

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

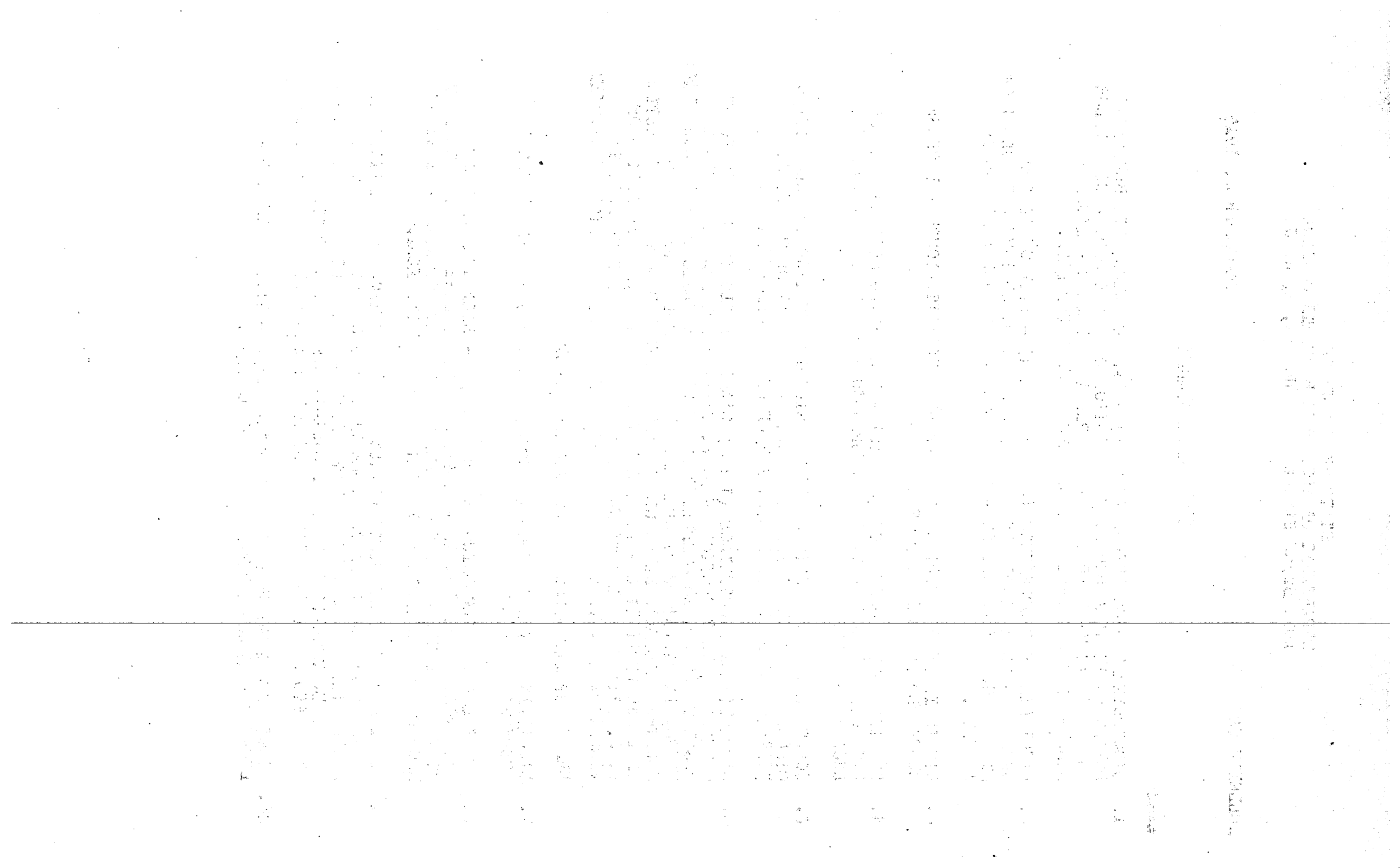
BULLETIN 683

NOVEMBER 2, 1945

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Camden) - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - FALSE ANSWER IN LICENSE APPLICATION - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 65 DAYS, LESS 5 FOR PLEA.
2. DISCIPLINARY PROCEEDINGS (New Brunswick) - SALE OF ALCOHOLIC BEVERAGES TO A MINOR, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.
3. DISCIPLINARY PROCEEDINGS (Paterson) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.
4. DISCIPLINARY PROCEEDINGS (Camden) - PERMITTING SLOT MACHINE ON LICENSED PREMISES - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.
5. COURT DECISIONS - OPINION OF THE CIRCUIT COURT OF APPEALS, THIRD CIRCUIT - UNITED STATES v. DI ORIO - JUDGMENT OF THE U. S. DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY AFFIRMED.
6. DISCIPLINARY PROCEEDINGS (Jersey City) - EMPLOYING NON-RESIDENT BARTENDER, IN VIOLATION OF R. S. 33:1-26 AND RULE 4 OF STATE REGULATIONS NO. 13 - SELLING ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - SELLING ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL REGULATION - HINDERING INVESTIGATION, IN VIOLATION OF R. S. 33:1-35 - PERMITTING A BRAWL ON LICENSED PREMISES, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 20 - LICENSE REVOKED.
HEREIN OF LICENSEES WHO ATTACK ABC AGENTS.
7. DISCIPLINARY PROCEEDINGS (Rockaway Township) - ORDER FIXING SUSPENSION PERIOD.
8. DISCIPLINARY PROCEEDINGS (Perth Amboy) - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - AGGRAVATING CIRCUMSTANCES - PREVIOUS RECORD - LICENSE SUSPENDED FOR BALANCE OF ITS TERM.
9. DISCIPLINARY PROCEEDINGS (South River) - CHARGE OF PERMITTING A BRAWL ON LICENSED PREMISES, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 20, DISMISSED - SALE OF ALCOHOLIC BEVERAGES TO A MINOR, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.
10. DISCIPLINARY PROCEEDINGS (Atlantic City) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.



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

BULLETIN 683

NOVEMBER 2, 1945

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - FALSE ANSWER IN LICENSE APPLICATION - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 65 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

FIRST WARD ITALIAN DEMOCRATE CLUB)
628 North Front Street)
Camden, New Jersey,)

CONCLUSIONS
AND ORDER

Holder of Club License CB-41, issued)
by the Municipal Board of Alcoholic)
Beverage Control of the City of)
Camden.)
- - - - -)

Rose & Epstein, Esqs., by A. David Epstein, Esq.,
Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that (1) on Sunday, September 30, 1945, it sold alcoholic beverages during prohibited hours, in violation of a local ordinance which prohibits such activity after 2:00 a.m. on Sunday, and (2) it falsified its license application by denying that it had suffered a previous suspension of its license.

This is the defendant's second offense of selling alcoholic beverages during prohibited hours on Sunday. In August, 1944, it received a net penalty of ten days for a similar violation. See Bulletin 630, Item 11. On the first charge, therefore, a sixty-day penalty must now be imposed. Cf. First Ward Republican Club of Camden, Bulletin 648, Item 11; and Laskowski-Wojtkowiak Post #74, Bulletin 649, Item 9.

