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THE RACKET-CONTROL LAWS OF VIRGINIA:
A REVIEW

WILLIAM A. REDFERN, JR.* AND LUTHER W. WHITE, III*

The publicity resulting from the Kefauver Committee's investigation of interstate crime\(^1\) has thrown a spotlight on local law enforcement, particularly in the "racket" group. Too often, the Kefauver Committee reports, lax law enforcement on the local level has enabled an underworld to build its strength until a city or county is unable to shake its hold. The Committee further points out that with alert, honest enforcement, there are sufficient existing statutes already on State and local books to cope with most forms of underworld business organizations, commonly termed "rackets." In Virginia and most Southern States there are generally three major areas in which there are underworld business organizations; namely, prostitution, alcoholic beverages and gambling. Although urban areas have more concern with these three "rackets," they are not unknown in rural communities.\(^2\)

Although each major "racket" can be considered separately, one should always remember that such enterprises are intertwined with one another and, frequently, while a law breaker may escape conviction and punishment in his major field, he may be less fortunate in a minor one.\(^3\) Effective law enforcement depends on knowledge and use of

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\(^1\)Kefauver, "Crime in the United States," Saturday Evening Post, Vol. 233, April 7, 14, 21, and 28, 1951. This Committee's full title is "Special Committee to Investigate Crime in Interstate Commerce." Its report and records of hearings are available at the Government Printing Office, Washington, D.C.

\(^2\)Illegal whiskey, for example, is manufactured in the rural areas, but the market is in the cities; law enforcement officials necessarily therefore must use different sections of the A.B.C. Act of Virginia in coping with the type of problem presented.

\(^3\)The classic example is mobster Al Capone's conviction for income tax evasion while never being charged with murder and extortion. Similarly, known whiskey runners have been convicted for violating the Motor Vehicle Act, speeding, driving after license revoked, etc., and notorious prostitutes convicted of violations regarding whiskey, a necessary adjunct to that business.
existing laws and, of course, on factual situations. It is the purpose of this article to examine separately the three above-listed areas of so-called petty crime and to set out the tools in Virginia, in the form of laws and technique, for fighting these rackets, as well as to set out and to evaluate interpretative decisions of the Virginia Supreme Court of Appeals which have strengthened (or weakened) these tools. Effective racket control, it should be noted, is predicated on the theory that all laws are strictly administered by honest law enforcement officials. Further, it should not be assumed that the business of prostitution, illegal whiskey traffic, and gambling will ever be entirely eradicated; rather, such rackets can be contained by harassment and by removing the big profit which makes them so attractive. It is with these premises that the existing laws on prostitution, whiskey and gambling will be considered.

Some of the findings and recommendations of the Kefauver Committee will be noted, for the purpose of drawing comparisons between national and state-wide racket-control efforts. The authors have also interrogated a number of the attorneys for the Commonwealth throughout the State, in order to be able to present a consensus of opinion as to the questions which will be discussed herein.

Prostitution

Prostitution, often termed “the World’s Oldest Profession,” will generally flourish in direct proportion to law enforcement and, as in any business, is actually sensitive to demand. Concentration of males in an area as result of war or development of an industry, usually stimulates business to such an extent that controlling legislation may soon follow. Obvious gaps in the law caused by cultural lags are thus plugged.

Historically, legislation in Virginia has been aimed at punishing

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4See H. Pariser, Health Department Approach to the Venereal Disease Problem in a Military Area with Particular Reference to the Norfolk Situation, 37 J. Soc. Hyg., No. 3, May, 1951, which illustrates how the venereal disease rates will drop when there is a concerted drive by public officials, both civil and military. The “V. D. rate” is usually a fairly reliable index in a community of existing prostitution.

5For example, see 4 Va. Code Ann. (Michie, 1950) §18-85 to 18-96. All this series of laws with the exception of § 18-87, were originally passed in two emergency enactments by the legislature in 1918 [Acts of Assembly (1918) c. 256, p. 496 and c. 404, p. 670]. The resulting law has led to confusion, and the need for legislative revision has been pointed out by the Virginia Supreme Court of Appeals in Comm. v. Gaskill, 185 Va. 440, 445, 39 S. E. (2d) 296, 299 (1946).

6See note 5, supra. Sec. 18-88 covers the problem of the motor vehicle, which, prior to 1918, was of little importance.
the keeper of a house of prostitution rather than the individual participant. While the act of keeping a house of prostitution, or bawdy-house, was a common law offense and indictable, a law was passed in 1948 as a part of the general criminal statute of that Legislature which read as follows:

“Section 6. Any free person who shall keep a house of ill fame, resorted to for the purpose of prostitution or lewdness, shall be punished by confinement in jail not more than twelve months and by fine not exceeding two hundred dollars.”

In 1878 the Legislature, in a revision of the criminal code reenacted the above statute, changing the first sentence to read, “If any person keep a house,” etc., and also added this significant clause at the end: “And in a prosecution for this offense, the general character of such house may be proved.” The value of this clause will be considered further. Substantially unchanged since 1878, this law is now incorporated in a series of statutes, referred to as the Section 18-85 series, at Section 18-87.

The remaining statutes of this series were passed by the State Legislature in 1918. The pandering statute was passed in 1910, and the prostitution nuisance law was enacted in 1916. The vagrancy statutes have been on the law books since the very earliest times, and in 1936 the law was amended by adding a section making association with prostitutes and persons engaged in the operation of disorderly houses part of the definition of vagrants. With the exception of statutes on the periphery of prostitution, these are the primary laws on the subject now existing in Virginia. Although certain statutes have been in effect for a long period and represent, basically, a codification of the common law, most of the laws were enacted during the early part

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7Wharton, Criminal Law (12th ed. 1952) §1722. See also Miller v. Comm., 88 Va. 618, 621, 14 S. E. 161, 162 (1892), in which the Court of Appeals subscribes to this doctrine while passing on a different matter.
8Acts of Assembly (1847-48) c. 120, Tit. II, §6.
9Acts of Assembly (1877-78) c. 311, chap. VII §10.
10See notes 32 and 33, infra.
11See note 5, supra.
12 §18-97. All statute citations hereafter will refer to Va. Code Ann. (Michie, 1950), unless otherwise designated.
13Acts of Assembly (1910) c. 163, p. 252.
14Secs. 48-7 to 48-15.
16Secs. 65-338 to 65-341.
18Acts of Assembly (1956) c. 156, § 9, p. 255. See Morgan v. Comm., 168 Va. 731, 191 S. E. 791 (1937), upholding this section (although a gambler was the vagrant in the case) as a constitutional exercise of police power.
of the twentieth century. The basic aim of this recent legislation has been two-fold: control over "commercialized" vice and control over disease as spread by prostitution—a public health measure as opposed to a morals law.¹⁹

As tools for control, the existing statutes are generally adequate, although certain of them might be sharpened. The Section 18-85 series is primarily designed for prostitution control and therefore should be examined in that light with other statutes considered as complementary thereto.

The first section, 18-85 deals with and includes the individual prostitute and the individual act. The language is broad in this section, which fact has been pointed out by the Supreme Court of Appeals.²⁰ It makes unlawful any visit by any person to any place "which is used or is to be used" for prostitution, etc. Thus, evidence of a visit to any place, reputable or not, for the purpose of prostitution, is sufficient for conviction.²¹ Nor is there any requirement that the act of prostitution be completed; it is only necessary that there be sufficient evidence that the place was to be used by the accused person for such purpose.²² Where evidence cannot be adduced that money or some consideration was exchanged (a necessary element of prostitution), although suspicious behaviour has been observed, then a person could be charged with adultery and fornication,²³ vagrancy,²⁴ or under city ordinances regulating disorderly and immoral conduct.

