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Equitable Devices for Controlling Organized Vice

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limitations, and the situation. Restitution is a creative, not a mathematical, process.

Instance. In Evansville, Ind., teenagers saw a newspaper ad requesting public backing for pay raises, and picketed City Hall, demanding better pay for the police. They explained that "Some of us have been giving the police trouble. We saw the ad and thought we'd switch sides."

In Seattle, Wash., a teen-age boy stopped to change a flat tire for a woman, and declined pay. "He said he wants to combat the bad publicity teen-agers get."

Although restitution is a voluntary act, an offender needs guidance. His initial thinking is in terms of avoiding or of enduring punishment, and of vengence. His understanding of what is involved in restitution will not grow overnight. Like reparations, restitution is appropriately used in connection with probation. Only a skillful guide can encourage a man to go a second mile. I suspect that the best guide is a man who has himself gone through it

A man who, as a result of guidance, finds the zestful satisfaction which comes from creative restitution will continue this process. On the other hand, sometimes an offender who is told that by suffering punishment or paying reparations he pays his debt to society and to his victim, feels that the score is now even, so that he is free to commit further offenses. Restitution, unlike punishment and reparations, is for life. It may erase stigma.

Instance. Tip paid his debt to society with 10 years in prison. During his last year, he discovered Alcoholics Anonymous and religion. While on parole, and with the writer's help, Tip founded Youth Anonymous, a self-help program for juvenile delinquents and youthful offenders. Working a 40-hour week as a truck-driver, he devoted evenings and week-ends to this youth work, paying expenses from his own pocket. The Detroit Commission on Children and Youth has nominated Tip for a Marshall Field Award.

In La Crosse, Wisconsin, Adults Anonymous, with leadership similar to that of Youth Anonymous, meets weekly in the county jail.

Because restitution is a voluntary, creative, life-long task, it is a growth process. In terms of psychological principles of learning, a life-long program of restitutional behavior may be a counter-habit to impulsivity.

Restitution Can Be a Group Process

In punishment, a man stands alone. But restitution is a creative act, and the way is open for group discussion, which is more creative than one man's ingenuity. If several youth have committed similar offenses, they can discuss among themselves, possibly with the victims of their offenses, appropriate restitutional measures for each of them to take.

This doesn't mean all would make the same restitution. The group does not impose any particular restitutional step upon any individual in the group, any more than authority can impose restitutional steps upon an individual. The group can only stimulate, suggest, support, and guide.

Because restitution can be a group process, time demands on leadership, e.g., on probation officers, can be reduced. Group probation seems especially appropriate when probation is seen as an opportunity for guided restitution. Probationary guidance may be easier with a group than with an individual. In committing an offense, what a youth would not do alone he tackles when supported by his group. In making restitution, what a youth could not do alone he may tackle with the support of his group.

A form of restitution always available, whether one has committed an offense, or has inflicted accidental damage, or has himself suffered a wrong either from others or from fate, is to seek out and to help others in the same boat. Out of this seeking and sharing, fellowship develops.

Instance. Alcoholics Anonymous, as part of its 12-step program of continuing personal growth, includes a willingness to seek out those persons whom the alcoholic has hurt, and to make amends to them. Another aspect of restitution in the AA program is the alcoholic's willingness, day or night, to inconvenience himself in order to bring this program to another alcoholic.

Semantics

Friendly critics have suggested that, in place of borrowing an old term like restitution for a new process—pouring new wine into old bottles?—, it might be better to find another term. One term suggested is restoration. Another is redeeming or redemption. I can see the semantic problem, but I have no satisfactory solution to offer. My own preference is to use restitution in this broader sense, and to use reparations or indemnity for the narrower term of a mandatory financial settlement.

CONCLUSION

Restitution is a form of psychological exercise, building the muscles of the self, developing a healthy ego. One man's opinion!

In the behavior disorders (alcoholism, delinquency, addiction, perversion, etc.), the goal of any rehabilitation program is to strengthen the ego, to build self-control and judgment, and to help an impulse neurotic to find constructive channels of self-expression. Skillful guidance towards restitutional behavior may accomplish this goal. Similar guidance has proven effective in breaking "fixated" behavior in laboratory animals subjected to stress (Maier). While punishment can increase fear-motivation, guidance and restitution increase the capacity for choice and thus may bring release to an impulse-ridden individual.

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EQUITABLE DEVICES FOR CONTROLLING ORGANIZED VICE

JAY OLIFF

The prevalence of gambling establishments, houses of prostitution and other forms of organized vice in many communities is evidence of the inadequacy of the criminal laws. Among the reasons for this inadequacy are that nominal penalties are imposed by the criminal statutes; that the penal laws only punish for past activities and do not prevent their recurrence; that obtaining sufficient evidence for a conviction is often frustrated by the prohibition against illegal search and seizure, and that the owner of the premises cannot be prosecuted unless he intentionally leased the premises for unlawful purposes.[1] In order to avoid these difficulties, an alternative remedy involving a civil action in equity to enjoin the unlawful activities may be available. Such an action has certain important advantages. Some stem from the fact that it is a civil rather than a criminal proceeding and others from the nature of the relief which equity can grant. An understanding of these advantages requires an examination of the nature of equitable jurisdiction and the relief which equity may afford.

EQUITABLE JURISDICTION OVER CRIMINAL ACTIVITIES

It is recognized that the civil courts can neither punish violations of the criminal laws nor enjoin the commission of crimes.[2] However, it is also recognized that one whose rights have been injured by another's conduct is entitled to damages in a civil action, despite the fact that the conduct may also be subject to criminal sanction.[3] Furthermore, the state, as well as a private individual, may be entitled to relief in a civil action when its interests are involved.[4] Thus, a civil as well as a criminal remedy may be available against the operators of a gambling establishment or house of prostitution.

[1] See BAKER, *An Equitable Remedy to Combat Gambling in Illinois*, 28 CHI-KENT L. REV. 287, 287–290 (1950).

[2] *1* STORY, EQUITY JURISPRUDENCE, §3 n.1 (14th ed., 1918); CALDWELL, *Injunctions Against Crime*, *26* ILL. L. REV. 259 (1931).

[3] CALDWELL, *Injunctions Against Crime*, *26* ILL. L. REV. 259 (1931).

[4] *Id.* at 260.

Although the claimant may be entitled to damages in a court of law, there are many situations where a money judgment will not completely vindicate his rights or interests. Such situations arise where serious injury will occur before a court of law can act or where the defendant's activities involve a continuous course of conduct.[5] With respect to the latter case, a legal remedy can compensate only for past injury and can neither directly abate the defendant's conduct nor compensate for future injuries.[6] It has been held that equity may offer relief in these situations despite the fact that the conduct complained of is also subject to criminal sanctions.[7] Thus, the fact that certain activities are crimes does not preclude equitable relief. However, equity requires that certain conditions be satisfied before it will act.