So far as appears, the incorrect statement in the application was the result of inadvertence. Under the circumstances, there will be an additional penalty of five days on the second charge.

From the total penalty of sixty-five days, five days will be remitted for the plea, leaving a net penalty of sixty days.

Accordingly, it is, on this 24th day of October, 1945,

ORDERED, that Club License CB-41, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to First Ward Italian Democate Club, for premises 628 North Front Street, Camden, be and the same is hereby suspended for a period of sixty (60) days, commencing at 2:00 a.m. October 29, 1945, and terminating at 2:00 a.m. December 28, 1945.

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against)

FRANK YAGER)
T/a THE CANTEEN)
12 Easton Avenue)
New Brunswick, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-41, issued by the Board of Commissioners of the City of New Brunswick.)
-----)

Charles M. Morris, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded not guilty to a charge alleging that he sold and served alcoholic beverages to a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The minor, who was almost nineteen years old at the time, and his adult companion, testified that, on August 13, 1945, they each purchased and consumed several bottles of beer at the defendant's tavern.

The defendant was the only witness on his behalf. He admitted that he had no specific recollection of the day in question. He further stated that he was the only bartender on duty on that day and would not have served the minor because he "appears to be young. He is husky; but his face resembles that of a minor."

The defendant further testified that, when the minor and an ABC agent visited the premises several weeks later for the purpose of having the minor identify the tavern, the latter stated that he had never before "been on these premises." This was denied by both the minor and the agent.

I find that the events related by the minor, and corroborated by his companion, represent the true version of what occurred on the occasion in question and, therefore, find the defendant guilty as charged.

Since this is the defendant's first offense, I shall suspend the license for a period of ten days.

Accordingly, it is, on this 24th day of October, 1945,

ORDERED, that Plenary Retail Consumption License C-41, issued by the Board of Commissioners of the City of New Brunswick to Frank Yager, t/a The Canteen, for premises 12 Easton Avenue, New Brunswick, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. October 29, 1945, and terminating at 2:00 a.m. November 8, 1945.

ALFRED E. DRISCOLL
Commissioner.

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against

GEORGE EMIL KLEPPER
10 Railroad Avenue
Paterson 1, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-204, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

George Emil Klepper, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

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

On September 11, 1945, during the course of an inspection of defendant's liquor stock, an agent of the Department of Alcoholic Beverage Control seized the bottle because his field test indicated that the contents thereof were not genuine as labeled. Subsequent analysis by the Department's chemist reveals several differences in characteristics between the whisky described on the label and that in the bottle.

