.

Accordingly, it is, on this 6th day of January, 1947,

ORDERED that Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Spring Lake Heights to Charles Fortenbacher, t/a Spring Lake Golf & Country Club, for premises on Warren Avenue, Spring Lake Heights, be and the same is hereby suspended for a period of sixty (60) days, commencing at 2:00 a.m. January 13, 1947, and terminating at 2:00 a.m. March 14, 1947.

ERWIN B. HOCK  
Deputy Commissioner.

5. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT ALCOHOL AND MOTOR VEHICLE ORDERED FORFEITED - APPLICATION BY OWNER FOR RETURN OF MOTOR VEHICLE DENIED.

In the Matter of a Seizure on April 29, 1946 of twenty-one five-gallon cans of alcohol, one other container with alcohol, three empty five-gallon cans and a Plymouth Coupe, in a garage located at 824 Merrick Avenue, in the Borough of Collingswood, County of Camden and State of New Jersey.

Case No. 6978

ON HEARING CONCLUSIONS AND ORDER

Malandra & Tomaselli, Esqs., by Joseph Tomaselli, Esq., Attorney for Joseph Jans. Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether 21 five-gallon cans of alcohol, one other container of alcohol, three empty five-gallon cans and a Plymouth coupe, seized on April 29, 1946 in a garage located at 824 Merrick Avenue, Collingswood, New Jersey, constitute unlawful property and should be forfeited.

At about 8:00 p.m. on the day in question, Joseph Jans, the garage tenant, drove his Plymouth Coupe into the garage at the above premises. He was apprehended a few minutes thereafter by a local police officer as he came from the garage because the officer, together with a fellow officer and ABC agents, had earlier that day discovered 17 five-gallon cans of alcohol in a cabinet in the garage, four other five-gallon cans of alcohol covered with a tarpaulin, and a five-gallon army gas can partially filled with alcohol, on the garage floor.

According to the ABC agents, when they questioned Jans he told them that he was the owner of the alcohol and asked them to give him a "break"; that he was on parole and his time was about up. Jans was arrested and charged with possessing illicit alcoholic beverages, and the alcohol and automobile were seized.

The alcohol was prima facie illicit because its containers did not bear any tax stamps or other indication that any alcoholic beverage tax thereon had been paid. R. S. 33:1-1(i), R. S. 33:1-88. Illicit alcoholic beverages and all personal property located in or upon any premises, building, yard or enclosure connected with a building, in which an illicit beverage is found, possessed, stored or kept, are subject to seizure and forfeiture as unlawful property. In addition, a vehicle used, or intended to be used, for the transportation of illicit alcoholic beverages, constitutes unlawful property and is subject to seizure and forfeiture. R. S. 33:1-1(y), R. S. 33:1-66.

When the matter came on for hearing pursuant to R. S. 33:1-66, no one appeared to oppose forfeiture of the alcoholic beverages. However, Joseph Jans appeared with counsel and sought return of the Plymouth sedan, claiming that he was not the owner of the alcohol, was unaware of its presence in the garage, and came to the garage merely to leave some tools.

Under R. S. 33:1-66(e), I have the discretionary authority to return property subject to forfeiture to a person who has established to my satisfaction that he acted in good faith and unknowingly

violated the law. Hence, Mr. Jans' disavowal of any connection with the alcohol must be considered in the light of his past record.

In August 1936, Jans pleaded guilty in Camden Police Court to the charge of possessing illicit alcoholic beverages and was fined \$200.00. This case involved the seizure by Camden police officers of 25 five-gallon cans of illicit alcohol in a garage in that city.

In 1939 Jans pleaded non vult in the Camden County Court of Special Sessions to the charge that he possessed and transported illicit alcoholic beverages, was fined \$350.00, given a suspended sentence of from one to one and a half years in New Jersey State Prison and placed on probation for two years. In this case he was caught while transporting 20 five-gallon cans of illicit alcoholic beverages in a Dodge sedan.