REQUIREMENTS FOR EQUITABLE JURISDICTION

Before equity will accept jurisdiction, the following pre-requisites must be established: (a)

[5] See JOYCE, LAW OF NUISANCES, §§415, 416 (1906).

[6] *Ibid.*

[7] In actions by the state, equitable relief has been granted against Criminal conduct that interferes with its proprietary interests. *Coosaw Mining Co. v. South Carolina*, 144 U.S. 550 (1891) (Injunction against the unlawful taking of rock from the bed of a navigable river); *Mayor of Georgetown v. Alexandria Canal Co.*, 37 U.S. (12 Pet.) 91 (1838) (obstruction of navigable stream); *People v. Truckee Lumber Co.*, 116 Cal. 397, 48 Pac. 374 (1897) (Unlawful destruction of fish in the streams of the state); that interferes with the property rights of a number of its citizens, *Georgia v. Tennessee Copper Co.*, 206 U.S. 230 (1907) (enjoined Corporation from discharging gases which destroyed crops and orchards in the vicinity of its plant); *Ex Parte Wood*, 194 Cal. App. 49, 227 Pac. 908 (1924) (enjoined defendant from recruiting members for organization which advocated the abolition of private property); or that are dangerous to the public health, *People v. Laman*, 277 N.Y. 368, 14 N.E.2d. 439 (1938) (practice of medicine without a license); or which constitutes ultra-vires acts of domestic corporations, *Fair Grounds Assoc. v. People*, 60 Ill. App. 488 (1895) (enjoined operation of parimutuel system by corporation chartered for operation of race track); *Columbian Athletic Club v. State*, 143 Ind. 98, 40 N.E. 914 (1895) (enjoined use of corporation's property for a prize fight); *Attorney General v. Jamaica Park Aqueduct Corp.*, 133 Mass. 361 (1881) (enjoined corporation from lowering the water level of a public pond below legal limits). See also 2 STORY, EQUITY JURISPRUDENCE, §1251 (14th ed. 1918).

the conduct complained of must be of a type which equity will enjoin; (b) the claimant must have an interest which equity will protect; (c) the remedy at law must be inadequate; and (d) the party seeking relief must have a standing to warrant protection.

Conduct enjoinable.—The type of conduct that equity will enjoin usually involves a continuous use of property that is offensive to others.[8] This type of conduct is generally termed a nuisance.[9] Although the term "nuisance" is difficult to define,[10] it does include, at common law, buildings devoted to gambling and prostitution.[11] Since gambling houses and brothels were public nuisances per se at common law, it has been held that the claimant only has to prove the existence of these establishments in order to satisfy this requirement.[12] Although injunctions against gambling and prostitution as such have been held to contravene the policy against enjoining the commission of a crime,[13] injunctions against the use of a specific piece of property for these unlawful purposes have been held to be a proper function of equity jurisdiction.[14]

Interests protected.—In several cases, the fact that the defendant was responsible for maintaining a public nuisance has been held not to be of itself a sufficient basis for the issuance of an injunction. These decisions have been largely based upon the fact that in leading English cases, an injunction was granted only where some injury to the property of the claimant was involved.[15] The courts that follow this view will enjoin the operation of a gambling or bawdy house which interferes with the use of the claimant's property.[16]

[8] CALDWELL, *Injunctions Against Crime*, 26 ILL. LAW REV. 259, 271-272 (1931).

[9] See JOYCE, LAW OF NUISANCES, §11 (1906).

[10] *Id.* §1.

[11] Independent of any statute, the keeping of a common gaming house was at common law indictable as a public nuisance per se because of its tendency to bring together disorderly persons, promote immorality and lead to breaches of the peace. *United States v. Dixon*, 25 Fed. Cas. 872, No. 14, 970 (C.C.D.C. 1830); *Vandeworker v. State*, 13 Ark. 700 (1850); *Thrower v. State*, 49 N.J.L. 471, 9 Atl. 681 (1887) *King v. Dixon*, 10 Med. 335, 88 Eng. Rep. 753 (K.B. 1692); *King v. Medler*, 2 Shower 36, 89 Eng. Rep. 777 (K.B. 1678). a bawdy house was also a public nuisance at common law. See *e.g. Smith v. Commonwealth*, 45 KY. 21 (1845). A nuisance per se has been defined as follows: "A nuisance per se, as the term implies, is a nuisance in itself, and which, therefore, cannot be so conducted or maintained as to be lawfully permitted to exist. Such a nuisance is a disorderly house...." JOYCE, LAW OF NUISANCES, §12 (1906).

[12] See *State v. Ellis*, 201 Ala. 295, 78 So. 71 (1918) (bawdy house); *City of Sterling v. Speroni*, 336 Ill. App. 590, 84 N.E. 2d 667 (gambling house); *Respass v. Commonwealth*, 131 Ky 807, 115 S.W. 1131 (1909) (gambling house).

[13] See *People v. Fritz*, 316 Ill. App. 217, 45 N.E. 2d 48 (1942) (gambling); *Weidner v. Friedman*, 126 Tenn. 677, 151 S.W. 56 (1912) (prostitution). However, in several instances where the use of property was not involved, the courts have directly enjoined criminal activities. See *e.g. State v. Mahon*, 128 Kan. 772, 280 Pac. 906 (1929) (usury); *People v. Laman*, 277 N.Y. 368, 14 N.E.2d. 439 (1938) (practice of medicine without a license).

[14] See, BAKER, *An Equitable Remedy To Combat Gambling In Illinois*, 28 CHI-KENT L. REV. 287, 298-300 (1950).

[15] *Attorney General v. Richards*, 2 Anst. 603, 145 Eng. Rep. 980 (Ex. 1794) (Ordered removal of buildings and docks that obstructed use of harbors); *Baines v. Baker*, 1 Amb. 158, 27 Eng. Rep. 105 (Ex. 1752) (Plaintiff sought to enjoin construction of a smallpox hospital, alleging that it would destroy the value of his property in the vicinity. The court denied relief, holding that if the hospital would be a nuisance it would be a public nuisance and the proper method of abatement would be a suit in the name of the attorney general); *Mayor of London v. Bolt*, 5 Ves. 129, 31 Eng. Rep. 507 (Ex. 1799) (Suit to enjoin defendant from storing sugar in such a manner that the warehouses were in danger of collapse. The court held that equity will not abate an existing nuisance, but will restrain the defendant from doing anything in the future which will result in a public nuisance endangering the public safety); *Attorney General v. Cleaver*, 18 Ves. 211, 34 Eng. Rep. 297 (Ex. 1911) (Suit to enjoin the manufacture of soap in a manner that was offensive to the health and comfort of the community. Trial at law was ordered to determine whether the defendant's activities constituted a nuisance).