Defendant alleges that the violation was the act of a bartender. However, a licensee is absolutely responsible for the condition of his liquor stock. Re Kurian, Bulletin 517, Item 2. Only by a strict enforcement of this principle can a patron be assured that he will get the merchandise that he orders. Any relaxing in this rule, so well established, would open the door to all kinds of fraud, first on the public and then on the State revenue.

Defendant has no prior adjudicated record. Pursuant to my repeated warnings, the license will be suspended for a period of fifteen days. Cf. Re Rudolph, Bulletin 680, Item 1.

Accordingly, it is, on this 25th day of October, 1945,

ORDERED, that Plenary Retail Consumption License C-204, issued by the Board of Alcoholic Beverage Control of the City of Paterson to George Emil Klepper, for premises 10 Railroad Avenue, Paterson, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 a.m. October 30, 1945, and terminating at 3:00 a.m. November 14, 1945.

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - PERMITTING SLOT MACHINE ON LICENSED PREMISES - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

WOMEN'S 11th WARD DEMOCRAT CLUB)
1014 No. 27th Street)
Camden, N. J.,)

CONCLUSIONS AND ORDER

Holder of Club License CB-14, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)
-----)

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

BY THE COMMISSIONER:

Defendant pleaded non vult to a charge alleging that it possessed and allowed, permitted and suffered on its licensed premises a slot machine, in violation of Rule 8 of State Regulations No. 20.

A description of the machine admittedly found on the licensed premises leaves no doubt as to the illegal nature of the contrivance.

The defendant is guilty of the violation charged.

Defendant has no prior adjudicated record. I shall, therefore, suspend its license for ten days, and remit five days thereof by reason of the plea. Cf. Re Penns Grove Lodge No. 820, Loyal Order of Moose, Bulletin 615, Item 2.

Accordingly, it is, on this 25th day of October, 1945,

ORDERED, that Club License CB-14, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Women's 11th Ward Democrat Club, for premises 1014 No. 27th Street, Camden, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. November 1, 1945, and terminating at 2:00 a.m. November 6, 1945.

ALFRED E. DRISCOLL
Commissioner.

5. COURT DECISIONS - OPINION OF THE CIRCUIT COURT OF APPEALS, THIRD CIRCUIT - UNITED STATES v. DI ORIO - JUDGMENT OF THE U. S. DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY AFFIRMED.

Appeal from the District Court of the United States for the District of New Jersey; Philip Forman, Judge.

Angelo DiOrio was convicted of a conspiracy, the possession of an unregistered still, unlawfully engaging in the business of a distiller with intent to defraud the government of taxes, and concealing distilled spirits on which the required tax had not been paid, and he appeals.

Affirmed.

Harold Simandl, of Newark, N. J. (Anthony A. Calandra, of Newark, N. J., on the brief), for appellant.

Grover C. Richman, Sr., Asst. U. S. Atty., of Camden, N. J. (Thorn Lord, U. S. Atty., of Newark, N. J., on the brief), for appellee.

Before BIGGS, WALLER, and McLAUGHLIN, Circuit Judges.

WALLER, Circuit Judge.

At or about 3:45 on the afternoon of April 26, 1944, several state officers found an illicit moonshine still in the horse barn on the Carkhuff farm in Somerset County, New Jersey. Secreting themselves, they watched and waited until approximately six o'clock, when one Stanley Pawlowski appeared on the scene and was arrested. At or about nine o'clock that night hidden officers saw the lights of an automobile as it approached the point where the road leading to, and beyond, the Carkhuff farm intersects the old York highway, at a point variously estimated to be between 1/8 of a mile and one mile from the Carkhuff farmhouse. Oddly enough, the driver extinguished the lights on his automobile shortly before leaving the highway and entering the lane leading by the Carkhuffs' house. Slowly, but with the accuracy of one familiar with the surroundings and with the stealth of one bent on concealing his approach, this nocturnal navigator drove to a point opposite the barn containing the still, where he turned in and came to a stop within eight or ten feet of the barn.

Thereupon two of the officers, with drawn guns, appeared beside his car, to his evident consternation and dismay, and gave the command: "Get out and get your hands up." Visibly frightened, the driver obeyed, meanwhile saying to the officers: "All right, you got me. Let's get it over with." And thus was accomplished the arrest of the appellant, Angelo DiOrio, sometimes called "Slim."

He was taken into the kitchen of the Carkhuff home where the following dialogue between him and one of the officers was said to have ensued:

Officer: "Slim, isn't this the first time you ever came into one of your stills?"

Slim: "Yes, God damn it, this is the first time. I ought to have my head examined."

