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Is the Operation of a "Suit Club" a Lottery?

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> "The practice followed by the company in thus carrying these mortgages has been followed for over 40 years by trust companies generally in Allegheny county and elsewhere throughout the state, with the exception of Philadelphia county. It has been approved by the Orphan's Court of Allegheny county, and by the Department of Banking of the Commonwealth. Inquiries by that department through the state have ascertained that trust mortgages aggregating approximately $138,000,000 at least, are carried without disclosure of the trusteeship on the public record, while other mortgages, amounting to over $78,000,000 are designated upon the public record as trust mortgages."

It appears to the writer that the *Guthrie* case is a reversal of *Yost's Estate* even though the court religiously says that it is conforming therewith. It is submitted that the holding in the *Guthrie* case probably conforms to public policy, and that it actually is the most reasonable and just decision that the court could make.

It would appear that the *Guthrie* case is the law in Pennsylvania today. Nevertheless, the basic doctrine, reasserted in the *Yost* case, is, under the proper conditions, still applicable. In *Smith v. Girard Trust Co.*,[8] decided after the *Guthrie* case, the court said: "A trustee may not take title to trust property in his own name, but where the party interested, with full knowledge, consents to the investment, the rule is otherwise."

Ivo V. Giannini

IS THE OPERATION OF A "SUIT CLUB" A LOTTERY

This note is concerned with the question of whether or not the operation of a "suit club" violates the statutory laws forbidding lotteries in the Commonwealth of Pennsylvania.

A "suit club" is a plan whereby certain persons, usually one hundred in number, are formed by a merchant into a club. Each member pays one dollar a week and each week there is a drawing. The names of all the members are written on slips and these are placed in a receptacle and at the end of each week, for twenty-five weeks, a slip is drawn out at a set hour and the member whose name is written on the slip is entitled to a suit. Each member whose name is drawn is entitled to a suit of like character. Each member whose name is drawn is

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[8]183 A. 47 (Pa., 1936).

entitled to receive a suit for as many dollars as he has paid in and he is then dropped from the club. After the twenty-fifth drawing there are seventy-five men left who have paid in twenty-five dollars and each of these members is entitled to a twenty-five dollar suit. Thus twenty-five men have received a twenty-five dollar suit for less than that amount and the other seventy-five have paid the full value for their suits.

The act of March 31, 1860, P.L. 382, section 52, provides "all lotteries, whether public or private, for money, goods . . . . . or matters or things whatsoever are hereby declared to be common nuisances . . . . .," and section 53 provides "If any person shall within this state, either publicly or privately, erect, set up, open, make or draw any such lottery as aforesaid, or be in any way concerned in the management, conducting or arranging of the same, he shall be guilty of a mis demeanor . . . . ." The statute does not set forth a definition of what constitutes a lottery[1] and nowhere mentions the operation of "suit clubs." Thus we must look to "see whether the scheme may reasonably and fairly be included within the terms as commonly used and understood".[2]

The legality of the operation of "suit clubs" has not as yet been determined by the Pennsylvania Appellate Courts and there is so far as the writer has been able to determine only one lower court opinion, that being *Commonwealth v. Painter*.[3] There the facts were for all purposes exactly as set forth in the "suit club" plan above. The court, admitting the statute did not define a lottery, upheld the findings of the jury that the defendant had violated the lottery statute, supra, and was thus guilty of committing a misdemeanor. The court said, "No one of course would contend that the use of lots to determine a question of difference necessarily constitutes a lottery within the meaning of the act. In case of a division of property belonging to a group of persons, a resort to lots, to determine what parcel should go to one and what to another cannot be considered an illegal lottery. Where, however, there is no ownership in property, where the question is to be decided by lot is whether one or or another of several persons shall become entitled to a particular article upon the payment of a small sum of money or a sum which bears no proportion to the value of the article to be disposed of, the case would seem to embrace all the elements necessary to constitute what is known and understood as a lottery in the proper meaning of the term intended to be descriptive of a bad and mischievous act or practice. The payment of a consideration for the right to get the benefit of a chance does not free the transaction from taint; that feature is to be found in the most notorious of lotteries: the putting at hazard of a consideration, small either absolutely or relatively, for the sake of getting a

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[1]Commonwealth v. Banks, 98 Pa. Super. 432 (1929).
[2]Commonwealth v. Banks, 98 Pa. Super. 432 (1929).
[3]Commonwealth v. Painter, 15 D. R. 491 (Pa., 1906).

large return—if the chance of the drawing of the slip of paper shall turn to be favorable—affords the ingredients necessary to constitute a lottery and constitutes such a case as the statute was intended to cover."