In *Attorney-General v. Utica Insurance Co.*, 1 N.Y. Ch. Rep. 412, 2 Johns Ch. 370 (1817), the court refused to enjoin an insurance company from issuing bank notes in violation of its corporate franchise on the grounds that it was not shown that the available legal remedies were inadequate and that no immediate harm was threatened by the defendant's conduct. However, after interpreting the above English cases, Chancellor Kent went on to deliver the following dictum: ".... (B)ut it is an extremely rare case, and may be considered, if it even happened, as an anomaly, for a court of equity to interfere at all, and much less preliminary by injunction, to put down a public nuisance which did not violate the rights of property, but only contravened the general policy." 1 N.Y. Ch. Rep. 412, 417, 2 Johns Ch. 370, 380. Subsequent cases have cited this dictum as authority for the view that the jurisdiction of equity is limited to the vindication of property rights.

[16] Courts of equity have enjoined the operation of houses of prostitution in suits by owners of neighboring property; *Tedesiki v. Berger*, 150 Ala. 649, 43 So. 960 (1927); *Crawford v. Tyrrell*, 128 N.Y. 341, 28 N.E. 514 (1891); *Blagen v. Smith*, 34 Or. 394, 56 Pac. 292 (1899); *Weakley v. Page*, 102 Tenn. 178, 53 S.W. 551 (1899); *Dempsie v. Darling*, 39 Wash. 125, 81 Pac. 152 (1905); *Ingersoll v. Rousseau*, 35 Wash. 92, 76 Pac. 513 (1904); *Contra, Neaf v. Palmer*, 103 Ky. 496, 45 S.W. 506 (1898). Operations of a gambling house have been enjoined where it was shown that it caused a depreciation in the value of property in its vicinity. See *e.g.*, *People v. Cella*, 112 Ill. App. 376 (1904). In addition, criminal activities have been enjoined in suits by the state when they constituted

However, where no ascertainable injury to property is shown, the fact that the illegal establishment corrupts the general welfare and morals of the community has been held to be an insufficient basis for equitable relief.[17] Other courts have objected to an extension of equitable jurisdiction to cases involving no ascertainable injury to the property rights of the claimant on the additional grounds that such an extension would interfere with the jurisdiction of the criminal courts or with the defendant's right to a trial by jury.[18]

Several courts, however, refused to adopt the view that the jurisdiction of equity was confined to the vindication of particular rights or interests and have granted relief where a nuisance was shown to exist for which there was no adequate remedy at law despite absence of injury to property rights. These courts maintained that the jurisdiction of equity should be sufficiently flexible to meet new situations.[19] In cases where the state is the complainant, this liberal view has been justified upon the theory that the interest of the state in protecting the general welfare of its citizens is a proper subject of equitable jurisdiction.[20] Therefore, where this view is followed, the state should have no difficulty in establishing a sufficient interest for equitable protection in cases involving activities such as gambling or prostitution that are nuisances per se at common law. The later cases, involving criminal nuisances, reveal a trend towards the liberal view[21] and evidence the

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ultra-vires acts of its domestic corporations; *Fair Grounds Assoc. v. People*, 60 Ill. App. 488 (1895) (operation of parimutuel system); *Columbian Athletic Club v. State*, 143 Ind. 98, 40 N.E. 914 (1895) (illegal prize fight).

[17] See *State v. Vaughan*, 81 Ark. 117, 98 S.W. 685 (1906) (gambling house); *People v. Lim*, 18 Cal.2d. 872, 118 P.2d. 472 (1941) (gambling house); *People v. Condon* 102 Ill. App. 449 (1902) (illegal race track); *State v. O'Leary*, 155 Ind. 526, 58 N.E. 703 (1900) (gambling house); *Commonwealth v. Stratton Finance Co.* 310 Mass. 469, 38 N.E.2d 640 (1941) (operation of "loan shark" business); *State v. Uhrig*, 14 mo. App. 413 (1883) (illegal sale of liquor); *State v. Patterson*, 14 Tex. Civ. App. 465, 37 S.W. 478 (1896) (gambling houses); *State v. Ehrlick*, 65 W. Va. 700, 64 S.E. 934 (1909) (gambling house). However, in some cases jurisdiction was accepted by a liberal interpretation of the requirement of injury to property rights. See, *e.g.*, *Stead v. Fortner*, 171 Ill. App. 161 (1912) (Requirement of effect on property rights satisfied by allegation that defendant used his property to violate the state liquor laws and no damage to the property of others need be shown. Appears to have overruled *People v. Condon, supra*); *People v. Cella*, 112 Ill. App. 376 (1904) (requirement satisfied by allegation that the citizens would be forced to abandon their property and leave the community if operation of gambling house was not enjoined).

[18] In *State v. Ehrlick*, 65 W. Va. 700, 64 S.W. 934 (1909) after discussing the lack of precedent for the abatement of a gambling house where no injury to property was shown, the court went on to hold that if the general welfare and morals were made a subject of equitable jurisdiction, the jurisdictional boundaries between the courts of law and of equity would be obliterated.

In *People v. Lim*, 18 Cal2d 872, 118 P. 2d 472 (1941) the court, in refusing to enjoin the operation of a gambling house, held that because the defendant would be deprived of a trial by jury and of the inherent safeguards of the criminal procedures, the expansion of the subject matter of equity jurisdiction should be left to the legislature. See also *Commonwealth v. Stratton Finance Co.*, 310 Mass. 469, 38 N.E.2d 640 (1941).

[19] In *State v. Mayor of Mobile*, 5 Porter (Ala.) 279 (1837), the court held that the dictum of Chancellor Kent in *Attorney General v. Utica Insurance Co.*, 1 N.Y. Ch. Rep. 412, 2 Johns, Ch 370 (1817) was not a correct interpretation of the law and enjoined the erection of a building in the middle of a street that was part of a public highway despite the fact that there was no proof of how anybody's property would be injured.

In CALDWELL, *Injunction Against Crime*, 26 ILL. L. REV. 259 (1931), after an analysis of the cases cited by Kent in support of his dicta (note 15, *supra*), the author concluded that they are not authorities for limiting the jurisdiction of equity to property rights. Caldwell points out that although the only case in which an injunction was granted involved an interference with the property of the crown, *Attorney General v. Richards*, 2 Anst. 603, 145 Eng. Rep. 980 (Ex. 1794), the other cases were dismissed not because of a failure to show any injury to property, but because the action was not brought by the proper party, *Baines v. Baker*, 1 Amb. 158, 27 Eng. Rep. 105 (Ex. 1752); the remedy at law was inadequate, *Mayor of London v. Bolt*, 5 Ves. 129, 31 Eng. Rep. 507 (Ex. 1799); or the existence of a nuisance was not established, *Attorney General v. Cleaver*, 18 Ves. 211, 34 Eng. Rep. 297 (Ex. 1811).

[20] In the case of *In Re Debs* 158 U.S. 564 (1894), after concluding that the property rights of the federal government in its official mails was a sufficient basis for the issuance of an injunction against a railroad strike that interferred with the movement of the mails, the United States Supreme Court went on to say: "*We do not care to place our decision upon this ground alone. Every government, interested by the very terms of its being, with powers and duties to be exercised and discharged for the general welfare, has a right to apply to its own courts for any proper assistance in the exercise of the one and the discharge of the other, and it is not sufficient answer to its appeal to one of these courts that it has no pecuniary interest in the matter. The obligation which it is under to promote the interest of all, and to prevent the wrong doing of one resulting in injury to the general welfare, is often of itself sufficient to give it a standing in court.*" (Emphasis Supplied) at 158 U.S. 584. This case frequently has been cited as the authority for the liberal view.