Slim is also said to have told Officer Cirone: "Well, I guess that is another feather in your hat."

According to Officer Webster, when appellant had been detained at the farmhouse approximately two hours, he inquired: "What are we waiting for?"

Officer Lurie replied: "Well, we have a lot of things to do yet."

To which appellant urged: "Let us go. There won't be any more men here tonight."

Mrs. Carkhuff and her sons, Raymond and Russell, along with Pawlowski and DiOrio, were indicted in five counts charging a conspiracy in the first count and substantive offenses alleging in substance: (a) The possession of an unregistered still; (b) unlawfully engaging in the business of a distiller with the intent to defraud the Government of taxes; (c) making and fermenting a quantity of mash fit for distillation in a building not then and there a distillery; (d) and concealing 265 gallons of distilled spirits on which the required tax had not been paid, with the intent to defraud the United States. A severance was granted to Mrs. Carkhuff because of illness. Her two sons were acquitted, but Pawlowski and DiOrio were convicted on all counts. Only DiOrio has appealed.

At the time of his arrest, and on trial, appellant denied any knowledge of, or connection with, the still and its operation and the Carkhuffs denied ever having seen him theretofore.

Appellant undertook to explain his presence and manner of approach by insisting that the defendant Pawlowski owed him \$250 as a loan, made some months before. Having acquired the impression that Mr. Pawlowski was not overzealous in his efforts to repay the loan, he set out that afternoon seeking Pawlowski and repayment. Inquiry from Mrs. Pawlowski, at her home, revealed that her spouse was at the Carkhuff farm. Not knowing where that farm was, he obtained directions from Mrs. Pawlowski as to its location. He also got additional directions at a filling station en route. Clear and explicit, indeed, these directions must have been, for they enabled him to drive to the place at night, minus lights, albeit he denied: (a) Having extinguished his lights; (b) having ever been to the place before; (c) or having any part in the illicit enterprise. He insisted that he was intently attempting to locate his delinquent debtor and to collect the money needed to relieve his financial necessities, even though he had \$600 in cash on his person at the time of his arrest.

Counsel for appellant state that the question involved is: Did the trial Court err in refusing to grant appellant's several motions for dismissal and acquittal?

Their chief argument is that the Government failed to prove the corpus delicti or the existence of any conspiracy in the present case, and that in the absence of such antecedent proof any admissions by the defendant were not receivable in evidence.

[1] Unquestionably, the Government proved the existence of an unlawful still, of untax-paid liquor, the presence of illegally produced mash, etc. In other words, the fact that the substantive acts charged in Counts 2, 3, 4, and 5 were proven to have been committed by someone is not even disputed. The corpus delicti may be

established by showing that a crime has been committed or by showing an act and that it was committed by a criminal agency. Proof of the identity of the perpetrator of the act or crime is not a part of the corpus delicti.¹

That the acts charged in Counts 2, 3, 4, and 5 were committed by someone, and that a criminal agency was involved, cannot be disputed, nor is the proof thereof dependent upon any admission, or confession, made in this case by appellant.

[2] Antecedent to an inquiry as to whether or not a sufficient compliance with the general rule in reference to the proof of the corpus delicti in conspiracy cases was followed by the Court below, it is appropriate that the general rule be stated, viz.: A conviction of conspiracy may not be sustained solely on an admission, or confession, of the accused unless such admission or confession is corroborated by independent evidence of the corpus delicti.²

[3] There is evidence in the record that seems to establish the existence of a conspiracy between two or more persons in reference to

¹"Proof of identity of accused is not an essential part of 'corpus delicti'." *Vernon v. State*, 239 Ala. 593, 196 So. 96.

"The 'corpus delicti,' as used in criminal law, means the fact that a crime has been committed." *Hunt v. State*, 216 Ind. 171, 23 N. E. 2d 681.

"The corpus delicti may be established without showing that offense charged was committed by the accused" but it means "the actual commission by some one of the particular offense charged." *Hopkins v. State*, 75 Okl. Cr. 268, 130 P. 2d 543, 544.

"Criminal agency of the accused is not an element in the 'corpus delicti'." *State v. Bennett*, Mo. Sup., 6 S. W. 2d 881.

In 14 Amer. Jur. 758, § 6, is found the following:

"Generally speaking, the term 'corpus delicti' means, when applied to any particular offense, that the specific crime charged has actually been committed by someone. It is made up of two elements: (1) That a certain result has been produced, for example a man has died or a building has been burned; and (2) that some person is criminally responsible for the act. It has been said that the corpus delicti consists of the facts that a crime has been committed and that the defendant was implicated in the crime. This definition, however, is inaccurate, since if true, all that would be necessary to convict of a crime would be to prove the corpus delicti."