In April 1944, Jans, through an attorney, inquired of the State Department of Alcoholic Beverage Control whether, in view of these convictions, he was eligible to engage in the liquor industry inasmuch as he intended to open a tavern or seek employment as a bartender. He was advised that he was, by reason of these convictions, mandatorily disqualified by the provisions of R. S. 33:1-25 and 26.

Hence, the logical explanation of Jans' activities at the garage is that, ruled ineligible from a legitimate connection with the liquor industry, he continued his illegal activities in that line. However, he was afforded full opportunity to establish that such was not the fact and if he presented any credible evidence that he had actually turned away from unlawful traffic in liquor and was entirely innocent of any wrongdoing on this occasion, I would unhesitatingly return the car to him.

According to Jans, he had been unemployed since the Spring of 1944 except for odd jobs which he estimates give him an income of a few hundred dollars a year, meanwhile living on his savings. Since the Spring of 1945, he has resided at a boarding house. He says that he formerly had fishing tackle, mechanic's tools and odds and ends stored with various friends; that in the Fall of 1945 he rented the garage in question (two miles from his residence) for the sole purpose of storing these articles but did not keep his car there; that by the Winter of 1945 there was nothing there but a few tools, stocks and dies and some fishing equipment. He claims that he continued to pay the monthly rental of \$5.00 (\$10.00 according to the landlord) for the convenience of storing these few items.

If Jans was at the garage on an innocent mission, it is difficult to perceive why he would not, then and there, tell the officers the story which he now gives. Instead, he said nothing at all to this effect, initially claiming only that he was at the garage because it was his. So far as appears, the officers have no reason to accuse Jans unjustly. Jans said he was "scared to death" because he had recently received a letter about a pardon and hoped soon to get into the liquor business. I doubt very much that, even under those circumstances, he was so "scared to death" that finally he would confess to the ownership of the alcohol (distinctly and positively recollected by the officers) and, in addition, admit that he would suffer a loss of at least \$1,000.00 which he had paid for the alcohol.

I cannot accept Jans' tale of innocent activities in the face of his admissions to the ABC agents and strong circumstantial evidence in corroboration. In the first place, the whole affair follows with exactitude the pattern of his previous unlawful operations involving illicit liquor. In the second place, I would have to disregard sheer realism if I were to accept his story that he used only an undivided half of the garage for storage of a few small items, did not know that the alcohol was in the other half, and was there at the time in question on a wholly innocuous mission.

Accordingly, I find as a fact that the Plymouth Coupe is subject to forfeiture because it was found in the garage where illicit alcoholic beverages were stored and seized. I further find as a fact that the Plymouth Coupe is also subject to forfeiture because it was used or adaptable for use for the transportation of said illicit alcoholic beverages. Cf. Patrick v. Driscoll, 132 N.J.L. 478. I further find as a fact that Jans did not act in good faith and deliberately violated the law. His application for return of the motor vehicle is therefore denied.

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

Dated: January 6, 1947.

ERWIN B. HOCK  
Deputy Commissioner.

\* SCHEDULE "A"

- 21 - five-gallon cans of alcohol
- 1 - can with alcoholic beverages
- 3 - empty five-gallon cans
- 1 - Plymouth Coupe, Serial No. 11273554,  
Engine No. P-12302838, bearing 1946  
New Jersey registration CB-21-B

6. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING MATERIAL FACT - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS, LESS 5 FOR PLEA - CANCELLATION PROCEEDINGS DISCONTINUED.

In the Matter of Disciplinary Proceedings against )

JAMES SLATTERY & CORNELIUS RYAN )  
 T/a RYAN'S TAVERN )  
 447 Henderson Street )  
 Jersey City 2, N. J., )

Holder of Plenary Retail Consumption License C-194 issued by the Board of Commissioners of the City of Jersey City, and now held by )

CORNELIUS RYAN )  
 T/a RYAN'S TAVERN, )

for the same premises. )  
 ----- )

CONCLUSIONS AND ORDER

William T. Cahill, Esq., Attorney for Defendant-licensees.  
 Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendants have pleaded non vult to charges alleging that in their application for renewal of their current plenary retail consumption license they falsely answered "No" to Question 33, which asks: "Have you or has any person mentioned in this application ever been convicted of any crime?"