The second section, 18-86, covers the person who aids another in finding a place which is used or is to be used for prostitution.²⁵ This offense is similar to the pandering statute²⁶ insofar as it strikes at the procurer, rather than the prostitute, but the quantum of proof is not as great.²⁷ The latter crime is difficult though not impossible to prove.

¹⁹Secs. 18-90, 18-93. See generally § 32-90, et seq. See note, supra, for a medical approach to venereal disease control in a city adjacent to a large military establishment.
²²Dorchincoz v. Comm., 191 Va. 33, 59 S. E. (2d) 863 (1950). Such a requirement permits undercover police work without a "customer" being subject to a possibly embarrassing cross-examination. Further, it should be noted that in most criminal offenses, the completed act is necessary to carry the full penalty; a non-completed act, i.e., an attempt to do an act, would be punishable under the Attempt Statute, §18-8. Not so under § 18-85.
²³§18-32.
²⁴Secs. 63-338 to 63-341.
²⁶§18-97.
²⁷Nor is the penalty, pandering being a felony, and the violation of § 18-86 being a misdemeanor.
without the testimony of the individual engaging in prostitution, whereas slight participation as a procurer is sufficient under the broad language of Section 18-86. This section is peculiarly well-suited for the prosecution of the obliging bellhop or beer tavern runner.

The next section, 18-87, is a modern version of the old "house of ill fame" statute which is substantially set out above. Controversies over the language in the section have caused much case law in Virginia. The early statute defined the house as one of "ill fame." This was held to be synonymous with bawdy-house and the present code section uses the word "bawdy-house," and has dropped the words "house of ill fame." A "house of prostitution" has also been declared synonymous with a "house of ill fame."

There is no requirement under the decisions in Virginia that the "house" have more than one room or be inhabited by more than one person. Use of a single room for purposes of prostitution in a house otherwise reputable is sufficient under the statute.

In order to convict the keeper of the house, it must be proved that he had knowledge of its illegal use. In that respect, the Court of Appeals has reversed a conviction in which the defendant had recently purchased the suspect premises, a hotel, and had denied knowledge of the immoral conduct in it. On the other hand, the Court has sustained a conviction in which the defendant was the night-to-night manager of a tourist court resorted to for prostitution. Both defendants were found guilty by juries. Since the question of guilty knowledge is for the jury to determine, it would seem that the Court of Appeals examined each factual situation as it arose, and that neither case can be considered to state the test to determine guilty knowledge. But in view of the Court's pronouncement that "in cases of this nature the rule of common sense should apply," it appears that the evidence in the two cases from which each jury could infer guilty knowledge was not

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28To prove that part of her earnings were received by the aider as the latter's share in the illegal enterprise.
32Bennett v. Comm., 182 Va. 7, 12, 28 S. E. (2d) 13 (1943); Warsaw v. City of Norfolk, 190 Va. 862, 58 S. E. (2d) 884 (1950). In the Warsaw case a municipal ordinance was under consideration, but the language of the ordinance is very similar to § 18-87 now under consideration. The Warsaw case involved a small hotel catering to transient traffic, and in the Bennett case a tourist camp catering to military personnel was the place under discussion. In both cases there was evidence of much suspicious activity, but the apparent knowledge of each accused differed in degree.
as different as the two results on appeal. "Juries are supposed to carry into the jury box ordinary knowledge of men and affairs. Its members do not cease to be men because they are members." 34

Under this section, as previously noted, the general character of the house may be proved. "General character" has been held to mean general reputation, and it is not a necessary element of proof when there is factual evidence available. 35 Clearly, this is a statutory assist to a prosecution and nothing else, but it seems unlikely that a prosecution could be based successfully on reputation alone. Recently this question of general character was again discussed by the Court of Appeals. 36 A house had been described by a police officer witness as having the reputation of being a house of prostitution and a bootlegging joint. Although specifically not passing on the point for other reasons, the Court pointed out that the statute does not limit proof of the "general character" of a house to any specific element. The Court further volunteered that the reputation of being a bootlegging joint is less derogatory than the reputation of being a house of prostitution. It would seem clear from these comments that all traits of character and reputation are admissible under this section. Logically, it follows that no time limit should be imposed on such testimony since character and reputation are summaries of opinion from the community at large, necessarily collected over a period of time.

Section 18-88 reaches those individuals who use the automobile and other modern transportation devices for conducting prostitution. Here again the language is broad and is designed apparently to require less evidence than the pandering statute. The taxi-cab driver in league with the prostitute is the target at which this statute is usually aimed.

The remaining sections in the series, 18-89 to 18-96, concern themselves with punishment, venereal disease control and rehabilitation. Section 18-89 and Section 18-91 are in obvious conflict as to type of punishment. 37 Section 18-89 and Section 18-94 are in conflict as to quantum of confinement. 38 These conflicts have been judicially recog-

34 Foster v. Comm., 179 Va. 96, 109, 18 S. E. (2d) 314, 316 (1942). Here, defendant's wife was the prostitute and defendant disclaimed knowledge. Defendant's wardrobe was on the premises and he lived in the adjoining room of his wife. Conviction affirmed.


37 The former calling for alternative jail or fine, or both, while the latter calls for a mandatory jail sentence.

38 The former providing for a sentence up to 12 months in jail, while the latter provides for an indeterminate sentence of 3 months to 3 years.
nized\textsuperscript{39} and the first-mentioned conflict was resolved by the Supreme Court of Appeals holding that "in cases of irreconcilable conflict in statutes passed at the same session of the Legislature, the last one approved by the Governor must prevail."\textsuperscript{40} As it now stands, a jail sentence up to 12 months can be imposed on a keeper of a bawdy-house, but no fine.\textsuperscript{41} The Supreme Court of Appeals has called upon the Legislature to clarify the existing confusion with a more precise punishment section,\textsuperscript{42} but at this writing at least two Legislatures have met without making any changes in these sections. From the point of view of permitting the court the widest discretion in dealing with such cases, perhaps punishment should be the same as in misdemeanors generally—i.e., a fine or imprisonment, or both. However, there is considerable merit in having a mandatory jail sentence for prostitution and madams because of its deglamorizing effect.\textsuperscript{43}

Section 18-90 provides that a person arrested upon a charge of prostitution or related charge shall be examined for venereal disease and shall not be admitted to bail until found "not dangerous in the community on account of such venereal disease . . . ." The same section provides for prompt examination, which must begin within three days after arrest. Clearly intended as a health measure, the inconvenience and loss of prestige by going to jail for a short time makes the statute a law enforcer's tool. Disruption of business and unfavorable publicity caused by arrest and incarceration can have a deterring effect on a trade where discreetness is a factor of success.

Use of this section, however, presents some problems which are not just academic. The first is whether or not it applies to the male sex as well as the female sex. This question has been raised by the Supreme Court of Appeals but not considered\textsuperscript{44} since it was not necessary. Obviously designed for women, Section 18-90 logically could apply to male keepers as well since, medically, the male is just as likely a carrier of venereal disease as a female.