²*Naftzger v. United States*, 10 Cir., 200 F. 494; *Tingle v. United States*, 8 Cir., 38 F. 2d 573; *Martin v. United States*, 8 Cir., 264 F. 950; *Oldstein v. United States*, 10 Cir., 99 F. 2d 305; *Anderson v. United States*, 6 Cir., 124 F. 2d 58, 65; *Flower v. United States*, 5 Cir., 116 F. 241.

the still and its illicit operations, to wit: (a) The barn belonged to Mrs. Carkhuff, an alleged conspirator, and the Carkhuffs knew that liquor was being manufactured in that barn. (b) Raymond Carkhuff, another conspirator, not only knew of the still but of the place where the key to the barn was hidden. (c) The same facilities that supplied water and electric current for the Carkhuff residence were utilized in supplying water and electric current for the manufacture of liquor in the Carkhuff barn. (d) Pawlowski, another alleged conspirator, had set up the still and made repairs from time to time and was arrested at or near the barn where he had placed it.

The foregoing facts, irrespective of any admissions by accused, were sufficient to justify the jury in concluding that there was a common understanding, or agreement, attended by overt acts, at least between Mrs. Carkhuff, her son Raymond, and Pawlowski. Moreover, these facts and circumstances were sufficient proof of the existence of the corpus delicti to serve as a predicate for the receipt in evidence of the admissions by the accused. And since such full and complete proof is not required, but only that admissions be corroborated by independent evidence, it can hardly be disputed that these proven facts supply sufficient corroboration to lay the predicate for receiving the admissions in evidence.

In examining the pertinent features of the evidence for the purpose of ascertaining whether or not they were sufficient to support the jury's finding that the appellant was a member of the conspiracy, we note: (a) That appellant had turned his automobile in, and had stopped, at a spot eight or ten feet from the barn that housed the still and that he was arrested as he was preparing to open the door of his car, although he had not located either the debtor, Pawlowski, or his automobile. (b) That he came into the Carkhuff farm stealthily, having extinguished the driving lights before turning into the Carkhuff lane. (c) That he was able to come into the premises in question in the night with his lights out, thereby exhibiting an apparent familiarity with the road and the premises. (d) That his coming in the night with his driving lights extinguished supports an inference that he was seeking to enter without attracting attention or arousing suspicion and that his purpose was not that of a man merely seeking to collect an honest debt from a slow-paying debtor. [The foregoing features of appellant's conduct were cumulative and competent evidence for the consideration of the jury on the question of the existence of a conspiracy, or as direct and corroborative evidence of the existence of the corpus delicti, and as a predicate for the receipt of his admissions in evidence.] (e) That when arrested by the officers appellant said: "All right, you got me. Let's get it over with." (f) That later, when asked if that was not the first time he had ever come into one of his stills, he answered: "Yes, God damn it, this is the first time. I ought to have my head examined." (g) That appellant remarked to Officer Cirone: "Well, I guess that is another feather in your hat." (h) That he commented to Officer Lurie: "Let us go. There won't be any more men here tonight."

The statements, or admissions, in paragraphs (e), (f), (g) and (h) were corroborated by facts and circumstances which tended to show the existence of a mutual understanding and agreement to do the illegal things alleged in the conspiracy count of the indictment and that appellant was a participant therein. Whether or not any or all of these statements were admissions as well as the inferences to be drawn therefrom and the effect to be given thereto were questions for the jury.

[4, 5] The corpus delicti, as well as the existence of a mutual understanding or a partnership in an illegal venture, may be proven by circumstantial evidence, and in the light of proven facts and the admissions of the defendant we conclude that the verdict was supported by competent and sufficient evidence to sustain it.

The judgment of the Court below is, therefore, affirmed.

- 6. DISCIPLINARY PROCEEDINGS - EMPLOYING NON-RESIDENT BARTENDER, IN VIOLATION OF R. S. 33:1-26 AND RULE 4 OF STATE REGULATIONS NO. 13 - SELLING ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - SELLING ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL REGULATION - HINDERING INVESTIGATION, IN VIOLATION OF R. S. 33:1-35 - PERMITTING A BRAWL ON LICENSED PREMISES, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 20 - LICENSE REVOKED.

HEREIN OF LICENSEES WHO ATTACK ABC AGENTS.

In the Matter of Disciplinary Proceedings against

ALBERT ARNOLD
T/a ARNOLD'S TAVERN
370 Ocean Avenue
Jersey City 5, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-164, issued by the Board of Commissioners of the City of Jersey City.

