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Evidence -- Federal Wagering Tax Stamp -- Abatement of Gambling Nuisance

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master's recommendations should be set aside only upon good cause, even though the findings were advisory. The court, in the instant case, interpreted this decision to mean that the reference which instructed the master to make findings of fact as well as conclusions of law, in effect, usurped the court's function. The court held that this was tantamount to permitting the master to render the final decision in the case, since it left the chancellor powerless to act where there is *ample* evidence to sustain the findings of a master. This, the court concluded, could not be done over the objection of one of the parties.

Perhaps the court erred in its decision through a misinterpretation of the holding in *Harmon v. Harmon*. The weight of authority is that a reference by a court of chancery to a master may be made over the objection of the parties, but where a party objects to such a reference, the master's report is to be considered as advisory rather than conclusive. It is the opinion of the writer that the *Harmon* case is not in opposition to the weight of authority. Therefore, there is no apparent precedent for the decision of this court in quashing the order of reference on the grounds stated.

DONALD STUART ZUCKERMAN

EVIDENCE—FEDERAL WAGERING TAX STAMP—ABATEMENT OF GAMBLING NUISANCE

The state sought to enjoin, as a nuisance, an alleged lottery and bookmaking business. The state's only evidence was the fact that the defendants had purchased a Federal Wagering Occupational Tax Stamp and had paid the tax of 10% on their gross income from gambling. *Held*: Mere purchase and possession of a gambling tax stamp is not sufficient evidence to establish the maintenance of a gambling house. *Boynton v. State*, 75 So.2d 211 (Fla. 1954).

A Florida statute[1] makes any place or building wherein gambling is engaged a nuisance and subject to abatement.[2] Even the early common law held that keeping a gambling house was a public nuisance.[3] The effect of the statute is that it makes this conduct a nuisance *per se*,[4] to enjoin which it is only necessary to prove commission of the act.[5] As a

1. FLA. STAT. § 823.05 (1953).
2. FLA. STAT. § 64.11 (1953).
3. Bowden v. Nugent, 26 Ariz. 485, 226 Pac. 549 (1924); State v. Vaughan, 81 Ark. 117, 98 S.W. 685 (1906); Ehrlick v. Comm., 125 Ky. 742, 102 S.W. 289 (1907); Roberts v. Reille, 50 N.Y.S.2d 196 (N.Y. Munic. Ct. 1944); People v. Langan, 196 N.Y. 260, 89 N.E. 921 (1909); *Ex Parte* Allison, 99 Tex. 455, 90 S.W. 870 (1906).
4. Pompano Horse Club v. State, 93 Fla. 415, 111 So. 801 (1927); State v. 30 Club, 124 Mont. 91, 219 P.2d 307 (1950).
5. Engle v. Scott, 57 Ariz. 383, 114 U.2d 236 (1941); People v. Lim, 18 Cal. 2d 872, 118 P.2d 472 (1941); Robinson v. Westman, 224 Minn. 105, 29 N.W.2d 1 (1947).

result, the state must merely establish the fact that the defendant is maintaining a gambling house. This may be shown by circumstantial evidence,[6] as well as by direct evidence,[7] providing a casual connection between the evidence and the defendant is established.[8]

The problem then presents itself as to what weight should be placed upon the purchase and possession of the tax stamp as evidence of gambling. There are only four other cases in the United States in which the gambling tax stamp has been used as evidence of violation of gambling laws, and three of them can be distinguished on their facts.[9] The remaining case is a Florida decision[10] which arose prior to the passage of the statute[11] making the stamp prima facie evidence of gambling. The court held the tax stamp not sufficient in itself to show that the holder was a common gambler,[12] indicating that, absent a statute of the aforementioned type, the stamp is not prima facie evidence.

Due to the paucity of law on the point, it would appear that the courts would have difficulty in deciding what evidentiary weight to give to the gambling tax stamp. Some courts have indicated that what has been previously held with reference to a Federal Liquor License is equally applicable to the Federal Wagering Stamp.[13] Therefore it is logical to assume that when confronted with the problem, and with no other law on the point, the courts will follow the law with regard to liquor licenses.

It is established that the fact that accused had paid the special Federal tax as a liquor dealer and had obtained a license is admissible in evidence[14]

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6. People v. Renek, 105 Cal. App.2d 277, 233 P.2d 43 (1951); People v. Gompertz, 103 Cal. App.2d 153, 229 P.2d 105 (1951); People v. Ross, 100 Cal. App.2d 116, 223 P.2d 85 (1950); People v. Barnhart, 66 Cal. App.2d 714, 153 P.2d 214 (1944); People v. Newland, 15 Cal.2d 678, 104 P.2d 778 (1940); People v. Lewis, 91 Cal. App.2d 346, 204 P.2d 919 (1949); Comm. v. Stoe, 167 Pa. Super 300, 74 A.2d 526 (1950).