A more serious legal and constitutional question could arise under this section by denying bail prior to completion of the medical exam-

\textsuperscript{39}Gaskill v. Comm., 185 Va. 440, 39 S. E. (2d) 296 (1946).
\textsuperscript{40}Gaskill v. Comm., 185 Va. 440, 443, 39 S. E. (2d) 296, 297 (1946).
\textsuperscript{43}By paying occasional fines and having some of her inmates serve the jail time, it is perfectly possible for an established madam to conduct business for many years without ever seeing the inside of a jail.
\textsuperscript{44}Gaskill v. Comm., 185 Va. 440, 445, 39 S. E. (2d) 296, 298 (1946).
ination and/or confining a prostitute or madam pending a medical examination after she has been acquitted of criminal charges. The latter is less likely than the former but perfectly possible in a close case. It would seem that a writ of habeas corpus would be the method of testing the constitutionality of the statute which in effect denies a constitutional right of bail pending trial and any appeal. In practice, it is unlikely that this section will ever be thus tested, since by the earliest time the case could be heard, the results of the medical examination would be known, the question would become moot, and the Court of Appeals would not likely pass on it.

The pandering statute, Section 18-47, is a long, wordy statute which makes it a felony, subject to ten years imprisonment, for one to accept a part of a prostitute's earnings, or to put a woman in a house of prostitution against her will, etc. There are many variations listed in this rambling statute, the substance of the law being aimed at the procurer. This section includes a prohibition against transportation of women in the state for purposes of prostitution and permits any female, whether married to the defendant or not, to testify. For all practical purposes, this pandering statute requires the testimony of a prostitute on behalf of the state. Women generally will not testify against their procurer unless there has been a quarrel, and such a quarrel or misunderstanding may be very temporary in terms of trial dates. In prosecutions of this nature, it is well to have corroborative evidence in addition to that of the prostitute. The statute, as a tool, reaches the procurer and madam and, under proper conditions, is an effective weapon. It is perfectly possible to reduce the present wordiness of the statute without loss of any effectiveness.

The vagrancy statutes, properly used, are a broom to sweep the streets clean of several types of undesirables, including prostitutes. People having no visible income lawfully acquired and who consort with prostitutes, gamblers, etc., are by definition, vagrants and can be punished as misdemeanants. Having been upheld on a constitutional attack as an invalid exercise of the state's police power, the statute, insofar as it is applicable to prostitution, applies to the street walker

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45 Va. Const. (1928) Art. I § 9, stating that “excessive bail ought not to be required.” But See Art. VI, § 109, which provides that the General Assembly shall provide “by whom and in what manner, applications for bail shall be heard and determined.”


47 Secs. 63-338 to 63-341.

48 Beggers, idlers, bootleggers, gamblers, etc.

and prostitute frequenting the taverns. It is difficult to apply this statute to the prostitute in league with a taxi-cab driver, or to an inmate in an established house, or to a casual visitor (for immoral purposes) to a hotel. Dealing with the latter requires application of the 18-85 series mentioned above.

Departing briefly from the criminal law, the Virginia Code declares houses of prostitution to be nuisances and provides for their abatement by injunction and for sale of all furniture and fixtures used in conducting the nuisance for payment of costs incurred in the injunction proceedings. Any person violating such injunction shall be punished for contempt and the penalties for contempt are fixed by statute. This is a civil proceeding, but if synchronized with a prosecution of a prostitute or keeper of a house under the criminal statute, a once prosperous, ornately-decorated house can become, literally, an empty shell. This law has also survived a constitutional attack, the Court of Appeals holding that the sale of movable property in a house found to be a nuisance is not taking property without due process of law. In passing, it should be noted that under this section, the attorney for the Commonwealth may grant immunity from prosecution to any witness called to testify on behalf of the Commonwealth. In a difficult case, it makes available witnesses who otherwise might be reluctant to testify. Another aid to the confiscation proceeding is the admissibility of evidence of the reputation of the place, as in the criminal proceeding.

To modernize this statute, it might behoove the Legislature to include automobiles and other forms of transportation used to conduct prostitution in the property classification noted above, and permit the confiscation and forfeiture of automobiles and household furniture, etc., to the State under a procedure similar to that of the Alcoholic Beverage Control Act and the gambling statutes. Prostitution today is just as dependent upon the automobile as are bootlegging and gambling.

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50 Secs. 48-7 to 48-15.
51§ 48-11. §100 to $1000 fine, or 3 to 6 months imprisonment, or both fine and imprisonment.
52Bunkley v. Comm., 130 Va. 55, 108 S. E. 1 (1921). Here the Court, in affirming the lower court, indicated its views on the subject-matter by stating that Blanche Bunkley (the defendant) “was an old hand in the detestable business of turning the frailties of her own sex and the lust of men into pecuniary profit.” 130 Va. 55, 63, 108 S. E. 1, 4 (1921).
53§ 48-15.
54Secs. 4-55 and 4-56.
There are, finally, a group of laws not directly on the subject of prostitution but which, depending upon the facts, may be used as means of combating and neutralizing it. Such laws prohibiting adultery and fornication,⁵⁵ lewd and lascivious cohabitation,⁵⁶ contributing to the delinquency of a minor,⁵⁷ second degree principals in statutory rape,⁵⁸ sale and possession of lewd literature,⁵⁹ abortion,⁶⁰ spreading venereal disease⁶¹ and regulation of employment agencies⁶²—all have their place in controlling prostitution although the circumstances may limit their use. Municipal ordinances sometimes parallel the state code⁶³ and may offer more flexibility in dealing with prostitution. In areas adjoining military establishments, cooperation with the military authorities and judicious use in declaring certain taverns and other meeting places “off limits” to service personnel will cause the owner to engage in hasty self-policing. Many other techniques may be used, but as many as possible should be brought to bear at once.

From a tabulation made from questioning 16 local prosecutors from both urban and rural areas in Virginia, none professed knowledge of any organized prostitution; about half admitted there was casual, infrequent prostitution, but that vagrancy laws with occasional use of the Section 18-85 series were generally sufficient. In the urban communities, the situation was in hand but required constant vigilance. The street-walker, tavern pick-up was found to be more prevalent than the organized house.

It was the general belief that prostitution laws are adequate. However, some revision could be made in the 18-85 series which would clear up the confusion caused by the punishment sections. It is recommended that an alternative jail or fine or both jail and fine punishment be imposed to give the court more flexibility in imposing punishment.

Permitting confiscation of automobiles and furniture and fixtures would, it is believed, further deter people other than the actual pros-

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⁵⁵§18-82.
⁵⁶§18-84.
⁵⁷§18-84. This would apply to both males and females under 18 years.
⁵⁸§18-54. This applies to girls under 16 years. A charge of second-degree principal, in statutory rape, could be used in a pandering case, where evidence of receiving money from a young girl's earnings is slight. The maximum and minimum penalties for statutory rape are considerably higher than for pandering.
⁵⁹§18-113.
⁶⁰§18-68.
⁶¹§32-99. Proof here may be very difficult.
⁶³See Code of City of Norfolk (1950) c. 29, which contains several ordinances almost identical with the Code of Virginia.
titute from engaging or participating in the activity. The pandering statute could be made more concise. Finally, mandatory picture-taking and finger printing for all people arrested for prostitution or on a related charge would be advisable. This would permit law enforcement agencies to build their records of offenders so as to keep a better watch upon them and also would be of assistance to the public health authorities in control of venereal disease.