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

BY THE COMMISSIONER:

The defendant has entered a plea of nolo contendere to seven charges, alleging in substance that, on Saturday morning, October 20, 1945, he:

- 1. Employed a non-resident bartender without permit, in violation of R. S. 33:1-26 and rule 4 of State Regulations No. 13.
- 2. Sold alcoholic beverages in original containers for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulations No. 38.
- 3 and 4. Sold and served alcoholic beverages, and permitted patrons on his licensed premises, during prohibited hours, in violation of local regulation.
- 5. Hindered an investigation by ABC investigators at his licensed premises, in violation of R. S. 33:1-35.
- 6 and 7. Permitted a brawl on his licensed premises, and conducted his licensed premises as a nuisance, in violation of Rule 5 of State Regulations No. 20.

When two ABC agents entered the licensed premises at 1:40 a.m. on Saturday morning, October 20, 1945 for the purpose of investigating a complaint that the licensee failed to observe closing regulations, they found about twelve patrons at the bar. Joseph Arnold, brother of the licensee and a resident of New York State, was acting as bartender.

At 2:00 a.m., the hour specified under the local regulation for closing and when patrons are required to leave, business kept on as usual. The customers continued to order and were served drinks of alcoholic beverages and, in addition, the bartender sold three bottles of beer for off-premises consumption to one of the patrons at about 2:20 a.m. This latter type of transaction is prohibited between 10:00 p.m. and 9:00 a.m. under Rule 1 of State Regulations No. 38.

Shortly before 2:30 a.m. the agents each ordered a glass of beer which was served by the bartender. At the same time, having observed the sale of the three bottles of beer only a few minutes before, they purchased two bottles of beer from the bartender, which he wrapped in newspaper.

The agents then identified themselves to the bartender, who referred them to the licensee. The latter had just started to check the cash register after coming from in front of the bar where he had been drinking with the patrons.

There then began a series of events which finally culminated in the arrest of the defendant on charges of atrocious assault and battery upon both ABC agents, and upon which the defendant has been held to await action of the Grand Jury. To say that the defendant completely lost his head and became a "wild bull in a china shop" is to place a mild connotation upon his actions. He and several other patrons attacked the agents in violent manner, and the defendant uttered dire threats against them unless they returned the two bottles of beer sold to them by the bartender and which one of the agents had managed to hide in the doorway of the building adjoining the defendant's tavern. One of the investigators lost consciousness as a result of the pummeling which he had received and the other finally managed to find his way to a police station, where officers were immediately assigned to their assistance. The officers found the unconscious agent lying in the street a short distance from the tavern.

Any attempt to characterize the actions of this licensee, who incited and provoked this most outrageous episode, or any further recital of the detailed evidence, would be mere anti-climax. A more crystal-clear demonstration of utter unfitness to enjoy the privileges of a liquor license can hardly be imagined. It is almost inconceivable that, in this day and age, any sane licensee would interfere with the orderly processes of law enforcement by committing so vicious an assault upon two agents who were merely doing their sworn duty.

The license is revoked outright, effective at once.

Accordingly, it is, on this 26th day of October, 1945,

ORDERED, that Plenary Retail Consumption License C-164, issued by the Board of Commissioners of the City of Jersey City to Albert Arnold, t/a Arnold's Tavern, for premises 370 Ocean Avenue, Jersey City, be and the same is hereby revoked, effective at once.

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - ORDER FIXING SUSPENSION PERIOD.

In the Matter of Disciplinary Proceedings against)

UNITED GRILLS SYSTEM, INC. ()
Route 6 ()
Rockaway Township, N. J., ()

Holder of Plenary Retail Consumption License C-14 for the fiscal year 1944-45, and transferred during the pendency of these proceedings in said year to)

O R D E R

HELEN M. ESPOSITO)
for the same premises,)

and renewed by the said Helen M. Esposito, now holding Plenary Retail Consumption License C-14 for the fiscal year 1945-46, issued by the Township Committee of the Township of Rockaway.)

Harry A. Shuback, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

It appearing that on November 15, 1944, the date of entry of the Order of suspension in the above entitled matter, the licensed premises had been destroyed by fire and that an effective date of suspension could not be fixed; said order providing that the effective dates of the suspension of five days would be fixed by a subsequent order (Bulletin 640, Item 10);

It further appearing that the licensed premises have been repaired or rebuilt and that the license has been transferred by the municipality to one Helen M. Esposito, subject to the five days' suspension referred to above;

It is, on this 25th day of October, 1945,

ORDERED, that Plenary Retail Consumption License C-14, issued by the Township Committee of the Township of Rockaway to United Grills System, Inc., for the 1944-45 fiscal year, for premises on Route 6, Rockaway Township, and thereafter transferred to Helen M. Esposito, for the same premises, be and the same is hereby suspended for a period of five (5) days, commencing at 1:00 a.m. November 5, 1945, and terminating at 1:00 a.m. November 10, 1945.

ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - AGGRAVATING CIRCUMSTANCES - PREVIOUS RECORD - LICENSE SUSPENDED FOR BALANCE OF ITS TERM.