The Pennsylvania courts have defined a lottery as embracing any scheme or plan for the distribution of prizes by lot or chance.[4] Judge Paxson in *Commonwealth v. Sheriff*[5] said of the above definition: "whatever amounts to this, no matter how ingeniously the object of it may be concealed, is a lottery."

As to other jurisdictions it has been held "the three necessary elements of a lottery are the (1) furnishing of a consideration, (2) the offering of a prize, and, (3) the distribution of the prize by chance rather than entirely upon the basis of merit.[6] Applying the plan of the operation of "suit clubs" we find these three elements present. (1) Each member of "suit club" pays a consideration of one dollar each week. (2) For this he is credited and also offered an opportunity to win a prize (suit) for less than the others may have to pay. (3) The prize (the suit) is distributed upon the result of chance (the result of the draw) rather than entirely upon the basis of merit.

Assuming that it is pointed out that eventually each member of the "suit club" has a suit of like character and price and therefore no one loses, this argument is adequately disposed of by several leading "suit club" cases. In *DeFlorin v. State*,[7] the court said, citing from an earlier case;[8] "It is true that a bet does imply risk, but it does not necessarily imply risk in both parties. There must be between them a chance of gain or a chance of loss; but it does not follow that each of the parties to the bet must have both these chances. If from the terms of the engagement, one of the parties may gain but cannot lose and the other may lose but cannot gain, and there must be either a gain by one or a loss by the other, according to the happening of the contingency, it is as much a bet or wager as if the parties had shared equally the chances of gain and of loss. So in the present case the fact that a member who was unlucky in the drawing of the prizes might by continuing to pay one dollar a week for thirty weeks receive a suit of clothes regardless of the result of the drawings, does not make the transaction any the less a lottery, for the lucky members of the club win prizes varying in value from one dollar to twenty-nine dollars." In the "suit club" case of *People v. McPhee*[9] the court said as to the above argument: "We approve the language used in the opinion of *Ballock v. State*[10]

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[4]Commonwealth v. Monderfield, 8 Phila. 457 (1870) and adopted in Commonwealth v. Banks, 98 Pa. Super. 432 (1929).

[5]10 Phila. 203 (1874) and adopted in Com. v. Banks, 98 Pa. Super. 432 (1929).

[6]Brooklyn Daily Eagle v. Voorheis, 181 Fed. 581 (1910); Russell v. Equitable Loan & Security Co., 58 S. E. 884 (Ga., 1907).

[7]121 Ga. 593, 49 S. E. 699; 16 Ann. Cas. 846 and note (1905).

[8]Myers v. State, 112 Ga. 20, 37 S. E. 96 (1900).

[9]139 Mich. 687; 103 N. W. 174 (1905), 69 L. R. A. 505.

[10]20 Atl. 184 (Md., 1890).

where the court said 'Our statute does not justify a court in deciding a thing is not a 'lottery' simply because there can be no loss when there may be considerable contingent gain, or because it lacks some element of a lottery according to some particular dictionary definition when it has all the other elements with all the pernicious tendencies which the state is seeking to prevent'."

It has been argued in support of this type of plan that a member of the club may withdraw at any time and "trade out" in merchandise the amount he has paid to the club fund. This feature gives, it is argued, any member the opportunity of getting value for value and thus destroys the objectionable features of chance. The courts of other jurisdictions have replied to this argument and said that it is merely an added incentive to aid the lottery scheme since membership is not purchased to get the face value in goods but in the hope of winning in the draw and therefore the vicious element remains present.[11]

Clothiers and laymen have advanced the argument that the purpose of such a plan is not to operate or run a gamble. This is and has been a period of economic stress. Money is tight, wages low and men have not been able to outlay at one time the necessary amount to buy the usual yearly suit and the result has been that merchants throughout the state find themselves with an overstock of merchandise that is not moving. In order to turn over their stock and arouse buying interest this plan has been offered. Thus the merchant is enabled to sell his wares and stay in business, trade is stimulated and the consumer by an easy payment plan is able to keep up appearances and continue to be well dressed. This being effected it cannot be said to inflict upon the habits of the public a demoralizing influence for in its ultimate result it encourages thrift and systematic budgeting and therefore may be said to be nothing more than another method of installment buying.

It is interesting to note that this plan has been extended to ladies' apparel, shoes, electrical appliances and other commodities and no doubt will eventually find its way to the "modern drug store."

It will be noted that in *Commonwealth v. Painter*[12] the court based their conclusion of illegality on the fact that in such a plan the member has no ownership in the goods after he pays one dollar each week and receives no right to a suit until he has paid in twenty-five dollars unless in the meantime he wins in the draw. Might not it be argued that, where a member may voluntarily withdraw at any time and "trade out" in merchandise the amount he has paid into the club fund, that as soon as the member pays in one dollar he acquires a property interest in the stock of the merchant and the latter is merely a bailee for the member, retain-

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[11]People v. McPhee, *supra.*; State v. Moran, 51 N. W. 618 (Minn., 1892).