Alcoholic Beverages

After the repeal of the 18th Amendment to the Federal Constitution, the people of Virginia, by majority vote in 1933, decided to adopt a plan for the control of liquor. Years later the Supreme Court of Appeals described the trepidation of the citizens in sizing up their task: "The use of alcohol in its many forms has perplexed society and its government from time immemorial and still does. It confronts them with an inescapable problem and apparently with an insoluble one."64 The Virginia Constitution of 1902 had provided: "The General Assembly shall have full power to enact local option or dispensary laws, or any other laws controlling, regulating, or prohibiting the manufacture or sale of intoxicating liquors."65 That constitutional provision was the culmination of a number of uniform decisions of the Supreme Court of Appeals, which decision was restated in 1906, after the Constitution of 1902 had been ratified. "The regulation of the subject is completely within the police power of the state; that the sale of liquor may be entirely prohibited, or regulated in any manner the Legislature may deem wise, without supervision or control of the courts."66 The Constitution was amended once, in 1928, and now reads: "The General Assembly may enact laws controlling, regulating, or prohibiting the manufacture or sale of intoxicating liquors."67 With this unlimited power, the General Assembly designated the Liquor Control Committee to prepare appropriate legislation. That Committee agreed on five principles: (1) Temperance, social betterment and respect for law should be the prime objectives of any system of liquor control. (2) Local option is important, that is, the people in each community should decide whether they desire the sale of alcoholic beverages in the locality. (3) The sale of alcoholic beverages should be brought out in the open. (4) Taxes should be levied as a method of pro-

moting social control and not primarily for raising state or local revenues. (5) The private profit motive, with its incentive to stimulate the sale and and consumption of liquor, should be reduced to a minimum.68

With those principles in mind the Alcoholic Beverage Control Act of 1934 was enacted.69 The Supreme Court of Appeals has observed that "The clear purpose of the Act is to permit the possession of spirits and alcoholic beverages legally acquired, and to prohibit and penalize possession when not so acquired."70 That purpose is effected in the Act in two ways. First, the sale of beer and wine is permitted by independent licensees. Secondly, the sale of distilled spirits is conducted solely by the State in its own stores, which are established for the purpose. Although the first category raises some problems for the law enforcement officer, it is the second category which causes the most concern.

The A.B.C. laws are concerned with regulating the manufacturer, on the one hand, and the dispensing on the other, of alcoholic beverages. With respect to beer and wine, it is not generally known that beer and wine may be manufactured at one's residence for domestic consumption at that residence, though not for sale.71 As a practical matter, the process of producing wine and beer at home for illegal sale is largely prohibitive because of the trouble and cost involved, and because legal beer is plentiful. Law enforcement officers are seldom confronted with this type of manufacturer, and it poses no problem when detected.

However, the sale of beer and wine lawfully manufactured poses more of a problem. The A.B.C. Act places the problem squarely in the hands of the A.B.C. Board,72 and gives its regulations the force of law, the violations of which are misdemeanors.73 The Board has equipped itself with elaborate administrative machinery to see to it that those applying for beer licenses are properly screened, and that those already licensed are carefully watched.

The law provides that beer and wine may be legally manufactured or bottled for sale and may be sold in the State, providing the appro-

69Acts of Assembly (1934) c. 94.
71§4-89.
72§4-25.
73§4-92.
priate license is procured. The suitability of any applicant for a license is left entirely and exclusively to the A.B.C. Board, without right of appeal, as is the power of the Board to revoke such licenses.

Violations of the provisions of the A.B.C. Law and regulations, with respect to beer and wine, are usually the administrative concern of A.B.C. inspectors, and local law enforcement officers find few violations which tend to corrupt the public morals.

The control of traffic in distilled spirits is the chief concern of local officers, and the A.B.C. Act contains an intricate maze of sections dealing in that subject. This portion of the article is necessarily limited to a discussion of a few of those sections found most useful to enforcement officers, as tools to effectuate the purpose of the entire Act. The A.B.C. Act specifies that the manufacture (except beer and wine at home, for home consumption) of alcoholic beverages, without proper license of the A.B.C. Board, is a felony. To aid the enforcement of the provisions, the statute declares that every person "found at" any place where alcoholic beverages are being manufactured in violation of the law, "shall be deemed prima facie guilty of manufacturing the same or aiding and abetting in such manufacture and upon conviction thereof shall be punished as if personally manufacturing the same." Distilling apparatus and materials used in the illegal manufacture are deemed contraband and subject to forfeiture to the Commonwealth.

With respect to the illegal dispensing of alcoholic beverages, the statutes usually relied on are Section 4-58 and Section 4-81, Code of Virginia. Section 4-58 makes it a misdemeanor, with a minimum jail sentence of 30 days, for any person to sell any alcoholic beverages "other than permitted by the provisions of this chapter." Except for certain sales for medicinal purposes, the practical effect of the statute is to forbid any sale of distilled beverages, since those beverages are dispensed only by the A.B.C. stores. Enforcement of the statute is aided by the statutory definition of "sale," which includes any transaction "otherwise than gratuitously." The statute is only as effective in the control of whiskey traffic as the evidence which can be pro-

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§4-105. At this writing, legislation is being pressed in the 1952 General Assembly which would provide an appeal to the courts by disappointed applicants.
duced to support the charge; and those who customarily purchase whiskey illegally sold are not willing to admit the fact. Hence, law enforcement must resort to undercover tactics to detect the violators. This section is probably used more than any other penal provision in the A.B.C. Law, but because of its clear and simple intent, the Supreme Court of Appeals has had few occasions to pass upon it. The handful of decided cases deal only with the sufficiency of the evidence to sustain the convictions.\textsuperscript{83}

Section 4-81 of the Code, commonly called the "nuisance section," is one of the most effective devices of A. B. C. law controlling illegal whiskey traffic. It specifies that "places of every description" are deemed common nuisances "where alcoholic beverages are manufactured, stored, sold, dispensed, given away or used contrary to law, by any scheme or device whatsoever . . ."\textsuperscript{84} and "any person who maintains or who aids and abets or knowingly is associated with others in maintaining such common nuisance, is guilty of a misdemeanor."\textsuperscript{85} The definition of the nuisance encompasses all the schemes known to bootleggers, and the specification of who shall be guilty includes any person shown to be knowingly associated with the illegal operation. The section has been attacked on the constitutional ground that it is vague, uncertain and indefinite in its terms, but the Supreme Court of Appeals has not passed on the question.\textsuperscript{86}

The statute is particularly useful to the police when no specific evidence of illegal sales or other unlawful use can be adduced. Nevertheless, it has been held that two distinct facts must be proved, "First, that alcoholic beverages were \textit{habitually} used upon the premises contrary to law, and second, that the defendant maintained, aided, abetted or knowingly was associated with another in such unlawful use."\textsuperscript{87} The Court of Appeals, in reviewing these cases, has repeatedly held that the question of whether or not the suspect place is a nuisance

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{83}See Nicholas v. Comm., 186 Va. 979, 45 S. E. (2d) 302 (1947); Surrat v. Comm., 187 Va. 940, 48 S. E. (2d) 962 (1948).
\item \textsuperscript{84}§4-81.
\item \textsuperscript{85}§4-81.
\item Smith v. Comm., 171 Va. 480, 198 S. E. 432 (1938). There, the evidence of the nuisance was so strong that the Court found it unnecessary to answer the constitutional question.
\item \textsuperscript{87}St. Clair v. Comm., 174 Va. 480, 482, 5 S. E. (2d) 512, 513 (1940) [italics supplied]. The "habitual" use of alcohol on the premises requires proof of a course of conduct, over some yet-undefined period. The longest permissible period would seem to be over a period of one year prior to the date of the arrest warrant, since that is the misdemeanor statute of limitations. §19-3.
\end{itemize}
\end{footnotesize}
is a question of fact for the jury under proper instruction.\textsuperscript{88} Circumstantial evidence is sufficient to sustain a conviction.