[21] In the following cases criminal activities were enjoined, despite the fact that no injury to property was shown, on the grounds that they were harmful to the general welfare of the community. *State v. Ellis*, 201 Ala 295, 78 So. 71 (1918) (bawdy house); *Martin v. Copeland* 145 Ga. 399, 89 S.E. 333 (1916) (bawdy house); *Brindle v. Copeland* 145 Ga. 398, 89 S.E. 332 (1916) (bawdy house); *City of Sterling v. Sporoni*, 336 Ill. App. 590, 84 N.E. 2d 667 (1949) (gambling house); *State v. Brush*. 318 Ill. 307, 149 N.E. 262 (1925)

abandonment of the view that equitable jurisdiction is confined to the protection of property rights.[22]

Inadequacy of remedy at law.—Apart from the nature of the interests that equity will protect, the problem remains of whether the remedy at law is inadequate. Generally, in order to obtain equitable relief, the claimant must show that his injuries result from a continuous course of conduct which cannot be suppressed by the ordinary legal processes.[23] Where criminal activities are involved, there may be the additional problems of the extent to which the claimant must first resort to the criminal remedies.

In regard to criminal activities, equitable jurisdiction may be invoked either on the ground that the plaintiff will suffer serious injury before the criminal processes can be put in motion or on the basis that because of the continuous nature of the conduct in question, it cannot be suppressed by a conviction in the criminal courts.[24] Under the former theory, since a showing that the criminal processes cannot be put in motion in sufficient time to prevent serious injury to the plaintiff establishes the inadequacy of the criminal remedies, no prior attempt at prosecution is needed. This theory has been applied where a gambling house or brothel interfered with the use and enjoyment of property.[25] However, the cases in which relief was granted upon this theory generally involved some measurable damage to the claimant's property or the threat of physical violence.[26]

Since in most instances gambling and prostitution do not cause any ascertainable injury to the complainant's property, the critical objection to these activities is their adverse effect upon the public morals.[27] Therefore, in most cases involving gambling houses and brothels, the jurisdiction of equity is predicated upon the theory that the defendant's conduct cannot be suppressed by the criminal laws.[28] Under this theory some experience with the criminal laws is usually required.[29] How-

(illegal sale of liquor); *People v. Clark*, 268 Ill. 156, 108 N.E. 944 (1915) (bawdy house); *State v. Hines*, 178 Kans. 42, 283 P.2d 472 (1955) (illegal sale of liquor); *Respass v. Commonwealth*, 131 Ky. 807, 115 S.W. 1131 (1909) (gambling house); *Commonwealth v. McGovern*, 116 Ky 237, 75 S.W. 261 (1903) (enjoined owner from permitting prize fight on property); *State v. Canty*, 207 Mo. 439, 105 S.W. 1078 (1908) (bull fight); *State v. Ark-Sar-Ben Exposition Co.*, 121 Neb. 248, 236 N.W. 736 (1931) (pari-mutuel system); *Balch v. State*, 65 Okla 146, 164 Pac 776 (1917) (bawdy house). See also *Everett v. Harron*, 380 Pa. 123, 110 A.2d 383 (1955) (Enjoined operators of recreation park from refusing to admit plaintiffs because of race. Pointed out that there is a progressive tendency on part of courts to abandon view that equitable jurisdiction is confined to property rights and to grant injunctions to remedy injuries to personal rights.)

[22] Compare *State v. Uhrig*, 14 Mo. App. 413 (1883), where the court refused to enjoin operation of illegal tavern because no injury to property was involved with *State v. Canty*, 207 Mo. 439, 105 S.W. 1078 (1908), where bull fight was enjoined because it was harmful to general welfare. For a similar situation in the Illinois courts compare *People v. Condon*, 102 Ill. App. 161 (1912) with *City of Sterling v. Speroni*, 336 Ill. App. 590, 84 N.E 2d 667 (1949).

[23] See JOYCE, LAW OF NUISANCES, §§415, 416 (1906).

[24] "The ground of this jurisdiction of Courts of Equity in cases of purpesture as well as of public nuisances undoubtedly is their ability to give a more complete and perfect remedy than is attainable at law, in order to prevent irreparable mischief and also to suppress oppressive and vexatious litigation. In the first place, they can interpose where the Courts of Law cannot, to restrain and prevent such nuisances as are threatened or are in progress, as well as to abate those already existing. *In the next place, by a perpetual injunction the remedy is made complete through all future time; whereas an information or indictment at the common law can only dispose of the present nuisance, and for future acts new prosecutions must be brought. In the next place the remedial justice in equity may be prompt and immediate before irreparable mischief is done; whereas at law nothing can be done except after a trial, and upon the award of judgment. . . .*" 2 STORY, EQUITY JURISPRUDENCE, §1251 (14th ed. 1918).

[25] An owner whose property has been injured by the existence of a bawdy house may have its operation enjoined as a private nuisance without a prior attempt at invoking the criminal processes. See *Tedesiki v. Berger*, 150 Ala. 649, 43 So. 960 (1907); *Cranford v. Tyrrell*, 128 N.Y. 341, 28 N.E. 514 (1891); *Weakley v. Page*, 102 Tenn. 178, 53 S.W. 551 (1899); *Ingersoll v. Rousseau*, 35 Wash. 92, 76 Pac. 513 (1904).

[26] In cases involving illegal public exhibitions such as prize fights, it has been held that equity may intervene because the criminal courts cannot prevent the serious mischief that would result from the large assembly of disorderly persons that would be attracted by the fight. See *e.g. Commonwealth v. McGovern*, 116 KY. 237, 75 S.W. 261 (1903); *State v. Canty*, 207 Mo. 439, 105 S. W. 1078 (1908).

[27] At common law gambling houses and brothels were public nuisances because of their tendency to promote immorality and lead to breaches of the peace. See cases cited in note 11, *supra*.

[28] "As we have noted above, this court has never regarded a criminal prosecution, which can only dispose of an existing nuisance and cannot prevent a renewal of the nuisance, for which a new prosecution must be brought, as a complete and adequate remedy for a wrong inflicted on the public." *Stead v. Fortner*, 255 Ill. 468, 477, 99 N.E. 680, 683 (1912) (illegal sale of liquor).