Defendants were also required to show cause why the aforesaid license should not be cancelled and declared null and void for the reason that said license was improvidently issued in violation of R. S. 33:1-25 in that one of the partners, Slattery, was disqualified by reason of the conviction of a crime involving moral turpitude.

The records show that on February 13, 1929, James Slattery pleaded guilty in a Federal Court to an indictment for "stealing, receiving and obtaining by fraud and deception, goods stolen from Interstate Commerce." On September 30, 1929 he was sentenced to two weeks in jail and placed on probation for one year. Such an offense involves moral turpitude.

The partnership first obtained its license on October 2, 1945 by a transfer from one Harry Kirichenko. The conviction in question was not revealed in the application for transfer or in the application for renewal for the current year 1946-47.

Shortly prior to the date fixed for hearing, counsel for the defendants appeared and, in addition to entering a plea of non vult, stated that Slattery was planning to dispose of his interest to the other partner, Cornelius Ryan, and furnished copies of such an agreement as well as bill of sale transferring from Slattery to Ryan all his right, title and interest in and to the said business, together with all goods and chattels described in the schedule annexed to the bill of sale. This Department is now advised by the municipality that Slattery is no longer interested in the license or the business conducted thereunder.

Since it appears that the illegal situation has been corrected by Slattery's complete divorcement from the license and the business conducted thereunder, the cancellation proceedings will be discontinued. The defendants, however, must be penalized for the violation

which was committed. Defendant Slattery is no longer connected with the licensed business. The suspension, therefore, can affect only defendant Ryan. The evidence indicates that Ryan neither knew nor had any reason to believe that his partner had been convicted of a crime. Under all the circumstances, I shall suspend the license for the minimum period of twenty days, less five days for the plea, making a net suspension of fifteen days.

Accordingly, it is, on this 7th day of January, 1947,

ORDERED that Plenary Retail Consumption License C-194, issued by the Board of Commissioners of the City of Jersey City to James Slattery and Cornelius Ryan, t/a Ryan's Tavern, for premises 447 Henderson Street, Jersey City, and now held by Cornelius Ryan, t/a Ryan's Tavern, for the same premises, be and the same is hereby suspended for fifteen days, commencing at 2:00 a.m. January 14, 1947, and terminating at 2:00 a.m. January 29, 1947.

ERWIN B. HOCK  
Deputy Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION IN OTHER THAN ORIGINAL CONTAINER - WHISKEY REBOTTLED CONTRARY TO TERMS OF LICENSE - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING MATERIAL FACT - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

EMIL KLUCKE )  
T/a EMIL'S BAR & GRILL )  
111-113 Park Street )  
Orange, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-25, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange. )  
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Kasen, Schnitzer & Kasen, Esqs., Attorneys for Defendant-licensee.  
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to charges that (1) he sold alcoholic beverages for off-premises consumption in other than original containers, in violation of R. S. 33:1-2; (2) bottled alcoholic beverages (whiskey) for resale, in violation of R. S. 33:1-78; and (3) falsified his application for his current license by failing to disclose a suspension of a prior license held by him in 1943, in violation of R. S. 33:1-25.

On Sunday, September 22, 1946, at about 1:15 p.m., an investigator of the State Department of Alcoholic Beverage Control observed the licensee, after a whispered conversation with another customer, take an empty pint bottle labeled "Calvert Reserve Blended Whiskey" and a 4/5 quart bottle labeled "Haviland Blended Whiskey", three-quarters full, into a back room. Returning, the licensee replaced the bottle labeled "Haviland", now nearly empty, on the back bar and handed the pint labeled "Calvert Reserve" to his customer, accepting some money therefor. The customer left and was followed by the investigator who, when joined by another investigator near the tavern of the licensee, stopped the customer and found in the customer's possession the pint bottle labeled "Calvert Reserve", now filled with whiskey but not sealed. Returning to the tavern, the investigators

then seized the nearly empty bottle of "Haviland". Subsequent analysis of the contents of the two bottles by the Department chemist disclosed the fact that said contents apparently are the same and that the whiskey in the "Calvert" bottle does not at all compare with genuine Calvert Reserve Blended Whiskey of like formula.