In the Matter of Disciplinary Proceedings against)

PULASKI CITIZEN CLUB, INC.)
310-312 Elm Street)
Perth Amboy, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-94, issued by the Board of Commissioners of the City of Perth Amboy.)
-----)

Francis N. Reys, Esq. and John E. Toolan, Esq., Attorneys for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to charges alleging that it sold, served and delivered alcoholic beverages to minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

As a result of an investigation conducted at the defendant's premises during the early part of this year, several of the officers of the club appeared at the offices of the Department of Alcoholic Beverage Control on May 22, 1945. At that time they were strongly cautioned that the dances held at the club on Wednesday and Saturday nights were attracting a large crowd of youngsters and that adequate precautions and safeguards would have to be taken to insure that no minors were served alcoholic beverages. The officers gave earnest assurance that all necessary steps would be taken toward that purpose and that a meeting of the club would be held to vote on the question of keeping the barroom on the second floor, where the dances were held, closed on Wednesday and Saturday nights. On or about June 15, 1945 an officer of the club appeared at the Department and stated that the meeting had been held and that it was decided that on the occasions of the dances only the barroom on the first floor would be permitted to remain open.

Despite these assurances, on Saturday night, June 16, 1945, two ABC agents, engaged in an investigation of additional complaints of sales to minors, found many young people present in the main barroom on the first floor. Several of these youths, who appeared to be under twenty-one years of age, were imbibing alcoholic beverages.

On Saturday, June 23, 1945, the agents again visited the defendant's premises. A dance was in progress and the place was flooded with minors. In the main barroom the agents observed the service of beer to a twenty-year-old youth. Proceeding to the second

floor, they noted that the bar there was lined with young boys and girls, many of whom were drinking liquor. Two boys, both of whom were drinking beer, were found to be sixteen and eighteen years old. Each had been served at least six glasses of beer.

Because of the confusion that followed the questioning of these minors, it was decided to enlist further aid and the agents went downstairs and called the local police. When the police officers arrived, they accompanied one of the agents to the second floor. Observing their approach, the person acting as ticket agent ran to the barroom and shouted, "Watch out!" When they reached the bar, the youngsters were still present but no drinks of any kind were anywhere visible.

After the agents had left the premises and proceeded to police headquarters, where statements were taken from several of the minors, the agents again returned to the club. As they mounted the stairs to the second floor, the ticket seller once again rushed to the barroom and shouted a warning to the bartenders. Entering this room, the agents noticed a seventeen-year-old minor in process of handing a partially filled glass of beer to a bartender. Questioning another youth, they learned that he was but fifteen years of age and had consumed four glasses of beer prior to the agents' visit. When the agents departed with the latter two minors, one of the defendant's officers said to the agents, "Why don't you let these kids go? What harm is there if they had a few glasses of beer?"

In my tenure as Commissioner, I have never experienced a more sordid and callous disregard of the salutary regulations prohibiting the sale and service of alcoholic beverages to minors. Where, as in this case, defiance is substituted for compliance, it is time to call a halt. My answer to the question of the defendant's officer, who saw no harm in serving intoxicants to immature youths, is that the license of the club must be suspended for the balance of its present term, viz., until June 30, 1946. In reaching this decision, I am giving due consideration to the fact that the defendant has held its license ever since 1934 and that during that time it has been guilty of only one other infraction, which resulted in a five-day suspension of its license. See Bulletin 369, Item 11.

Since the license has not been revoked, the order to show cause why the defendant's premises should not be declared ineligible as licensed premises is hereby discharged. See R. S. 33:1-31.

Accordingly, it is, on this 26th day of October, 1945,

ORDERED, that Plenary Retail Consumption License C-94, issued by the Board of Commissioners of the City of Perth Amboy to Pulaski Citizen Club, Inc., for premises 310-312 Elm Street, Perth Amboy, be and the same is hereby suspended for the balance of its term, effective October 31, 1945, at 2:00 a.m.

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - CHARGE OF PERMITTING A BRAWL ON LICENSED PREMISES, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 20, DISMISSED - SALE OF ALCOHOLIC BEVERAGES TO A MINOR, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against

CLUB WASHINGTON, INC. T/a CAPITOL COCKTAIL LOUNGE, 28 Main Street, South River, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-24, issued by the Borough Council of the Borough of South River.

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

BY THE COMMISSIONER:

The defendant pleaded not guilty to charges alleging: (1) and (2) it sold and served alcoholic beverages to a minor, and (3) it permitted a brawl on its licensed premises.

As to (1) and (2): The issue here is purely factual and presents a square conflict in the testimony produced in the record.

From the story related by the minor, who is a nineteen-year-old soldier, it appears that he arrived at the defendant's tavern about ten o'clock on the evening of July 14, 1945. During his stay there, which continued about two hours, he claims to have been served approximately ten drinks of alcoholic beverages.