Section 4-81 also provides for the entry of a judgment that the place the nuisance exists "be closed up" or, in the alternative, that the owner or lessor give bond "conditioned that the premises shall not be used for unlawful purposes . . . ." But it is important to note that to invoke this portion of the statute, due notice must be given to the owner or lessor, and guilty knowledge of either must be shown.\textsuperscript{89}

No guilty knowledge need be proved as to the owner of the premises under the injunction section.\textsuperscript{90} That section permits a temporary injunction against the nuisance as soon as the sworn bill is filed, which injunction the Court may continue for an indefinite period, after the cause has matured and been fully heard. Interviews of the Commonwealth's Attorneys revealed that the section is widely used, both as a penal measure against violators and as injunctive relief against the premises.

Another interesting and useful statute, Section 4-75, makes it a misdemeanor to possess, keep, or transport alcoholic beverages which have been "illegally acquired."\textsuperscript{91} The enforcement of the section is aided by the evidential statutory presumption that "spirits"\textsuperscript{92} in containers not bearing the A.B.C. seal "shall be deemed for the purposes of this chapter to have been illegally acquired."\textsuperscript{93} Those bootleggers who traffic in illegally manufactured "corn" whiskey, or whiskey brought in from neighboring non-control states, find the presumption hard to overcome. Another paragraph declares that "alcoholic beverages" are deemed to have been illegally acquired when found "in the possession of any person in amounts in excess of one gallon, in containers not


\textsuperscript{90}§4-81. As originally enacted, the statute did not provide that notice and opportunity to be heard be given the owner of the premises. The "padlock" portion of the section was contested in McNelis v. Comm., 171 Va. 471, 198 S. E. 498 (1938) and held to be unconstitutional in that it deprived the owner of his property without due process of law. The notice provision was added by the 1950 General Assembly. Acts of Assembly (1950) c. 446, p. 877. It provides that notice and an opportunity to be heard must be afforded "any owner or lessor not involved in the original offense." "Padlocking" is thus made more difficult, and properly so.

\textsuperscript{91}§4-82.

\textsuperscript{92}§4-75.

\textsuperscript{93}Spirits are defined in § 4-2 (24).
bearing stamps or other evidence showing the same to have been purchased from the Board or a person licensed to sell the same under the provisions of this chapter or other evidence that the tax due to the Commonwealth or the markup required by the Board has been paid . . .”

It will be noted that “alcoholic beverages” by definition includes every conceivable form of “alcohol, spirits, wine or beer and capable of being consumed.”

The important elements of the offense are (1) the possession and (2) the illegal acquisition. What constitutes “possession” has been the subject of considerable case law. In 1938, the Court of Appeals observed that the crime was unaccompanied by any statutory presumption “that the person occupying or in control of the premises is in possession of illegal liquor on the premises” as had been the law prior to 1934. “The fact of possession is a fact to be proved. It is not presumed.”

Thus, the Court ruled that the mere presence of liquor on the premises, unaccompanied by other pertinent and material facts pointing to the owner’s possession, of itself is insufficient to sustain a conviction. This construction of “possession” requires the police officer to be sure of an offense, and operates as a safeguard for the innocent.

Similar opinions have been rendered as to the “transporting.” “The mere presence of a person in an automobile in which intoxicating liquor, illegally acquired, is being transported, is not conclusive proof of illegal possession or illegal transportation.”

With respect to the “illegal acquisition,” it seems that as far as the consumer is concerned, one of the main purposes of the A. B. C. Law is to prescribe how alcoholic beverages may be lawfully possessed and, necessarily, how they may be lawfully acquired. The Court of Appeals has quickly noted, however, “that the Act, nowhere, in express terms provides that it shall be unlawful to possess spirits or alcoholic

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94§4-175.
95§4-2(2). “‘Alcoholic beverages’ shall include the four varieties of liquor defined herein as alcohol, spirits, wine and beer, and any one or more of such varieties, and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed by a human being.”
96§4-2(2).
beverages in containers not bearing the required government stamps or seals."^{102} This immediately points up the vital importance to law enforcement officers of the two evidential presumptions noted above, for it makes the absence of the stamps or seals on the containers in question the test to be applied to determine the legality of the source from which or the means by which the beverages were acquired.

Since the Act does not make possession in unstamped containers an offense, this section would seem, on first glance, to be rather arbitrary. However, the evidential presumptions have been held to be not conclusive, but merely presumptions "subject to be rebutted by evidence of opposing or explanatory facts."^{103} The section is one of the most useful to effectuate the intent of the A. B. C. Act.

Section 4-72 is closely related to Section 4-75. Section 4-72 makes unlawful the transportation of alcoholic beverages in quantities in excess of one gallon, "within, into or through this State . . ." except by a permit issued by the A. B. C. Board. The section was designed "to protect citizens of Virginia from the illicit delivery, sale, and transportation of ardent spirits."^{104} It is aimed primarily at the professional runner of whiskey, who deals in large amounts, and it may be presumed that the Legislature felt that one gallon would be a sufficient supply for the ordinary domestic user. The Supreme Court of Appeals has held that "transportation" means exactly that, and it will not infer from the evidence that the vehicle must have moved at one time or another, in the absence of circumstances which show that to have occurred.^{105} However, Section 4-75, noted above, picks up the offense when the "transporting" evidence leaves off, but only if illegal acquisition can be proved. For instance, if two gallons of stamped whiskey were found in a parked car, the Commonwealth would be required to prove that the same was illegally acquired and that the defendant was in fact in possession.

Another effective tool available to the law enforcement officer is the confiscation provision of the A. B. C. Act. The provision is

^{102} Miller v. Comm., 172 Va. 639, 647, 2 S. E. (2d) 343, 347 (1939). On the contrary, the Court observes: "In the possession and use of legally acquired liquor, [the consumer] is not denied the privilege to mix spirits or alcoholic beverages in cocktail shakers or in eggnog bowls, or to transfer it from a larger or broken bottle to an unstamped container, or to transport it in a flask, or, perhaps, to carry a small quantity, in an unstamped container, to the bedside of a sick neighbor."

^{103} Miller v. Comm., 172 Va. 639, 647, 2 S. E. (2d) 343, 345 (1939).


particularly painful to the bootlegger whose business requires that he deliver whiskey directly to the customer. Section 4-56 requires an officer to search a vehicle suspected of the illegal transporting of alcoholic beverages or the transporting of such beverages illegally acquired, "and if such illegally acquired alcoholic beverages or alcoholic beverages being illegally transported in amounts in excess of one quart be found therein, he shall seize the same." The statute then sets out an elaborate procedure whereby the vehicle may be forfeited to the State. An information is filed, setting forth the grounds of the proposed forfeiture and praying that the vehicle be condemned. The proceeding has been held to be one purely in rem, and the statute provides that appropriate notice be given to the owner, persons indebted for the purchase of the vehicle, and persons having liens thereon. Those interested persons may answer the information and defend their interests. For the owner to have the vehicle relieved from forfeiture, he must prove that he was the bona fide owner at the time of the seizure, that he was ignorant of the illegal use of the vehicle complained of, that the illegal use was without his connivance or consent, express or implied, and that he has perfected his title to the vehicle. Similarly, the lien holder must prove that the title was perfected by the owner, that the lienor was "ignorant of the fact that such ... vehicle was being used for illegal purposes, when it was so seized," that the use was without his connivance or consent, and that his lien was bona fide and perfected according to law. It will be seen at once that these requirements are eminently fair to an owner or lienor wholly innocent of the illegal transporting; yet they are stern requirements for the most clever bootlegger to overcome. "The burden of proof is upon the claimant. Forfeiture is the rule and release therefrom is the exception." It has been held that the reputation of the owner-claimant is admissible to show his knowledge of the illegal use, even though he was not present at the time of the seizure. This is a latitude not permitted to the