Defendant offers by way of mitigation with respect to charges (1) and (2) the alleged fact that the customer had pleaded with him for the liquor, claiming that he was sick and needed it. However, the sale of whiskey in an open container for off-premises consumption is contrary to the terms of the license and the excuse offered for the violation cannot be accepted. Re Development Syndicate, Inc., Bulletin 587, Item 3.

Although the sale referred to in charge (1) was not technically in violation of Rule 1 of Regulations No. 38 because the sale was not made in an original container, it was contrary to the spirit thereof since it was made on a Sunday when the sale of whiskey for off-premises consumption is prohibited. The aforesaid rule cannot be circumvented merely by pouring whiskey from one bottle to another. This circumstance will, therefore, be considered as aggravation in determining the penalty.

Defendant's prior record discloses two suspensions by the local issuing authority, one in 1938, for a period of twenty-four days, on a charge of "permitting a brawl on licensed premises", -- affirmed by the Commissioner of Alcoholic Beverage Control on appeal -- see Klucke v. Orange, Bulletin 256, Item 3; the other in 1943, for a period of fifteen days, on conviction of a charge of "allowing book-making on licensed premises".

Under all of the circumstances, I shall suspend the license for a period of thirty (30) days, less five (5) days for the plea, leaving a net suspension of twenty-five (25) days.

Accordingly, it is, on this 7th day of January, 1947,

ORDERED that Plenary Retail Consumption License C-25, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to Emil Klucke, t/a Emil's Bar & Grill, for premises 111-113 Park Street, Orange, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. January 13, 1947, and terminating at 2:00 a.m. February 7, 1947.

ERWIN B. HOCK  
Deputy Commissioner.

8. STATE REGULATIONS NO. 39 - CREDIT - AMENDED RULE 4(a) REVISED TO GIVE MANUFACTURERS AND WHOLESALERS AN ADDITIONAL FIVE DAYS WITHIN WHICH TO SEND ADVANCE WARNING NOTICES.

TO ALL STATE LICENSEES:

Experience under Amended Regulations No. 39 reveals that the provision requiring written advance warning notices ten days before the expiration of the thirty-day credit period places undue hardship upon manufacturers and wholesalers. A study of the situation indicates that a large number of retail licensees customarily pay their bills from ten to five days before the thirty-day credit period expires. Thus, under the "ten-day warning" requirement, literally thousands of notices are sent to retailers needlessly.

In line with its policy of speedily correcting any procedural requirements which have been found to impose undue hardship, the Department has decided to change Amended Regulations No. 39 to provide that manufacturers and wholesalers shall give written advance warning notice to retail licensees not earlier than ten days and not later than five days before the expiration of the thirty-day credit period. This means that manufacturers and wholesalers will not be required, as heretofore, to give the advance warning notice ten days before the thirty-day credit period expires. Instead, they will be permitted to wait as many as five additional days before sending such warning notices to their retail customers.

Accordingly, Amended Rule 4(a) of State Regulations No. 39 is revised, effective January 15, 1947, to read:

"Rule 4(a). Each manufacturer and wholesaler shall give written warning notice, personally or by mail, to each retail licensee indebted to him for the purchase of alcoholic beverages, not earlier than ten (10) days and not later than five (5) days before the expiration of the thirty-day credit period provided in Rule 2(a). The warning notice shall contain the following statement:

"Pursuant to amended Rule 4(a) of State Regulations No. 39, you are hereby given advance notice that payment for alcoholic beverages delivered to you on \_\_\_\_\_ (date) invoiced in the amount of \$\_\_\_\_\_ has not as yet been made in full. Unless full payment is made by (here insert date when the thirty-day credit period expires), a notice of default must be filed against you with the Department of Alcoholic Beverage Control."

"Each manufacturer and wholesaler shall give written notice, by registered mail, to each retail licensee who is in default to him under Rule 2(a), within five (5) days after the default occurs. The notice shall state the date of delivery in respect to which the default exists and the amount of money in which the retailer is in default, and shall contain the following statement:

"Rule 5 of State Regulations No. 39 prohibits you from accepting delivery of any alcoholic beverages from any manufacturer or wholesaler except for cash until you have paid in full the amount of default shown in this notice and for a period of ten (10) days following the date of such payment."

