

February 1948

Criminal Law--Keeping Place of Prostitution--Circumstantial Evidence of Corpus Delicti

G. R. A. Jr.

West Virginia University College of Law

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>



Part of the [Criminal Law Commons](#), and the [Evidence Commons](#)

Recommended Citation

G. R. A. Jr., *Criminal Law--Keeping Place of Prostitution--Circumstantial Evidence of Corpus Delicti*, 51 W. Va. L. Rev. (1948).

Available at: <https://researchrepository.wvu.edu/wvlr/vol51/iss1/6>

This Case Comment is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.

sale. *State v. Board*, 111 W. Va. 562, 163 S. E. 57 (1932). Though the land was characterized as irredeemable, the former owner had one later opportunity to redeem, redemption being allowed during the pendency of the suit for the second sale. W. VA. REV. CODE (1931) c. 37, art. 3, § 29. The court declared that this second period of redemption is a mere matter of grace on the part of the legislature without effect on the irredeemable status of the land. *Bank of Quinwood v. Becker*, 119 W. Va. 534, 194 S. E. 894 (1937). Also, statutes extending the time allowed for redemption are constitutional, the extension being a legislative privilege that does not affect the irredeemable quality of the land. *Blooming Rose Coal Co. v. White*, 37 S. E. (2d) 455 (W. Va. 1946). The same line of reasoning would have sustained the statute in question. Thirdly, in point of fact, the lands in the main case could not have been redeemed from 1929 until 1932 nor from 1939 until 1941. W. VA. CODE (Barnes, 1923) c. 31, § 33; W. Va. Acts 1939, c. 61. This would seem sufficient to satisfy any technical requirement of irredeemability. Finally, the court might have employed the technique it recently used in *Lawhead v. County Court*, 38 S. E. (2d) 897 (W. Va. 1946). There the court went beyond the so-called plain meaning of the words to apply their practical and rational meaning. The instant case turns upon refinement of syntax rather than reason. Under it, had the statute allowed one week, or even a day, during which there could be no redemption, it would have been valid. Such reasoning is hypercritical. The constitution exhibits no purpose to restrict the legislature in the matter of redemption; instead, its silence in this respect indicates, and the court might have held, it was a matter whose details were for the legislature. The decision flies in the face of the principle of deciding constitutional doubts in favor of statutory validity.

R. G. S.

CRIMINAL LAW—KEEPING PLACE OF PROSTITUTION—CIRCUMSTANTIAL EVIDENCE OF *Corpus Delicti*. — As X, an undercover man, walked by the house occupied by D and two other women, he was accosted by D and asked to come in for the purpose of prostitution with one of the women. He inquired as to the price and was told that it would be “all right”. X then excused himself on a pretense and left. Approximately two weeks later the house was raided and the same two women, who were present when D solicited X, were arrested along with D. The evidence showed that D had a past record as

a keeper of a place of prostitution; *D* admitted that she had been arrested twice for that offense. It was adequately shown that the house had a bad reputation for being a place of prostitution. One of the women arrested with *D* remarked at the time of the arrest that "she knew she could not get away with this forever and she expected a raid of this kind." *D* was convicted before a justice of the peace for keeping a place of prostitution and appealed to the criminal court, where there was a verdict of guilty and *D* was sentenced to serve one year in jail and to pay a fine. The circuit court refused to review the judgment of the criminal court and *D* was granted a writ of error and supersedeas. *Held*, one judge dissenting, that the evidence was insufficient to sustain the jury's verdict of guilty since one instance of solicitation, the reputation of the house, and the previous arrests of *D* for keeping a place of prostitution do not, taken separately or collectively, prove the *corpus delicti*. Conviction reversed. *State v. Crummitt*, 40 S. E. (2d) 852 (W. Va. 1946).

To convict for the offense of keeping a place of prostitution, the state must prove that the defendant kept the place and that the place was one of prostitution. W. VA. CODE (Michie, 1943) § 36660. The statute does not define "house of ill fame" or "place of prostitution" so the common law must be consulted for a definition. In *State v. Badda*, 97 W. Va. 418, 125 S. E. 170 (1924), a bawdy-house or house of ill fame is said to be "a house kept for the reception of persons who choose to resort to it for the purpose of illicit sexual intercourse." *Gamewell v. State*, 137 Ark. 74, 207 S. W. 211 (1918) differed from the instant case in that there was no statute making the keeping of a place of prostitution an offense, but resembled it in that the court was forced to resort to the common law for a definition of a place of prostitution. There, where defendant operated a mercantile establishment and lived in a room adjoining, and there was testimony that a lewd woman, frequently though not regularly, at defendant's place, was there for immoral purposes, that defendant had solicited other men to have intercourse with her there, and that men were seen to come and go with her from the place, the evidence was held sufficient to prove the existence of a place of prostitution. The varying facts in cases from other states also tend to support a less explicit showing than was demanded in the instant case. In *Commonwealth v. Visotsky*, 129 Pa. Super. 86, 195 Atl. 148 (1937), the court held evidence of defend-

ant's general reputation, past raids on the house, and testimony of ten police officers as to its reputation, sufficient to prove the existence of a place of prostitution. In *State v. Johnson*, 189 Minn. 546, 250 N. W. 366 (1933), which is summarily rejected by the majority in the instant case, one instance of solicitation of a police officer plus the general reputation of the house, of the inmates, and of defendant were held sufficient to prove the *corpus delicti*. In *Commonwealth v. Levandowski*, 90 Pa. Super. 403 (1927), involving a conviction for keeping a place of prostitution, the *corpus delicti* was held adequately established where the house bore the reputation of a bawdyhouse and there was evidence that defendant had furnished one witness a girl whom he took upstairs and paid money, some of which was turned over to defendant, that no fornication took place and that same girl later solicited another witness to go upstairs with her. As a general principle, the *corpus delicti* may be established by circumstantial evidence, 2 BISHOP, NEW CRIMINAL PROCEDURE (2d ed. 1913) 1057, although when it is to be so established, the evidence must include all uncertainty from the minds of the jury. *State v. Bennett*, 93 W. Va. 548, 117 S. E. 371 (1923). It is not, however, necessary that each particular circumstance be of this conclusive character, but the combined effect of all the circumstances in the case must be such as to prove the *corpus delicti* beyond reasonable doubt. *Patterson v. State*, 202 Ala. 65, 79 So. 459 (1918); *State v. Davidson*, 30 Vt. 126 (1858). But cf. *State v. Bennett*, *supra*. Although no one circumstance in the instant case was sufficient to prove the *corpus delicti*, the real issue was whether all of them in the aggregate were not sufficient to do so beyond a reasonable doubt. The most nearly analogous cases seem to support the dissent.

G. R. A., JR.

DOWER—PROPERTY SUBJECT TO RIGHT—CONTRACT BEFORE MARRIAGE TO WILL TO ANOTHER. —Before decree in a pending divorce proceeding. *H* undertook by a written contract with *W* to continue to furnish *W* and their two children their present residence as a home, to supply necessaries, and pay an annuity as long as *W* remained unmarried, and that upon his death all his net estate should be divided equally between *W* and the children, in return for *W*'s surrender of alimony claims and property settlement. The contract was recorded and divorce granted. *H* having remarried, plaintiff,