[12]*Supra.*

ing his stock for the convenience and selection by the member at any time up to the end of the twenty-fifth week?

It is to be noted with interest that very recently a number of merchants operating "suit clubs" in different counties have been arrested under the lottery law and in every case within the knowledge of the writer the Grand Jury has refused to return a true bill.[13] This has been seized upon by those supporting the plan and it is argued that the Grand Jury is composed of members of the consuming public and certainly their attitude should be considered by the courts in determining if such a plan is a lottery.

Undoubtedly the wide spreading of the operation of "suit clubs" will within a short time result in the submission of such a case to the Pennsylvania appellate courts. Though we can but speculate as to what the result will be, if the past and very recent attitude of the court in *Commonwealth v. Banks*[14] may be taken as a criterion the operation of "suit clubs" and any similar plans will be capitulated into the category of forbidden lotteries. There the court in declaring "number rackets" to be lotteries answered the contention of the defendants that "number rackets" were not lotteries, in that the statute did not define a lottery nor did it mention the particular type of scheme being engaged in, by stating that our statute does not define a lottery and is thus a general statute and then pointing to the language of the late Chief Justice Gibson as early as 1818 relative to the lottery statute. In *Seidenbender v. Charles*[15] he said: "I grant the legislature may not have had this particular kind of lottery in view, but was it intended to restrain the operation of lotteries then in use and to those only? I apprehend not. It was very clear that a particular kind of mischief, differing not in form or substance but in degree only from the one under consideration, and only less pernicious in consequences, first induced the legislature to act on the subject. Shall the letter, which is sufficiently comprehensive to embrace the case be restrained to the particular mischief then existing and exclude one of the very same stamp because it was not practiced. . . . . We are bound to extend it to every case within the letter, which we can suppose would, if foreseen, have been specifically provided for."

In conclusion, therefore, in view of the definitions placed by the Pennsylvania courts[16] as to what may constitute a lottery and their recent reiteration and adoption of the construction and breadth of our lottery statute as determined by the late Chief Justice Gibson,[17] and finally the antagonistic view taken by other jurisdictions[18] as to the operation of "suit clubs," the writer is of the opinion that the

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[13]Luzerne County (1936).
[14]*Supra.*
[15]4 S. & R. 151, 164 (1818).
[16]*Supra.*
[17]Seidenbender v. Charles, *supra* and iterated in Com. v. Banks, *supra.*
[18]*Supra.*

appellate courts, if a case comes before them, may well follow *Commonwealth v. Painter*[19] and declare such plans to be forbidden lotteries.

Sidney L. Krawitz

JURISDICTION OF JUSTICES OF THE PEACE IN PENNSYLVANIA OVER ACTIONS FOR PERSONAL INJURIES

The jurisdiction of justices of the peace in Pennsylvania relative to trespass has been defined and limited by two basic statutes, the Act of March 22, 1814, P.L. 190 and the Act of July 7, 1879, P.L. 194. Any authority of justices to hear and determine suits involving personal injuries must be traced to either one of these two statutes.[1]

The Act of 1814 states that the justices,

> ". . . . shall have jurisdiction . . . of actions of trespass brought for the recovery of damages for injury done or committed on real or personal estate in all cases where . . . damages alleged . . . shall not exceed $100."[2]

The fifth section of the same act specifically states,

> "nothing in this act shall be construed to extend to actions . . . for damages in personal assault and battery, wounding, or maiming."[3]

The language of this statute appears clearly to resist any interpretation that gives justices jurisdiction over actions for personal injuries. Injury to person is not injury to personal estate; and in construing the fifth section, there is the express exclusion of actions for damages in personal assault and battery.[4]

The second act, passed in 1879, states in its title that the purpose of the enactment is "To enlarge the jurisdiction of justices of the peace . . .".[5] The first section declares that,

> ". . . justices of the peace . . . shall have concurrent jurisdiction with the courts of common pleas . . . of all actions of trespass . . . wherein the sum demanded does not exceed three hundred dollars. . ."

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[19] *Supra.*

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[1] Murdy v. McCutcheon, 95 Pa. 435 (1880).

[2] Act of March 22, 1814, P.L. 190, 6 Sm.L. 182, section 1.

[3] Id., section 5.

[4] Donaldson v. Maginnes, 4 Yeates 127 (1804). This particular section was taken from a former act, that of March 1, 1799, 3 Sm.L. 354.

[5] Act of 1879, P.L. 194.