[29] Where the general welfare and morals were the only interest involved, the courts have refused equitable relief where no effort was made to suppress the nuisance by the criminal processes. See *e.g.*, *People v. Fritz*, 316 Ill. App. 217, 45 N.E. 2d 48 (1942) (gambling house); *State v. Crawford*, 28 Kan. 726 (1882) (illegal saloon).

ever, there is no general rule governing the extent to which the claimant must have exhausted the criminal processes before resorting to equity. Injunctions have been granted where the inadequacy of the criminal penalties was shown by the fact that prior convictions failed to discourage the operation of a gaming house or brothel.[30] In addition, equitable jurisdiction may be available where the enforcement of the criminal laws is inadequate because of the failure of the law enforcement officials to take action[31] or because it is easy for the proprietors of a gambling house to leave the jurisdiction when threatened with an arrest.[32] Furthermore, injunctions have been granted despite the fact that the defendant was acquitted in a criminal action.[33] Equity, then, is particularly useful in regard to gambling and prostitution where both the nominal penalties provided by the criminal laws and the non-enforcement of the laws are a source of difficulty.

Party who may bring action.—The use of equity for the abatement of criminal activities as public nuisances is limited by the requirement that the action be initiated on behalf of the state by a legal officer, rather than by a private individual. This requirement prevents the institution of more than one suit for the abatement of a specific nuisance, which might occur if any private citizen were allowed to initiate an action.[34] Because of this requirement, if the attorney general or prosecuting attorney refuses to initiate action the criminal elements are usually protected from an injunction as well as a criminal prosecution.

A private citizen cannot sue unless he can show special damage, in addition to that suffered by the public at large.[35] In suits by private citizens, the requirement of "special damage" has generally been interpreted as an interference with the use and enjoyment of the owner's property.[36] However, in addition to property rights, recent cases exhibit a trend towards granting relief where the illegal conduct interferes with a personal right of the citizen[37]. Thus, if a gambling establishment or brothel is located in a populated area and its operation causes a depreciation in the value of neighboring property, it may be enjoined by the owner of the neighboring property. However, equity will not grant relief to a private citizen merely because gambling and prostitution are contrary to his moral concepts.[38] Since the state must initiate an action to vindicate the public morals, its refusal to act will protect a criminal nuisance from an injunction unless it directly interferes with the use and enjoyment of the property of a private citizen.[39]

EVIDENTIAL AND PROCEDURAL ADVANTAGES

Since a suit in equity is a civil proceeding, it has strong procedural and evidentiary advantages over a criminal prosecution. For example, because the action may be initiated by the filing of a bill with the court, there is no necessity for an arrest or other intervention by the law enforcement officials. An equitable proceeding can be an effective means

[30] See *City of Sterling v. Speroni*, 336 Ill. App. 590, 84 N.E. 994 (1915); *Respass v. Commonwealth*, 131 Ky. 807, 115 S.W. 1131 (1909).

[31] See *Stead v. Fortner*, 255 Ill. 468, 99 N.E. 680 (1912) (illegal sale of liquor); *State v. Vaughan*, 81 Ark. 117, 98 S.W. 685 (1906).

[32] *E.g.*, *People v. Cella*, 112 Ill. App. 376 (1904).

[33] *E.g.*, *State v. Canty*, 207 Mo. 439, 105 S.W. 1078 (1908).

[34] Statutes authorizing suits by private citizens on behalf of the state, to abate the operation of a bawdy house, have been upheld. The decisions pointed out that the purpose of the rule against suits by private individuals was to prevent a multiplicity of suits. However, they went on to hold that the rule was a matter of legislative policy and, therefore, it was within the discretion of the legislature to change the rule. *E.g.* *People v. Casa Co.*, 35 Cal. App. 194, 169 Pac. 454 (1917); *People v. Smith*, 275 Ill. 256, 114 N.E. 31 (1916).

[35] See *e.g.* *Redway v. Moore*, 3 Idaho 312, 29 Pac. 104 (1892) (bawdy house); this rule has been applied despite the fact that the law enforcement officials refused to take action. *People v. District Court*, 26 Colo. 386, 58 Pac. 604 (1899) (gambling). In *Koch v. McClugage*, 276 Ill. App. 512 (1934), it was held that a wife's right to support and maintenance would not entitle her to an injunction against a gambling house in which her husband had been losing large sums of money.

[36] See cases cited in note 16, *supra*. Furthermore, in a few cases the courts granted equitable relief by resorting to a liberal interpretation of the concept of property rights. See *Herald v. Glendale Lodge*, 46 Cal. App. 325, 189 Pac. 329 (1920) (enjoined lodge of Elks Club from serving beer in violation of city ordinance, in a suit by member of lodge. Basis of decision was that practice, if continued, would subject members to financial loss and social odium). *Burden v. Hoover*, 9 Ill. 2d 114, 137 N.E.2d 59 (1956) (Chiropracter held to have sufficient proprietory interest in license to maintain action to enjoin practice by unlicensed competitor).

[37] See *e.g.* *Everett v. Harron*, 380 Pa. 123, 110 A.2d 383(1955) (enjoined operators of a recreation park from refusing to admit plaintiff because of his race: Discriminatory practice was prohibited by state penal laws).

[38] See *People v. District Court*, 26 Colo. 386, 58 Pac. 604 (1899).

[39] The benefit that a gambling house receives from a corrupt prosecutor may largely depend upon its location.

for circumventing corrupt or apathetic law enforcement officials. Furthermore, after the bill has been filed, relief may be obtained almost immediately by the issuance of a temporary injunction.[40] This is significant when contrasted with the fact that no relief can be obtained in a criminal proceeding until after a verdict by a jury. Since a jury is not necessary in an equitable proceeding, no delays are encountered incident to jury selection. In addition, the plaintiff, who is usually an officer of the state, is entitled to an appeal if the suit is dismissed in the trial court.[41]

In order to be convicted for a crime, one must be proved guilty beyond a reasonable doubt.[42] For this reason, the defendant, in a criminal action, does not have to produce evidence of his innocence until the state has produced evidence of his guilt.[43] In an action in equity, on the other hand, a temporary injunction may be issued solely upon the allegations in the bill or complaint.[44] If the defendant should default or fail to answer as to the facts, the allegations in the bill may be a sufficient basis for the issuance of a permanent injunction.[45] Those who are responsible for the operation of gambling establishments must either admit or deny their deeds. They cannot remain silent and merely wait for the state to come forward with evidence.

In contrast to the criminal action, the plaintiff in an equitable proceeding need only prove his allegations by a preponderance of the evidence.[46] The plaintiff's burden of proof is further facilitated by the fact that a court of equity may consider the general reputation of the premises in question, as evidence of its character as a nuisance.[47] Furthermore, if the defendant should refuse to submit to cross-examination, the court may consider this fact in weighing the evidence.[48]

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[40] *State v. Ellis*, 201 Ala. 295, 78 So. 71 (1918); *City of Sterling v. Speroni*, 336 Ill. App. 590, 84 N.E. 2d 667 (1949) (Temporary injunction against gambling house issued after notice and hearing, but before the filing of defendant's answer); *People v. Clark*, 268 Ill. 156, 108 N.E. 994 (1915) (Temporary injunction was issued after notice to defendant. Defendant defaulted after receiving notice); *People v. Cella*, 112 Ill. App. 376 (1904) (Temporary injunction was issued after filing of complaint, but before filing of defendant's answer); *Commonwealth v. McGovern*, 116 Ky. 237, 75 S.W. 261 (1903) (Temporary injunction issued after filing of answer. Based upon allegations in complaint supported by affadavits and depositions); *Balch v. State*, 65 Okla. 146, 164 Pac. 776 (1917) (Temporary injunction issued at hearing in chambers, upon affidavits submitted by various private citizens).