106§4-56(a).
109§4-56(f).
111Wray v. Comm., 191 Va. 738, 62 S. E. (2d) 889 (1951). There, the evidence revealed that the owner had a bootlegging reputation and was a friend of those in the car when seized, who were also reputed bootleggers.
Commonwealth in the prosecution of criminal offenses under the Act, and its effect is a substantial obstacle for the not-so-pure claimant to overcome. Nevertheless, the Commonwealth, to sustain the forfeiture, must produce sufficient evidence against the claimants, for "where the testimony of the defendant in no wise conflicts with the testimony of the Commonwealth and is not contradicted directly or indirectly, the testimony of the defendant must be accepted as true."\textsuperscript{112}

The interview with attorneys for the Commonwealth reveals that the confiscation statute is widely, though not universally, used throughout the State, both in urban and rural communities. It is one of the most effective weapons of harassment in the A. B. C. Act, for it places on the bootlegger the perplexing problem of transporting his commodity undetected. In addition, confiscation of vehicles serves to take the profit out of bootlegging. The statute could be strengthened, however, by including (in addition to vehicles illegally transporting beverages or transporting beverages illegally acquired) vehicles "being used in connection with a sale of alcoholic beverages in violation of the A. B. C. Act." That addition would subject to forfeiture those vehicles used to deliver whiskey for illegal sale, in amounts less than one quart. It appears that the confiscation statute was designed primarily for large-scale runners of whiskey and, thus far, the "pint-pushers"\textsuperscript{113} have escaped its effects.

In conclusion, a potent law enforcement tool is Section 4-91, which specifies that in any charge of violating the A. B. C. Act, it may be alleged and proven that the defendant has previously been convicted of violating the Act. The purpose for which those prior convictions may be shown has been limited by the Court of Appeals to the enhancement of the punishment, in the event the defendant is first found guilty of the pending charge.\textsuperscript{114} They may be proved by the defendant's own admissions on the stand,\textsuperscript{115} but it is customary to introduce oral testimony of officers who took part in the prior arrests.

\textsuperscript{112}Patterson v. Comm., 187 Va. 913, 48 S. E. (2d) 357 (1948). There, the defendant's auto was seized in his absence at a gas station where he had parked it. It contained eighty-five fifths of Washington, D. C. whiskey. He testified that he had left it to be serviced, had given no one permission to use it or to store whiskey in it, and that he did not know how it got there. None of the Commonwealth's evidence was to the contrary. The judgment of forfeiture was reversed.

\textsuperscript{113}"Pint-Pusher" is a descriptive term used by vice officers to designate those bootleggers who deliver whiskey by the pint to forgetful or miscalculating customers, after the State whiskey stores have closed for the day.

\textsuperscript{114}Smith v. Comm., 182 Va. 585, 30 S. E. (2d) 26 (1944); Campbell v. Comm., 176 Va. 564, 11 S. E. (2d) 577 (1940).

\textsuperscript{115}Smith v. Comm., 182 Va. 585, 30 S. E. (2d) 26 (1944).
The constitutionality of the section has been upheld as not depriving the defendant of equal protection and due process.\textsuperscript{116} However, the defendant is entitled to an instruction on the purpose for which the jury may consider the evidence.

As a practical matter, the prior convictions may some times work a hardship on the defendant. In a close case, where the burden of proof has barely been met by the Commonwealth, evidence of the prior convictions might serve to dispel any reasonable doubt from the jurors' minds as to the defendant's guilt. Human nature being what it is, this is true even though the jury is carefully instructed and defense counsel vigorously argue the purpose for which the evidence may be received.

It is suggested that an amendment be made to the procedure, whereby the jury would not be informed of the prior convictions until they had passed on the guilt or innocence in the pending charge. In such a procedure, the jury would be instructed to return their verdict \textit{without} specifying the penalty. If the verdict were that of guilty, it would then be permissible for the Commonwealth to allege and prove prior convictions, after which the jury could retire to fix the punishment. Even though such a procedure would logically require two sets of instructions and two summation periods for counsel, it is submitted that the possibility of the jury's considering the prior convictions as evidence in the instant case would be eliminated.

\textbf{Gambling}

Since earliest times there have been laws prohibiting and limiting gambling in Virginia.\textsuperscript{117} Today no form of gambling is permissible, and all individuals in any way connected with it are subject to punishment; and our courts follow a broad statutory interpretation. The legislative and judicial attitude toward gambling is well illustrated by the following preamble to a statute passed by the General Assembly in 1792:

Sec. V "And to prevent gaming at ordinaries and other public places, which must be often attended with quarrels, disputes and controversies, the impoverishment of many people and their families, and the ruin of health, and corruption of the manners of youth, who upon such occasions frequently fall in company with lewd and dissolute persons, who have no other way of maintaining themselves but by gaming; \textit{Be it further enacted}...."\textsuperscript{118}

\begin{footnotes}
\item[117] The first statute on gaming was passed in 1727, 4 Hen Stat. 214. The Act of 1740 contained the first criminal section on the subject, 5 Hen Stat. 102, §4.
\item[118] Va. Code of 1802, c. 96, p. 174. This part of the code reduced all previous laws
\end{footnotes}
Today the Constitution of Virginia\textsuperscript{119} removes from the Legislature the power to enact any law making lotteries legal, by flatly declaring that all activity of lotteries shall be prohibited and that none shall be authorized. Where the statutes leave any question concerning an activity faintly considered to be a lottery or gambling, this provision is sufficient to indicate the policy of the Commonwealth and to act as a guiding beacon for the Court of Appeals. In order to remove any doubt, the Virginia Code at Section 18-276 provides that all laws for suppressing gaming and lotteries shall be construed as remedial.

A survey of Title 18, Chap. 9, Arts. 1-2 of the Code of Virginia\textsuperscript{120} discloses at once a series of statutes which afford complete coverage in the gambling field. With the help of the above-mentioned constitutional provision and the statute declaring these laws to be remedial, it would seem that the law enforcement officer has no legal problem, and, if any problem at all, it is one of merely enforcement. The main thesis of the Kefauver Committee's report is to the effect that gambling syndicates having become organized on a nation-wide basis, with rapid means of communication, the average state's laws can only strike at the local offenders and cannot reach the behind-the-scenes figures who control the vast networks.\textsuperscript{121} That Committee believes, however, that a combination of federal legislation regulating and prohibiting interstate communication of gambling information and steady police pressure on local outlets with the use of existing state laws will produce the most effective control of gambling.