7. People v. Gompertz, *supra* note 6; People v. Ross, *supra* note 6; People v. Barnhart, *supra* note 6; People v. Newland, *supra* note 6.

8. People v. Gompertz, see note 6 *supra*; People v. O'Brian, 37 Cal. App.2d 708, 100 P.2d 367 (1940); People v. Fisk, 32 Cal. App.2d 26, 89 P.2d 142 (1939); People v. Rabalete, 28 Cal. App.2d 480, 82 P.2d 707 (1938).

9. Griggs v. State, 73 So.2d 382 (Ala. App. 1954)(held that a statute providing that the possession of a gambling tax stamp was prima facie evidence of violation of gambling laws was not an unconstitutional ex post facto law as applied to defendants). Acklen v. State, 267 S.W.2d 101 (Tenn. 1954). The gambling stamp was not the only evidence in this case. There was also the testimony of officers, defendants' confessions, and wagering tax returns. Deitch v. Chattanooga, 195 Tenn. 245, 258 S.W.2d 776 (1953) (city ordinance made it unlawful to possess Federal gambling stamp).

10. Rodriguez v. Culbreath, 66 So.2d 58 (Fla. 1953).

11. FLA. STAT. § 849.051 (1953) makes possessing or paying tax for Federal gambling stamp prima facie evidence against any person holding same in any prosecution of such person for violation of gambling laws of this state.

12. Rodriguez v. Culbreath, see note 10 *supra*.

13. Pompano Horse Club v. State, see note 4 *supra*. Acklen v. State, see note 9 *supra*. Deitch v. Chattanooga, see note 9 *supra*.

14. King v. State, 92 Okla. Cr. 389, 223 P.2d 773 (1950); Nickols v. State, 76 Okla. Cr. 178, 135 P.2d 352 (1943); Brooksher v. State, 251 P.2d 200 (Okla. 1952); Ellington v. State, 94 Okla. Cr. 26, 229 P.2d 902 (1951); State v. Kallas, 97 Utah 492, 94 P.2d 414 (1939).

to show the maintenance of a liquor nuisance.[15] The probative value of such evidence is to be determined in connection with all the other evidence in the case,[16] and, in the absence of a statute making possession of a license prima facie evidence of guilt,[17] the mere issuance of such a license is not sufficient to sustain a conviction.[18]

At the time the instant case was decided, there *was* a statute[19] which made the purchase and possession of the gambling stamp prima facie evidence of violation of the gambling laws. It is interesting to note that this statute was not even mentioned in this case, although there was an excellent opportunity to do so, and its logical application would have resulted in an opposite decision. However, it is probable that the court refrained from mentioning the statute in anticipation of the case,[20] which only a few months later, held the statute unconstitutional. Thus the court appears to have followed the law with regard to liquor licenses.

JOAN M. FRANKS

CORPORATIONS—CUMULATIVE VOTING—STAGGER SYSTEM—UNCONSTITUTIONAL

A stockholder sought to have declared unconstitutional an Illinois statute[1] which provided that a corporation could stagger the terms of office of its directors by designating different classes of directors who are elected at different intervals. *Held*, that although the Illinois Constitution,[2] providing for cumulative voting, did not expressly prohibit director classification, the statute could not be upheld since it defeated the purpose of cumulative voting. *Wolfson v. Avery*, Illinois Supreme Court, No. 33563, April 15, 1955.*

Cumulative voting is a method by which a stockholder, instead of voting his shares for each of the directors to be elected, is allowed to cast the whole number of his votes for one director or to concentrate or distribute

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15. State v. Kallas, see note 14 *supra*.
16. Bishop v. State, 90 Okla. Cr. 410, 214 P.2d 971 (1950); White v. Comm., 107 Va. 901, 59 S.E. 1101 (1907).
17. For example, ARK. STAT. § 48-49 (1947).
18. Appling v. State, 88 Ark. 393, 114 S.W. 927 (1908); Peyton v. State, 83 Ark. 102, 102 S.W. 1110 (1907); Liles v. State, 43 Ark. 95 (1884).
19. FLA. STAT. § 849.051 (1953).
20. Jefferson v. Sweat, 76 So.2d 494 (Fla. 1954)(held statute unconstitutional on ground that mere possession of the stamp cannot be prima facie evidence that defendant has been guilty of a crime when there is no evidence of any kind that a crime has been committed).

1. ILL. CODE ANN. § 157.35 (1951): Providing that when a corporation shall have nine or more directors they may be divided into classes.
2. ILL. CONST. ART. XI, sec. 3 (1870): Every stockholder shall have the right to cumulate his vote. ILL. CODE. ANN. § 157.28 (1951).
*A rehearing of this case is anticipated.