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Criminal Law–Indictment–Allegation of Knowledge

W. J. C.
West Virginia University College of Law

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to consult the dictionary.\textsuperscript{10} The dictionary defines "service" as the performance of labor for the benefit of another. In every transaction listed as a service in the rules and regulations of the tax commission the element of labor is the important factor.\textsuperscript{11} A simple bailment for a term in connection with which no labor is exerted ought not to be taxed. The principal case falls in between these two extremes and it is a fair question whether the labor involved in servicing the tires brings the case under the statute.\textsuperscript{12} On the facts of the case a decision either way would hardly be subject to criticism.

J. L. G., Jr.

**Criminal Law — Indictment — Allegation of Knowledge.**

An indictment was returned against the Chesapeake & Potomac Telephone Company, charging that, while engaged in the telephone business, it unlawfully transmitted information concerning the result of a horse race, to a pool room where it was used for gambling purposes. One of the certified questions was: "Is the indictment demurrable because of the fact that it does not allege that the offense charged was 'knowingly' committed?" Held, that since the statute\textsuperscript{1} does not require that the act prohibited, an offense *malum prohibitum*, should be knowingly done, the absence of an allegation of knowledge is no ground for sustaining a demurrer to the indictment. *State v. Chesapeake & Potomac Telephone Co. of W. Va.*

Operating a gaming house is a public nuisance at common law, a crime *malum in se*,\textsuperscript{3} but furnishing information thereto was

\textsuperscript{10} Eisner v. Macomber, 252 U. S. 189, 40 S. Ct. 189, 64 L. Ed. 521 (1919).

\textsuperscript{11} Some of the services listed are: advertising, auto repairing, baggage transfer companies, broadcasting stations, collection agencies, credit bureaus, dressmakers, dyers and cleaners, electric repair service, garages, hotels, laundries, loan companies, machine shops, parking lots, plumbers, painters, printing, repair shops, shoe repairing, storage, tire repairing, towel supply, and general cleaning. It can be seen that all these services denote labor and are not like the service in the principal case which does not take any labor on part of T.

\textsuperscript{12} T agreed to maintain and repair all tires for which service B agreed to pay, in addition to the mileage fee provided for their use, the sum of fifty dollars per month.

\textsuperscript{1} W. Va. Code (Michie, 1937) c. 61, art. 10, § 10: "... any person engaged in the telephone ... business, ... who shall transmit or furnish, or permit to be transferred or furnished, over or upon, or by means of the wires, ... to any pool room, ... any message, token or information of or concerning the result of any such event as herein mentioned, they ... shall be guilty of a misdemeanor, ... ."

\textsuperscript{2} S. E. (2d) 257 (W. Va. 1939).

\textsuperscript{3} State v. Baker, 69 W. Va. 263, 71 S. E. 186 (1911).
no such offense at common law. By statute it is made illegal, an offense *malum prohibitum* — one against public policy. As a general rule where an act is prohibited and made punishable by statute, the statute is to be construed in the light of the common law and the existence of criminal intent is essential. The legislature, however, may forbid the doing of an act and make its commission criminal without regard to the intent of the doer, and if such an intention appears the courts must give it effect although the intention may have been innocent. Whether in a given case a statute is to be so construed is to be determined by the court upon consideration of the subject matter of the prohibition as well as the language of the statute, thus ascertaining the intention of the legislature. Where the statute is silent as to the defendant's intent or knowledge, the indictment need not allege or the state's evidence show that he knew the fact. It has been held in West Virginia that where a statute simply prohibits the sale of liquor in certain cases, as to minors, without some word like 'knowingly', the doing of the act fixes the offense, regardless of the knowledge, or ignorance, or intent of the accused. It seems settled generally that in an indictment it is sufficient to use the language of the act defining a statutory offense. The general rule is that, if it is proved that the accused committed the charged unlawful act, it will be presumed that the act was done with a criminal intent.  

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4 Commonwealth v. Western Union, 112 Ky. 355, 67 S. W. 59 (1901); Louisville v. Wehnhoff, 116 Ky. 812, 76 S. W. 876 (1903).  
5 See note 1, supra.  
6 Vaughn v. State, 83 Ala. 55, 3 So. 530 (1888); People v. Rice, 161 Mich. 657, 126 N. W. 981 (1910); State v. Alva, 18 N. M. 143, 134 Pac. 209 (1913); State v. Smith, 61 W. Va. 329, 56 S. E. 528 (1907).  
8 Commonwealth v. Murphy, 165 Mass. 66, 42 N. E. 504 (1896); People v. West, 106 N. Y. 293, 12 N. E. 610 (1887); State v. Baer, 37 W. Va. 1, 16 S. E. 368 (1892).  
11 State v. Farr, 34 W. Va. 84, 11 S. E. 737 (1890); State v. Smith, 61 W. Va. 329, 56 S. E. 528 (1907); State v. Farr, 101 W. Va. 175, 132 S. E. 504 (1926).  
In the exercise of the police power for the protection of the public, the performance of a specific act may constitute the crime regardless of either knowledge or intent, both of which are immaterial on the question of guilt.\(^{13}\) For the effective protection of the public the burden is placed upon the individual of ascertaining at his peril whether his act is prohibited by statute.\(^{14}\) Due to the difficulty of proof, if knowledge had been made part of the offense by the legislature, the law would have failed in a great degree to accomplish its manifest object.\(^{15}\) Remedial statutes\(^{16}\) are to be construed liberally in order to effectuate their purpose.\(^{17}\) As the penalty is slight, no great injustice is perpetrated by enforcing this type of statute regardless of knowledge.\(^{18}\) The rule that every man is presumed to know the law is sometimes productive of hardship, and the hardship is no greater where the law imposes the duty to ascertain the fact.\(^{19}\)

In view of the fact that the telephone company is required by statute\(^{20}\) to render service to all who apply, excusable only when it knows that the place is a gambling house, bawdy house, pool room, or similar establishment, the lack of knowledge should be considered by the trial court in mitigation of damages, as it would seem harsh and unreasonable otherwise.\(^{21}\)

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\(^{13}\) State v. Cain, State v. Denoon, State v. Baer, all \(supra\) n. 7; State v. Pennington, 41 W. Va. 599, 23 S. E. 918 (1892).

\(^{14}\) People v. Roby, 52 Mich. 577, 18 N. W. 365 (1884); Reg. v. Tolson, 23 Q. B. D. 172 (1889).


\(^{16}\) W. Va. Code (Michie, 1937) c. 61, art. 10, § 14: "All laws for suppressing gaming, lotteries and unchartered banks shall be construed as remedial."


\(^{19}\) Commonwealth v. Boynton, 2 Allen 160 (Mass. 1861).

\(^{20}\) W. Va. Code (Michie, 1937) c. 24, art. 3, §§ 1, 2.

\(^{21}\) State v. Gill, 89 Minn. 502, 95 N. W. 449 (1903); Bracey v. Commonwealth, 119 Va. 567, 89 S. E. 144 (1916); State v. Denoon, 31 W. Va. 122, 5 S. E. 315 (1888). By dictum two members of the court in the majority opinion say that lack of knowledge should be considered by the trial court in mitigation of damages. The other members dissent as to this.