

WHAT IS A LOTTERY?
Communicated.

To the Editor:

In view of the agitation not only in Carroll county, but throughout the State of the question "What is a lottery?" I believe that many of our merchants who have been asking this question will appreciate the publication in your paper of some of the data which will enable them to answer the question for themselves and apply it to the various schemes and "gift enterprises" which are employed as inducements to purchasers. The Court of Appeals of Maryland in Long vs. The State, 74 Md. 569, has said practically that any scheme for the distribution of prizes by lot, or by which one on paying money to another obtains a token, which entitles him to receive a larger value or nothing, as some formula or chance may determine, is a lottery. The same Court in State vs. Caspare, 115 Md. 21, has said "It is necessary in cases arising under this statute to determine from the facts of each case whether the element of chance, as characterized or defined by us, exists."

It is therefore evident that when the question is asked as to any particular scheme, is it a lottery? no general answer can be given, but each case must be determined according to the facts and the principles governing.

For that reason, it is impossible for the State's Attorney to answer categorically "Yes" or "No," when any particular case is presented to him with the inquiry, "Is it a lottery?" He is not a judicial officer, and cannot in advance determine what would be the view of Court or jury in any particular case. To any inquiry, he can only make response by stating the general principles, the application of which to the facts in any particular case must determine.

The law is found in Art. 27, section 315 and 456 of the Code (1914). Sec. 315 is as follows:—"No person or body corporate shall be permitted, either directly or indirectly, by agent or otherwise, to barter, sell or trade, by any public or private association of persons, either directly or indirectly, by agent or otherwise, use or hold for use in any way, or sell any stamp commonly called a trading stamp, or any ticket or check, or any written or printed promise or assurance, express or implied, or any other scheme or device, which stamp, ticket, check, promise, assurance, scheme or device is for the sale, barter or trade of any goods, wares or merchandise, holding out as an inducement for any such sale, barter or trade the giving or issuing of any such stamp, ticket, check, promise, assurance, scheme or device, which stamp, ticket, check, promise, assurance, scheme or device is for the sale, barter or trade of any goods, wares or merchandise at the time of the purchase thereof."

In Long vs. State 74 Md. 569, Justice Fowler said:—"In Hull vs. Ruggles 56 N. Y. Rep. 424, the exigency of the case required the Court to determine and define what is a lottery, and they laid down this definition: "Where any pecuniary consideration is paid and it is determined by a lot or chance, according to some scheme held out to the public, what or how much he who pays the money is to have for it, that is a lottery. Worcester's definition is 'A game of hazard in which small sums are ventured for the chance of obtaining greater value.' And the definition adopted by the State in this case is not materially different from the above 'Any scheme for the distribution of prizes by lot, or which one on paying money to another obtains a token, which entitles him to receive a larger value or nothing as some formula or chance may determine, is a lottery.'"

An examination of the many cases on the subject will show that it is very difficult, if not impossible for the most ingenious and subtle mind to devise any scheme or plan short of a gratuitous distribution of property, which has not been held by the Courts of this country to be in violation of the lottery or gaming laws in force in the various States of the Union."

"It was contended on the part of the State that the Act of 1886 comes within the legitimate exercise of the police power and that gift enterprises is a species of lottery, because the distribution in all gift enterprises is dependent on some formula or chance. But we do not think the words 'gift enterprise' necessarily

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imply a scheme involving chance. In so far as the Act is to protect the moral and advance the welfare of the people by prohibiting every scheme and device bearing any semblance to lottery or gambling, it would undoubtedly be a valid exercise of power, and the citation of authorities is not necessary to sustain a proposition so well settled."

"It follows that the Act of 1886, chap. 480, by reason of its general terms, including as it does all gift enterprises, those involving the element of chance, as well as those that do not, is invalid so far as it relates to gift enterprises not involving chance."

In State vs. Hawkins 95 Md. 143, Justice Boyd, referring to Long vs. State, and quoting as above, said that the Court therein had decided only that the statute was invalid only in so far as it related to gift enterprises not involving the element of chance. All gift enterprises involving the element of chance come within the statute, and with relation to such gift enterprises the statute is valid.

In State vs. Hawkins, 95 Md. 143, Justice Boyd said:—"Although the facts relied on to hold the appellee guilty are not before us, excepting in so far as they are to be found in the indictment, we cannot decline to consider such things as are common knowledge to all persons acquainted with business dealings, and we must assume that neither a merchant nor trading stamp company would intentionally engage in a business by which loss must necessarily be sustained. If the merchant only received the actual value of the goods sold, he could not very long continue the practice of having a third party furnish some other article at his expense, and unless the third party in some way gets value for the articles delivered by him, his business career will ordinarily be short-lived. And it would seem to be equally clear that if purchasers from the merchant always paid full value for the goods purchased and for the article obtained from a trading stamp company there would be but little inducement for them to make purchases in that way. But when they are led to believe that they have a chance of getting something in addition to their purchases, and especially when they do not know what it is to be, then it is unfortunately true that they are very many persons who would be thereby induced to make purchases, who would not otherwise do so. The uncertain, undetermined or unknown is what attracts a large class of people in every community, and it is dealing with the uncertain, undetermined or unknown, that has ruined many, and the tendency to this deal (appealing to the gambling instinct) is one of the evils of the present day. Lotteries, which were at one time expressly prohibited by law, are now generally prohibited throughout this country—there are provisions against them in the Constitution of many States, including our own. Numerous statutes have been passed to prevent transactions, which while not technical lotteries, are so akin to them that they have some of the same evil results, and when a statute is before a Court for construction, which apparently seeks to correct such evils, it should not be too ready to declare it invalid, but on the contrary should sustain it, unless it clearly violates some rights guaranteed to those affected by it. If the inducement for the sale was a stamp which would enable the holder to get something which was uncertain, undetermined,

and unknown to him at the time of the purchase, it would seem to be clear that the transaction involved the element of chance referred to in Long vs. State, and therefore cannot be justified by that decision, but is, by implication at least, condemned by it.