ERWIN B. HOCK  
Deputy Commissioner.

Dated: January 10, 1947.

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

JACK HARRIS )  
T/a JACK'S BARS & RESTAURANT )  
357½-359 West Side Avenue )  
Jersey City, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-214, issued by the Board of Commissioners of the City of Jersey City. )  
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Fredman & Fredman, Esqs., by J. George Fredman, Esq., Attorneys for Defendant-licensee.  
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

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

On November 13, 1946, an investigator of the State Department of Alcoholic Beverage Control seized two 4/5 quart bottles labeled "Teacher's Highland Cream Perfection of Blended Scotch Whisky", two 4/5 quart bottles labeled "Johnnie Walker Red Label Blended Scotch Whisky", one 4/5 quart bottle labeled "Black & White Blended Scotch Whisky", one 4/5 quart bottle labeled "Vat 69 Liqueur Blended Scotch Whisky", and one 4/5 quart bottle labeled "Usher's Green Stripe Blended Scotch Whisky" when his field tests disclosed that the contents of each of said seven bottles were not genuine as labeled.

A subsequent analysis by the Department chemist reveals that said bottles each contained a substantial amount of an alcoholic beverage which was not the "Scotch Whisky" described on the labels. I must conclude that each of said bottles had been wholly or largely refilled and that the contents thereof were not truly described by the label on the respective bottles within the meaning of R. S. 33:1-88.

Defendant alleges that he personally did not tamper with the contents of any of said bottles and that he has no knowledge of any such tampering. It is noted, however, that "possession" of the illicit beverages is the gravamen of the offense. Re Barrale, Bulletin 705, Item 5.

Defendant has no prior adjudicated record. I shall, therefore, suspend his license for a period of thirty days, the minimum suspension indicated for similar violations, Re Lydon, Bulletin 731, Item 4, and remit five days thereof, pursuant to the policy recently laid down in Re Gelb, Bulletin 741, Item 8, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 10th day of January, 1947,

ORDERED that Plenary Retail Consumption License C-214, issued by the Board of Commissioners of the City of Jersey City to Jack Harris, t/a Jack's Bars & Restaurant, 357½-359 West Side Avenue, Jersey City, be and the same is hereby suspended for a period of twenty-five (25) days. Pursuant to notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK  
Deputy Commissioner.

## 10. STATE LICENSES - NEW APPLICATIONS FILED.

Frank A. Mathews  
Quakertown, Oak Grove Grange Road  
Pittstown, Franklin Township, Hunterdon County, N. J.  
Application for Transportation License filed January 9, 1947.

Suffern Distributors, Inc.  
E. S. Franklin Turnpike  
Mahwah, N. J.  
Application for additional warehouse at North Place, Rear of  
124 Brunswick Ave., Trenton, N. J., filed January 9, 1947.

The Gallo Wines Co., Inc.  
50 Broadway  
New York, N. Y.  
Application for Wine Wholesale License filed January 10, 1947.

William Derasmo and Edward Terrazzi  
145 - 34th St.  
Union City, N. J.  
Application for Transportation License filed January 13, 1947.

W. D. Bresler, Inc.  
226 Sixth Ave.  
New York, N. Y.  
Application for Transportation License filed January 13, 1947.

Jersey National Liquor Company  
193 Ellison St.  
Paterson, N. J.  
Application filed January 14, 1947 for transfer of Plenary  
Wholesale License W-37 from Michael & Edna Keller; Joseph &  
Anna Kindler; James J. Donnelly; Hannah, Matthew & Norman  
Feldman; David Starr; Nathaniel Tyler & George E. Wenz, Jr.,  
t/a Jersey National Liquor Company.

Renfield Importers, Ltd.  
60 Branford Place  
Newark, N.J.  
Application for Plenary Wholesale License filed January 14,  
1947.

*Erwin D. Hock*

Deputy Commissioner.