If this be true, it is submitted that the Virginia law is more than adequate to contribute its share to the effort, and perhaps of foremost importance is Section 18-282,\textsuperscript{122} aimed at prohibiting the betting and transmitting of bets on horse races outside the state's boundaries. Section 18-281 strikes generally at "making books, pools or mutuals upon the result of any game of baseball or football or any trial of speed or power of endurance of animals or beasts . . . ."\textsuperscript{123}

Illustrative of the State's clear-cut policy to forbid gaming of every other sort is Section 18-284, Code of Virginia, and related sections. The
section is the nemesis of every civic and church organization attempting to stage a carnival or the like (usually to raise money for purposes universally conceded to be worthwhile). Those who operate amusement parks as a business are more wary of its prohibition. "If any person keep or exhibit, for the purpose of gaming, any table or bank of any name or description whatever, or any bank used for gaming which has no name, and any wheel of fortune or slot-machine, or any pigeon-hole table or Jennie Lynn table, whether the game or table be played with cards, dice, or otherwise, or be a partner or concerned in interest in the keeping or exhibiting such table or bank, he shall be confined in jail . . . ." This eliminates the playing lawfully of any such game, where consideration is passed for the privilege.

At one time, in 1920, the Legislature added a proviso to the section making it lawful to keep games and wheels on such amusement parks and carnivals, where the prizes consisted of candy or novelties. The reason such an inroad was permitted might have been due, in part, to the casual language used by the Supreme Court of Appeals in 1911, in Virginia State Fair Association v. Virginia Amusement Concessions Corp. There, on a contract between the parties, it became material to compare the legality of upright wheels of fortune where money was the prize and other wheels where only novelties could be won. The Court said:

"It is obvious that there was no such relation between a wheel at which money was exchanged for money, which was contrary to law, and a wheel at which some innocent trifle was given in exchange as that the one could not be operated without the other." This is the extent of case law on the subject in Virginia. Perhaps the Court was indeed drawing a distinction between the two wheels, as other states have done. Even so, it is submitted that the statute then

\[\text{\textsuperscript{18}§18-284.}\]
\[\text{\textsuperscript{19}Acts of Assembly (1920) c. 409, p. 597. It read: "Provided, however, that nothing contained herein shall prevent any person from keeping or exhibiting any game or wheel upon any city, county, or state fair grounds, benevolent bazaars, carnivals and amusement parks, whereby prizes consist of fruit, candy, toys or other novelties."}\]
\[\text{\textsuperscript{20}16 Va. 547, 82 S. E. 176 (1911).}\]
\[\text{\textsuperscript{21}16 Va. 547, 566, 82 S. E. 176, 180 (1911).}\]
\[\text{\textsuperscript{22}The words "game" and "gaming," as used in antigambling statutes, are used in the narrow sense of something \textit{vicious}, and almost invariably in connection with betting, rather than in the broad sense of a \textit{sport} or \textit{pastime} in which people may engage without any thought of betting. The courts in their interpretation of such statutes have been careful to draw a distinction between \textit{illegal gaming} and \textit{innocent playing of games, even for a prize." [Italics supplied] 24 Am. Jur., Games and Acts Prohibited. §19.}\]
did not permit such a construction. Nor does it now, for the present law is the same as it existed in 1911, the proviso of 1920 having been eliminated in 1924.129 One indication of the present Court's feeling is the recent denial of a writ of error to a defendant convicted of keeping a wheel of fortune where dolls only were prizes. The Virginia State Fair case only130 was urged as authority for reversal, but to no avail.131

Section 18-287 is aimed at the player, rather than the keeper of the game, and makes it unlawful to play the games mentioned above and, in addition, to bet in any game in a public place. As to the latter part, it is not necessary to prove that any money or other articles of value was bet at the game.132 Thus, every citizen who matches coins for drinks at the corner drug store is within the spectre of the gaming law.133 The law seems clearly antiquated, and the fact that the strictest enforcement has not been attempted is a matter of common knowledge, the best evidence of this being that neither Section 18-287 nor its predecessor statutes have been construed since 1858.134

As if the law were not clear enough, the present Section 18-278 was enacted in 1916, providing that "it shall be unlawful for any person to bet, wager, or play at any game for money."135 The simple yet absolute prohibition would seem to be the most adequate statutory tool available to law enforcement officers. Yet, the statute has never been construed by the Court of Appeals.

Sections 18-290 through 18-296 are effective weapons against punch boards, slot machines and similar devices. Section 18-290 forbids the keeping or exhibiting for use, or permitting the same, of those devises which operate on the nickel-in-the-slot principle, "in the operation

130 See note 3, supra.
131 Comm. v. Smith, Corp. Court, Part Two, City of Norfolk; writ denied Dec. 6, 1951.
132 §18-289. Bowling, chess, backgammon, drafts, dominoes, and "licensed games" are exempt.
133 In the ancient case of Comm. v. Terry, 2 Va. Cas. (4 Va.) 77 (1817), the Court rendered this terse per curiam opinion: "The Court is of opinion, that the act of playing Cards in a Tavern, whether the person so playing bets or not, is Gaming, within the true intent and meaning of the several Laws made to prevent unlawful Gaming, and that Judgment ought to be rendered on the verdict in this Case."
134 Purcell v. Comm., 14 Gratt. (55 Va.) 679 (1858). Related sections are aimed at the occupant of premises where gaming is permitted (§18-285) and at doorkeepers and guards of such places (§18-286).
135 Acts of Assembly (1916) c. 44, p. 50. The act now states: "Any person who shall bet, wager, or play at any game for money or other thing of value shall be fined not exceeding one hundred dollars, or confined in jail not exceeding sixty days, or both." [Italics supplied].
of which any element of chance whatever may enter . . . .”\textsuperscript{136} Devices which do not uniformly return to the customer in each transaction the equivalent in merchandise that it returned in each preceding transaction are deemed to embody the “element of chance.”\textsuperscript{137} Also, an important statutory presumption accompanies the prohibition: “The possession of any such punch board, slot machine or other device shall be prima facie evidence of the use thereof.”\textsuperscript{138}

Sections 18-291 through 18-294 deal exclusively with slot machines, the first section overlapping in most instances the prohibitions of Section 18-290. The series was passed in a single act in 1936.\textsuperscript{139} As originally enacted, it prohibited the keeping or use of any slot machine by any person, except “a duly licensed dealer in slot machines storing such machines for sale outside this State and in jurisdictions where the operation of such machines is not forbidden by law . . . .”\textsuperscript{140} In the extra session of the Legislature in 1944-45, the portion of the statute quoted above was eliminated,\textsuperscript{141} making the prohibition absolute and without exception. Its provisions are phrased in the strongest and most minute language, and include a lengthy definition of slot machine.\textsuperscript{142} Any article used in violation of Section 18-291 is declared a “public nuisance”\textsuperscript{143} and subject to forfeiture. In 1942 the Legislature added two additional sections to the statute,\textsuperscript{144} the first aimed at lax enforcement of the slot machine law in the localities. It provides that, if it shall come to the Governor’s attention that the law is not being enforced, he may call on the Attorney General to instruct local officers “to take such steps as may be necessary to insure the enforcement of such sections . . . .”\textsuperscript{145} The second addition makes it mandatory on the A. B. C. Board to suspend or revoke the wine and beer license of any licensee violating or permitting the violation of this slot machine law.\textsuperscript{146} This series of sections is a most stringent condemnation of its particular subject matter.