Corroboration of the minor's consumption of intoxicants at the tavern is given by a female, who testified that, when she entered the premises at approximately 10:00 p.m., she observed the minor drinking a glass of beer.

Several witnesses produced by the defendant were of little help on the issue since they admittedly did not arrive at the tavern until well after 11:00 p.m. of the night in question. One of the defendant's bartenders testified that he remembered the minor from previous occasions and had refused to serve him any liquor because he had failed to produce any evidence of his age. The bartender further stated that the minor was in and out of the tavern at least three times on the night of July 14th and that he served him only a glass of soda when he came in for the last time close to midnight.

The defendant's manager substantiated the testimony given by the bartender. He also stated that when the minor last returned to the premises on the evening in question, he noticed that the minor

was under the influence of liquor and instructed the bartender to "mix him a glass of seltzer and to put salt and lemon juice in it."

The defendant suggests that the minor's testimony is influenced by the fact that a dispute arose between him and a patron, who subsequently became an employee of the defendant, over some money that disappeared from the bar. While this incident may have caused some animus on the part of the minor against the patron, no reason appears why he should carry any such resentment against the defendant. Moreover, on the very night in question, the minor was questioned by a police officer who, called as a witness by the defendant, testified that the minor had told him that he had been drinking at several places during that night, one of which was the defendant's premises. This is important only in so far as it negatives the defendant's theory that the minor's story was fabricated as an afterthought by the witness.

The defendant further contends that the female witness, who testified to observing the minor consume a glass of beer, is biased because she was refused service at the tavern until she produced a birth certificate indicating that she was over twenty-one years of age. The fact, however, as she testified, that she had frequented the tavern on many occasions thereafter, would seem to establish that she felt no rancor against the defendant.

The issue is a close one. After giving careful consideration to the entire record, I have resolved it against the defendant. The minor told a straightforward story which was not shaken by the vigorous cross-examination of the defendant's attorney. I am satisfied that the greater weight of the credible evidence rests with the case made by the prosecution. Under the circumstances, I find the defendant guilty of the first and second charges.

As to (3): Voluminous testimony was given by many witnesses concerning the fight, involving several servicemen, which occurred at the defendant's tavern on the night of July 21, 1945. It is needless to detail all of the evidence. While there is no dispute that an altercation did take place as alleged, I fail to find in the record any circumstances which would attribute any responsibility for the incident to the defendant or any of its employees, nor does it appear that there was a failure on its part to take any precautions that would have resulted in avoiding the disturbance. On the contrary, the record indicates that the defendant did everything in its power to quell the fight as soon as it started. The third charge, therefore, is dismissed.

The license will be suspended for a period of ten days on the first and second charges.

Accordingly, it is, on this 30th day of October, 1945,

ORDERED, that Plenary Retail Consumption License C-24, issued by the Borough Council of the Borough of South River to Club Washington, Inc., t/a Capitol Cocktail Lounge, for premises 28 Main Street, South River, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. November 5, 1945, and terminating at 2:00 a.m. November 15, 1945.

ALFRED E. DRISCOLL
Commissioner.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against

SIDNEY HARTFIELD
T/a SID'S BAR & RESTAURANT
1230-1232 Atlantic Ave.
Atlantic City, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-109, issued by the Board of Commissioners of the City of Atlantic City.

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

BY THE COMMISSIONER:

Defendant pleads non vult to a charge that he possessed on his licensed premises, in violation of R. S. 33:1-50, one 4/5 quart bottle labeled "Canadian Club Blended Canadian Whiskey", and one 4/5 quart bottle labeled "Seagram's V. O. Canadian Whiskey", both of which bottles contained alcoholic beverages not genuine as labeled.

On August 21, 1945 an investigator of the State Department of Alcoholic Beverage Control seized the above described two bottles of whiskey after preliminary tests thereof disclosed that the contents were not genuine as labeled. Subsequent analysis of said whiskey by the Department chemist verified the fact that said whiskey was not genuine as labeled.

Defendant disclaims any knowledge of tampering with the bottles in question. However, a licensee is strictly accountable for the alcoholic beverages found on his licensed premises. Cf. Re Kurian, Bulletin 517, Item 2.

Defendant has no previous adjudicated record. Accordingly, I shall, in the present case, suspend defendant's license for a period of fifteen days.

Accordingly, it is, on this 30th day of October, 1945,

ORDERED, that Plenary Retail Consumption License C-109, issued by the Board of Commissioners of the City of Atlantic City to Sidney Hartfield, t/a Sid's Bar & Restaurant, for premises 1230-1232 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 12:01 a.m. November 12, 1945, and terminating at 12:01 a.m. November 27, 1945.

Alfred E. Russell
Commissioner.