[41] See *State v. Ellis*, 201 Ala. 295, 78 So. 71 (1918) (bawdy house); *Commonwealth v. McGovern*, 116 Ky. 237, 75 S.W. 261 (1903) (illegal prize fight); *State v. Canty*, 207 Mo. 439, 105 S.W. 1078 (1908) (bullfight).

[42] See *e.g. Holt v. United States*, 218 U.S. 245 (1910) (murder). The burden of proof is the same for serious crimes as it is for trivial crimes: *State v. Johnson*, 164 La. 417, 29 So. 24 (1900); *State v. Tetrault*, 78 N.H. 14, 95 Atl. 699 (1915).

[43] Non-action of the defendant in a criminal case cannot be substituted for action on the part of the state as to any matter required to be established as part of the state's case.

[44] See cases cited in note 40 *supra*.

[45] In *People v. Clark*, 368 Ill. 156, 108 N.E. 994 (1915) a bill was filed alleging that the defendant operated a bawdy house and praying that the operation of the house be enjoined. The allegations in the bill were supported by two affidavits. Upon the default of the defendant the court issued a permanent injunction. Later, in an action for contempt based on a violation of the injunction, the Supreme Court of Illinois held that the defendant's failure to answer the allegations in the bill stopped her from questioning the sufficiency of the evidence or the regularity of the proceedings in the original suit for the injunction.

In the following cases, the defendant did not answer to the facts alleged in the complaint, but filed a motion to dismiss on the grounds that the suit was unlawful. Upon dismissal of the defendant's motion, the court issued an injunction against him upon the allegations in the complaint and without the presentation of any evidence. *Fulton v. State*, 171 Ala. 572, 54 So. 688 (1911) (illegal sale of liquor); *People v. Smith*, 275 Ill. 256, 114 N.E. 311 (1916) (bawdy house); *Stead v. Fortner*, 255 Ill. 468, 99 N.E. 680 (1912) (Illegal sale of liquor); *Littleton v. Fritz*, 65 Iowa 488, 22 N.W. 641 (1885); *Carleton v. Rugg*, 19 Mass. 550, 22 N.E. 55 (1889) (bawdy house).

[46] In a suit to abate a criminal nuisance the ordinary civil procedures in equity are applicable, which means that the allegations of the bill or complaint can be sustained by a mere preponderance of the evidence. See *e.g. Davis v. Auld*, 96 Me. 559, 53 Atl. 118 (1902) (Action to abate illegal saloon).

[47] Where a suit in equity to abate a criminal nuisance is authorized by statute, such statute may contain provisions to the effect that the general reputation of the premises shall be admissible for purposes of proving the existence of the nuisance. See *e.g.* "Redlight Abatement Law", CAL. PEN. CODE, §11228 (Supp. 1956); COLO. REV. STAT. ANN., c. 39, Art. 15, §4 (Supp. 1955); ILL. ANN. STAT. c. 100½, §3 (Supp. 1956); MASS. ANN. LAWS, c. 139, §9 (Supp. 1955). A decree pursuant to a statute and substantially based upon evidence as to the general reputation of the premises was sustained in *Gregg v. People*, 65 Col. 390, 176 Pac. 483 (1918). However, even in the absence of a statute, the general reputation of the defendant's premises has been held to be sufficient proof of his illegal activities. See *e.g. Balch v. State*, 65 Okla. 146, 164 Pac. 776 (1917).

[48] In *Davis v. Auld*, 96 Me. 559, 53 Atl. 118 (1902), the court refused to set aside a decree on the grounds of insufficiency of evidence. The court held that a decree should not be set aside unless the findings as to the maintenance of the nuisance (illegal sale of liquor) were clearly wrong and the existence of unexplained suspicious circumstances and the fact that the defendants refrained from placing themselves under

In addition, securing evidence of gambling that is admissible in a criminal trial is often difficult because of the prohibition against illegal searches and seizures.[49] This prohibition has been held to be applicable in civil as well as in criminal proceedings.[50] Since the general reputation of the defendant's premises, however, and his refusal to submit to cross-examination are admissible as evidence in equity, it should not be necessary to introduce evidence obtained by an illegal search or seizure. Furthermore, since the prohibition against illegal searches and seizures is intended as a limitation on the power of the state, it has no application if the action is initiated by a private citizen.[51]

Scope of the Injunction

Once a court of equity decides to grant relief, further complications arise as to the parties who may be joined in the decree and as to the extent to which it can abate the illegal activities. These limitations arise from the fact that theoretically equity does not enjoin gambling and prostitution as such, but enjoins the use of a specific piece of property for these illegal purposes.[52] Therefore, although the defendant may be enjoined from using a certain premises for conducting an unlawful business, the decree generally can not prohibit him from conducting the business anywhere within the jurisdiction of the court.[53] In addition, provisions of a decree ordering the closing of a building, rather than prohibiting its illegal use, have been reversed by appellate courts.[54]

It also follows from the fact that equity acts only upon the use of property, that the parties named in the decree must be confined to those who are responsible for the condition of the premises. There is no problem in enjoining the lessee who operates the illicit enterprise or the owner who fails to act after receiving notice of the nuisance on his property.[55] However, the courts will not go beyond this point and make suppliers of essential goods and services parties to the injunction. Thus, attempts to reach telegraph companies who supply essential racing information to horse betting parlors, printers who print policy tickets, or the railroads who deliver supplies to gambling houses have been unsuccessful.[56]

Even with these limitations upon its scope, the decree of injunction is still an effective device

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cross examination was sufficient to sustain the decree. This suggests that a defendant in an equitable proceeding will not benefit from a refusal to testify as to facts which could be used against him in a subsequent criminal action.

[49] For an example of difficulty in obtaining evidence for conviction of gambling house proprietor because of illegal search and seizure rule see *People v. Two Roulette Wheels and Tables*, 326 Ill. App. 143, 61 N.E.2d 277 (1945).

[50] Illegally seized evidence has been barred in civil suits by the federal government. See *Rogers v. United States*, 97 F2d 691 (1st Cir. 1938) (Illegally seized liquor barred as evidence in civil action to recover import duties thereon).

[51] See *e.g. Walker v. Penner*, 190 Ore. 542, 227 P.2d 316 (1951) (Action for personal injuries arising from automobile collision. Defendant objected to admission of uncorked bottle of liquor seized from his car by plaintiff after the accident).

[52] Suits to enjoin gambling or prostitution as such, and not in connection with a specific piece of property have generally been dismissed as unlawful attempts to enforce the criminal laws. See *People v. Fritz*, 316 Ill. App. 217, 45 N.E.2d 48 (1942) (gambling); (*Weidner v. Friedman*, 126 Tenn. 677, 151 S.W. 56 (1912) (prostitution).