For sheer inclusiveness, the statute prohibiting lotteries is unrivaled.\textsuperscript{147} Composed of five sections and calling for a mandatory jail

\textsuperscript{136}§18-290.
\textsuperscript{137}§18-290.
\textsuperscript{138}§18-290.
\textsuperscript{139}Acts of Assembly (1936) C. 247, p. 397.
\textsuperscript{140}Acts of Assembly (1936) C. 247, p. 397.
\textsuperscript{141}Acts of Assembly (1945) C. 86, p. 83.
\textsuperscript{142}§18-292.
\textsuperscript{143}§18-294.
\textsuperscript{144}Acts of Assembly (1942) C. 361, pp. 539-540.
\textsuperscript{145}§18-295.
\textsuperscript{146}§18-296.
\textsuperscript{147}§18-301.
sentence and fine, the statute is also aided by the constitutional pro-
hibition previously mentioned. However, it is to be noted that
"Lottery" itself is not defined. This is of little comfort to the law
breaker because, falling back on case law, the Court of Appeals has
held a lottery to consist of three elements: (1) the distribution of money
or property (2) by chance (3) for a valuable consideration paid, or
agreed to be paid. Most jurisdictions are in accord with this propo-
sition. The first element of a lottery seldom causes any difficulty; the other
two on occasion may require more reflection. Generally, the only issue
decision arising from the second element, chance, is whether or not
the scheme involves any element of skill. When a "commercial"
scheme (as opposed to an out-and-out policy game) is proposed and
the element of skill is added to escape infraction of the lottery law, the
scheme loses its mass appeal, since most people prefer a scheme where
selection of the winner is by pure chance. Thus, the question of what
is or is not consideration has been the subject of much litigation in many
jurisdictions. The Supreme Court of Appeals, following other courts,
has given a broad interpretation to "consideration" by holding that at-
tendance alone at an auction sale, regardless of whether a person made
a purchase or not, is consideration. A prize given away to a lucky ticket
holder at such sale, completed the lottery. Thus, give-away, raffles,
door prizes, as well as the policy or numbers games are illegal schemes,
subject to jail and fine.

Section 18-301 with its five sub-sections covers all the phases of
lottery participation, even to the extent of possession of tickets for
the purpose of sale or transfer. This provision is aimed at the "writer" and
the "pick-up" man in the numbers game. The Supreme Court
of Appeals has had no difficulty in deciding that "numbers" and
"baseball" pools are lotteries within the meaning of Section 18-301.

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150 For annotation see Note (1927) 48 A. L. R. 1109 and subsequent annotations
covering all types of commercial enterprises.
151 A scheme for attracting attention to an otherwise reputable business establish-
mement.
152 Note (1927) 48 A. L. R. 1109. For example, movie bank nights so prevalent in
the 1930's were the subject of considerable case law in the United States.
154 The individual who meets the person actually making the wager.
155 The individual collecting the bets from the writers who in turn gives the tickets
to the backer of the policy game.
156 Motley v. Comm., 177 Va. 805, 14 S. E. (2d) 28 (1940).
The only "commercial" scheme known to be considered was held to be a lottery, although the case was not heard as a criminal matter. It seems that the merchant would be best advised, under the existing law, to avoid any kind of give-away schemes.

Not only can an individual be incarcerated for participation in a lottery, however slight, but, under Section 18-302, the forfeiture statute, provides that all money, prizes, office equipment, or any personal property used in connection with a lottery, may be forfeited. There is a recently-added proviso, however, which protects the innocent lienor of such seized property, provided the lien is perfected. The enforcement of lottery forfeitures follows generally the forfeiture procedure set for violations of the state game and fish laws.

As in the A. B. C. cases, this section subjects to forfeiture the automobile used in the illegal game. Use of automobiles for collecting "numbers" in a policy game is widespread, particularly where the area covered by such a game is large. Apprehension of a "pick-up" man in an automobile with slips in his possession will generally be sufficient for both confiscation of the vehicle and his conviction for violating the criminal law. Logically, it follows that bicycles, taxicabs, and even public buses could also be confiscated, provided, of course, that the drivers were aware of the occupation and immediate business of the "pick-up" man. If a numbers game can be confined to an area no larger than one can travel by foot, it is a major victory for law enforcement, by virtue of containment alone.

Section 18-303 permits the local prosecutor or the Attorney-General to enjoin any person gambling or conducting a lottery, and it is provided that the procedure in such a chancery suit shall be the same as in any injunction suit.

Finally, it should be noted that prosecution witnesses in gaming cases are exempt from prosecution and can be compelled to testify.

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159 Acts of Assembly (1950) c. 262, p. 455.
160 In effect giving the innocent lienor the same rights as that of an innocent lienor of a car seized for illegal transportation of whiskey. See §4-56 (l), at note 109, supra.
161 Except automobiles, for which the procedure is the same as in A. B. C. forfeitures. §4-56.
162 See §§29-214 et seq. See Boggs v. Comm., 76 Va. 989 (1882), an interesting early case providing that ignorance of an owner as to the use of his vessel was no defense to forfeiture proceedings. All property, including automobiles, were proceeded against under these code provisions until the 1950 Amendment, note 159, supra, which provided for the relief of innocent automobile lienors.
163 §19-240.
Such a provision can be of great assistance in dealing with a reluctant witness. With the minute statutory coverage afforded gambling in Virginia, little else could be done to strengthen the law. However, it would seem that some of the mandatory jail sentences should be changed to an alternative sentence—jail or fine, or both jail and fine—depending upon the facts. This would relieve reluctant juries of the problem of either acquitting or sentencing to jail business people who violate the law prohibiting lotteries by an advertising scheme, and the occasional bettor in the drugstore or tavern. A fine generally is sufficient in such cases, and the jail sentence would still be available for the professional gambler and lottery operator.

Conclusion

This article has addressed itself exclusively to an examination of the adequacy of the racket-control laws of Virginia, as tools of enforcement in that area of crime. The abundance of case law referred to is best evidence that the State is not free from vice. The attorneys for the Commonwealth are constantly faced with the problems of new schemes attempted by the underworld in an effort to avoid the letter of the vice laws. Even so, they report that there is very little organized bookmaking in the State, although the "numbers" game flourishes in wide areas, but on a local scale. Prostitution customarily encountered is on a small scale, usually in isolated instances. Bootlegging in its different forms obtains uniformly throughout the State but has yet to reach uncontrollable proportions.

This being the case, a great majority of the attorneys interviewed believed the State need not follow the Kefauver Committee's recommendation that a special racket squad be formed in the State. Nor do they believe it necessary for the State to make a sweeping investigation of crime within its borders. Furthermore, they uniformly believe that the racket-control laws are adequate to meet the problem in Virginia.

Even though it appears that the Commonwealth has not yet suffered from the onslaught of nation-wide syndicates of vice, it is submitted that the existence of any vice in the State is an invitation to more. Every community is subject to become the prey of gangsterism, directly or indirectly.

"In many cities, large and small, there is evidence of active and often controlling participation by former bootleggers, gangsters and hoodlums, in the political affairs of the community. In some cases this participation extends to other cities and even to the government of the State. Underworld characters do not engage
in politics for the good of the community or the Nation. They do so for the purpose of increasing their power and wealth and gaining greater protection for their illegal activities."\textsuperscript{104}

And the Kefauver Committee gives this warning:

"In many cities, large and small, visited by the committee, corrupt officials have been forced to resign, grand juries and law enforcement officials have doubled their vigilance, and gangsters have gone into hiding. Even Virginia and the District of Columbia which were not themselves the subject of investigation, have felt the repercussions of the committee's work..."\textsuperscript{105}

Hence, it is submitted that the continued pressure of law enforcement on the local level, and constant vigilance to detect the advent of large-scale vice, are the keystones to keeping the Commonwealth free of the rackets. For this endeavor, it is finally submitted, the laws of the State are basically adequate and will continue to serve as tools for law enforcement officials.