[53] Provisions of decrees enjoining the defendants from engaging in the illegal activities anywhere within the jurisdiction of the court have been set aside as unlawful attempts to enforce the criminal laws. *State v. Denny's Place*, 98 Ohio App. 351, 129 N.E.2d 532 (1954) (Illegal tavern). Although in City of *Sterling v. Speroni*, 336 Ill. App. 590, 84 N.E.2d 667 (1949), the trial court enjoined the defendant from operating a horse betting parlor anywhere within the jurisdiction of the court, the scope of the injunction was not placed in issue or appeal.

[54] In the following cases the decrees were modified to eliminate provisions ordering the padlocking of buildings used for prostitution, *Brindle v. Copeland*, 145 Ga. 398, 89 S.E. 332 (1916); *Martin v. Copeland*, 145 Ga. 399, 89 S.E. 333 (1916); *Balch v. State*, 65 Okla. 146, 164 Pac. 776 (1917).

[55] It has been held that notice of a suit in equity to abate a nuisance on his property is sufficient notice to the owner. Therefore, if the owner fails to remove the nuisance after receiving notice of the action, he may be made a party to the injunction. See *Chase v. Proprietor of Revere House*, 232 Mass. 881, 122 N.E. 162 (1919) (bawdy house) *State v. Gilbert*, 126 Minn. 95, 147 N.W. 953 (1914) (bawdy house). Held that ignorance due to negligence is the equivalent of notice and that owner is presumed to know the business conducted on his premises); *State v. Fanning*, 96 Neb. 123, 147 N.W. 215 (1914) (bawdy house). (Held that granting of temporary injunction was sufficient notice to defendant owner).

[56] In *People v. Fritz*, 316 Ill. App. 217, 45 N.E.2d 48, (1942), the court set aside an injunction which had been issued against 1400 defendants, alleged to have been responsible for the operation of gambling houses in the state. Among the defendants were a telegraph company and other suppliers of essential goods and services to the illegal establishment. The court felt that the presence of these defendants showed that the action was directed against violations of the law generally and not against the use of specific pieces of property. In other cases the courts refused to enjoin a brewery from shipping beer to customers in a "dry" county, *State v. Dick and Bros. Quincy Brewing Co.*, 270 Mo. 100, 192 S.W. 1022 (1917).

for the abatement of criminal activities, such as gambling and prostitution, which depend upon public patronage and the use of a specific piece of real property. Because a violation of the injunction would subject the responsible parties to immediate punishment for contempt, they may be forced to abandon the base of operations which is essential to the conduct of the illegal enterprise. In addition, because the action is civil rather than criminal in nature, the owner of the property can be joined as a defendant and made a party to the decree without the necessity of showing that he had knowledge of the lessee's activities prior to the initiation of the suit.[57] Because a violation of the injunction by the operator of the unlawful business would also subject the owner to contempt proceedings, a duty to abate the gambling or prostitution is thereby placed upon the owner. Furthermore, this duty does not end with the abatement of the existing nuisance. Since the operation of the injunction may be perpetual,[58] the owner is induced to diligently inquire into the motives of his future tenants and to police his premises after they have been leased. Furthermore, both the suit for an injunction and the contempt proceeding for a violation of the injunction have been upheld against the contention that they constitute an infringement of the defendant's right to a trial by jury.[59]

In addition to enjoining the owner, a suit in equity may be a distinct advantage where the owner of a gambling house or brothel has avoided the effect of prior convictions by transferring the title to the premises.[60] A decree may be worded in such a manner that in addition to ordering the present owner to abate the nuisance, it may also order all subsequent parties, claiming under the owner, not to allow a resumption of the nuisance.[61]

ENLARGEMENT OF JURISDICTION BY STATUTE

Many states have enacted statutes eliminating common law restriction upon the subject matter of equitable jurisdiction, the scope of the decree and the initiation of the suit. These statutes generally declare that buildings used for activities such as gambling, prostitution, and the illegal sale of liquor are public nuisances and may be abated by a suit in equity.[62] This completely alters the policy of those courts which insisted upon an interference with property rights before granting equitable relief.[63] Also, the courts have said that these statutes constitute a legislative recognition of the fact that the powers of equity are better suited than those of the criminal courts for the

[57] See cases cited in note 55, *supra*.

[58] *Ladner v. Siegal*, 298 Pa. 487, 495, 148 Atl. 699, 701, (1930).

[59] The United States Supreme Court in upholding the constitutionality of a Kansas statute authorizing an action in equity for the padlocking of buildings in which liquor was illegally sold, held that the power conferred by the statute to abate a nuisance without a trial by jury is in harmony with settled principles of equity jurisdiction. *Mugler v. Kansas*, 123 U.S. 623 (1887).

After he had been imprisoned for violating a decree enjoining him from leading a railroad strike, the defendant petitioned the United States Supreme Court for a suit of error and a writ of habeas corpus. The former unit was denied on the grounds that the order of the circuit court was not a final judgment or decree. In the case involving the petition for a writ of habeas corpus, the court answered the defendant's claim that his right to a trial by jury had been violated, as follows: "Nor is there in this any invasion of the constitutional right of trial by jury .... But the power of a court to make an order carries with it the equal power to punish for a disobedience of that order, and the inquiry as to the question of disobedience has been, from time immemorial, the special function of the court. And this is no technical rule. In order that a court may compel obedience to its orders it must have the right to inquire whether there has been any disobedience thereof. To submit the question of disobedience to another tribunal, be it a jury or another court, would operate to deprive the proceeding of half its efficiency ...." *In Re Debs* 158 U.S. 564, 594–595, 600 (1894).

[60] See *e.g. Respass v. Commonwealth*, 131 Ky. 807, 115 S.W. 1131 (1909).

[61] See BAKER, *An Equitable Remedy To Combat Gambling In Illinois*, 28 CHI-KENT L. REV. 287, 295 (1950).

[62] The following state statutes grant to the courts of equity, the power to enjoin the use of premises for certain criminal activities. ALA. CODE, tit. 29, §141 (1949) (illegal sale of intoxicating liquors); "Redlight Abatement Law", CAL. PEN. CODE, §11225 (Supp. 1956) (bawdy houses); COLO. STAT. ANN. c. 1, §1 (1935) (bawdy house); ILL. ANN. STAT. c. 100½, §1 (Supp. 1956) (bawdy house); IND. ANN. STAT. §10-2709. (Supp. 1955) (illegal horse races); IOWA CODE ANN. §128.1 (Supp. 1956) (illegal sale of liquor); KAN. GEN. STAT. 41-806 (1949) (liquor); ME. REV. STAT. c. 141, §1 (Supp. 1955) (gambling, prostitution and illegal sale of liquor); MASS. ANN. LAWS c. 139, §6 (Supp. 1955) (bawdy house); MASS. ANN. LAWS, c. 139, s.16 (Supp. 1955) (gambling houses); MINN. STAT. §617.34 (1949) (prostitution); NEB. REV. STAT. §280911 (1943) (bawdy house); OKLA. STAT. ANN. tit. to, §§2, 11 (Supp. 1956) (Any public nuisance); TEX. REV. CIV. STAT. ANN. art. 4665, 4667 (Supp. 1956) (gambling and prostitution.)

[63] Compare *People v. Lim.*, 18 Cal. 2d 872, 118 P.2d 472 (1941) (Refused to enjoin operation of gambling house because of failure to show injury to property) with *People v. Barbiere*, 33 Cal. App. 770, 166 Pac. 812 (1917) (Suit under statute to abate bawdy house. Relief granted despite failure to allege or prove damages to property).

suppression of the nuisance in question.[64] This makes it unnecessary for the petitioner to show why the remedy at law is inadequate.

In addition to a suit by the attorney general or prosecuting attorney, these statutes authorize the initiation of an action on behalf of the state by any citizen of the county in which the nuisance is located, without the necessity for showing a special injury to his property rights.[65] This provides a convenient means for circumventing the corrupt prosecutor. Furthermore, not only may the defendant be enjoined from conducting gambling or prostitution at a specific location, but many statutes authorize an injunction that is operative throughout the state.[66]

Apart from the removal of technical common law limitations, these statutes also effectively increase the powers of equity by providing for other potent remedies in addition to the injunction. Unless the owner posts a bond, a court is authorized to order the padlocking of a building for a specified period of time.[67] Furthermore, the decree may order the sheriff to remove and sell all personal property used in connection with the illegal activities and turn the proceeds over to the owner after the deduction for the cost of sale.[68] This may have the effect of complete confiscation of gambling devices which cannot be used for legitimate purposes. It also has been held that since these remedies act in rem, or against the property, the lack of knowledge of the illegal activities on the part of the owner is no defense.[69] Furthermore, if the owner of the premises cannot be found, a decree may be issued without the necessity of serving the owner with notice of the action.[70]

These additional statutory remedies have been attacked as a taking of property without due process of law and as punishment for a crime without a trial by jury. However, such remedies have been almost uniformly upheld.[71] It has been held that the statutes do not authorize the state to take or to appropriate any property for its own use since the owner is entitled to regain the use of his building for legitimate purposes by posting a bond and any proceeds from the sale of the personal property is turned over to the owner.[72]

[64] See *Clopton v. State*, 105 S.W. 994 (Tex. 1907) (suit under statute to enjoin bawdy house).

[65] The statutes cited in note 62, *supra*, uniformly provide that in addition to the state legal officers, a suit can be maintained by a private citizen of the county without the necessity of showing special damages.

[66] "If the existence of the nuisance is established, the court shall enter a decree perpetually restraining all persons from maintaining or permitting such nuisance, and from using the building or apartment, or the place in which the same is maintained for any purpose for a period of one year thereafter... *and perpetually restraining the defendant from maintaining any such nuisance within the jurisdiction of the court.*" (Emphasis supplied). ILL. ANN. STAT. c-1000½ §s5 (Supp. 1956). Most of the other statutes in note 62, *supra* have a similar provision.

[67] ".... (A)nd to enjoin the use of such building or apartment or such place for any purpose for a period of one year" ILL. ANN. STAT. c. 100½, §2 (Supp. 1956). "If the owner of such building or apartment, or such place shall appear and pay all costs which may have been assessed, and shall file a bond of not less than one thousand dollars or more than five thousand dollars, conditioned that such owner will immediately abate such nuisance and prevent such nuisance from being established or maintained therein within a period of one year thereafter, the court shall vacate such decree and order of abatement, on such place, and shall also vacate the order directing the sale of movable property...." ILL. ANN. STAT. c. 100½, §8 (Supp. 1956). The other statutes cited in note 62, *supra*, contain similar provisions.

It has been held that the section pertaining to the filing of a bond has no application where the owner of the premises is also the operator of the illegal business. *People v. Marshall*, 262 Ill. App. 128 (1931).

[68] See *e.g.* ILL. ANN. STAT. c. 100½, §5 (Supp. 1956).

[69] Although the owner's lack of knowledge may prevent him from being made a party to the injunction or being bound for the costs of the action, it will not prevent the issuance of a closing or removal and sale order. See *People v. Barbiere*, 33 Cal. App. 770, 166 Pac. 812 (1917) (bawdy house); *State v. Gilbert*, 126 Minn. 95, 147 N.W. 953 (1914) (bawdy house).

[70] A decree ordering the closing of a building or the removal and sale of the furniture and fixtures cannot be issued if the owner is not joined as a party. *State v. Fanning*, 96 Neb. 123, 147 N.W. 215 (1914). Such a decree, however, may be issued where the owner, after a diligent search, cannot be found. *People v. Lipschultz*, 240 Ill. App. 411 (1926).

[71] The case upholding the constitutionality of the various state statutes are: ALA. CODE, tit. 29 §.141 (1940); *Fulton v. State*, 171 Ala. 572, 54, So. 688 (1911); "Redlight Abatement Law," CAL. PEN. CODE §11225 (Supp. 1956), *People v. Barbiere*, 33 Cal. App. 770, 166 Pac. 812 (1917); COLO. STAT. ANN. c.1, art. 39 (Sup. 1955); *Gregg v. People*, 65 COLO. 399, 176 Pac. 483 (1918); ILL. ANN. STAT. c. 100½ §1 (Supp. 1956); *People v. Smith*, 275 Ill. 256, 114 N.E. 31 (1916); IND. ANN. STAT. §10-2709 (Burns Supp. 1955); *State v. Roby*, 142 Ind. 168, 41 N.E. 145 (1895); IOWA CODE ANN., §128.1 (Supp. 1956); *Littleton v. Fritz*, 65 Iowa 488,22 N.W. 641 (1885); ME. REV. STAT. c. 146 §1 (Supp. 1955); *Davis v. Auld*, 96 Me. 559, 53 Atl. 118 (1902); MASS. ANN. LAWS, c. 139 §16 (Supp. 1955); *Chase v. Proprietors of Revere House*, 232 Mass. 88, 122 N.E. 162 (1919); MINN. STAT. §617.34 (1949); *State v. Gilbert*, 126 Minn. 95 147 N.W. 953 (1914); NEB. REV. STAT. §28-911 (1943), *State v. Fanning*, 96 Neb. 123, 147 N.W. 2 5, *Rehearing*, 97 Neb. 244, 149 N.W. 413 (1914); OKLA. STAT. ANN. tit 50, §2, 11 (Supp. 1956); *Jones v. State*, 38 Okla. 218, 132 Pac. 319 (1913); TEX. REV. CIV. STAT. ANN. art. 4664, 4667 (Supp. 1956), *Ex Parte Allison*, 99 Tex. 455, 90 S.W. 492 (1906).

[72] *See Mugler v. Kansas*, 123 U.S. 623 (1887); *People v.*