In the case of State vs. Caspare, 115 Md. 21, Justice Pattison, delivering the opinion of the Court after referring to the above cited cases, said:—"If at the time of the purchase of the merchandise, that which the purchaser is to receive for the stamps held by him is 'uncertain, undetermined and unknown to him, and the determination of that fact is dependent upon an element of chance, which partakes of the nature of a lottery or gambling, and which appeals to the gambling instinct, then such facts bring the transaction within the meaning of the statute as construed by this Court in the Hawkins case, but if the determination of that fact does not depend upon such element of chance then it does not fall within the meaning of the statute."

Therefore it is necessary in cases arising under this statute to determine from the facts of each case whether the element of chance, as characterized, or defined by us, exists."

From these decisions it seems to be clear that any device used as an inducement to a purchaser of goods which involves the element of chance of his receiving in addition to his purchase something "undetermined, uncertain or unknown," or nothing at all, would be held by our Courts as coming within the meaning of the statute.

WILLIAM L. SEABROOK,
The State's Attorney
for Carroll County.

2400 BARRELS OF OIL A DAY

Frech & Allen Strike Another Big Oil Gusher.

The West Virginian, at Fairmount, W. Va., of June 2, publishes the following:—"A Bonanza oil well that is producing about 2400 barrels of rich Virginia oil which sells for \$2.60 a barrel is flowing today near Mannington. The well is located in what is practically new and undeveloped territory in Marion county and is on the Higginbotham farm near Dents Run, about six miles from Mannington. This Higginbotham lease comprises about 120 acres and is the property of James J. Allen and company."

The well was drilled in early Thursday morning by the drilling contractor, J. A. Mason, and the tremendous flow and force of the spouting gusher almost tore the rig down. The entire country surrounding the rig was covered with the escaping oil which shot into the air many feet over the top of the tall rig, and it is estimated that more than 200 barrels of the flow was lost before the casing head could be placed in position and the well controlled. All of the idle oil men of the Mannington district worked day and night with the Eureka Pipe Line Company until now there are four 250-barrel tanks receiving the flow and more tanks are under construction. The Eureka company's lines are taking the oil away as fast as possible and the latest reports state that all of the production is being cared for.

"The oil was struck in the Thirty-foot sand and at the first entrance of the sand the well choked up with oil and made a shot necessary. When the heavy charge of nitroglycerin was

fired yesterday morning the oil shot nearly a hundred feet above the top of the rig. The entire Mannington district is discussing the strike today and this will likely stimulate drilling operations in this section to a remarkable degree."

James J. Allen, who is chief owner of the well in New York today arranging for the purchase of the production of the well and upon his return several other locations on this lease will be made. Allen is the junior partner of the Frech-Allen contracting company who built the paved roads in Mannington district. The oil company, however, is a separate concern and is composed of Allen and some of his relatives. Since the beginning of the paying work Allen has made his home in Mannington and has many friends throughout the county who are glad to hear of his good fortune.

"The income from the well is estimated at about \$5,000 per day and it shows every indication of holding up this production for a considerable length of time."

James J. Allen is well known here, having built the state road from Smallwood to Gamber, and made this city his headquarters.

Washing Goes Up.
Alliance, O., May 23.—Even the washerwomen of this city are boosting prices. They have announced an increase in wages, effective at once, of 25 cents a day. They have been receiving \$1.50 for a day's work, but will now get \$1.75.

Crank Breaks Remaining Arm.
Altoona, Pa., June 5.—While preparing to bring a party of friends to Hollidaysburg, Eli Emigh, of Roaring Springs, perhaps the only one-armed auto driver in Blair county, was struck on his only arm by the crank and suffered a fracture of the bone.

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LOCUST HILL.
The following attended the funeral of Ada L. Leppo, wife of Harvey Leppo, who died last Friday evening at her home in West Manheim Township, which was held last Monday morning: Mr. and Mrs. Jacob Leppo and children, Relda, Bertha, Albert, Edmund and Theodore, of Pine Grove; Mr. and Mrs. N. Arter, of Pine Hill, Md.; Mr. and Mrs. Wesley Humbert and daughters, Ella and Estella, of Humbert's Schoolhouse, and Mr. and Mrs. Frank Bechtel, of Silver Run, Md.
The Pleasant Hill Band furnished music at Hunterstown last Saturday evening.

Edward Matthias, Oliver Matthias, Milton Bowman and Frank Matthias purchased Ford touring cars.
Herbert Motter, William Warner, Aaron Null and Albert Leese motored to McCall's Ferry recently in Mr. Motter's machine.

A gasoline lighting system has been installed in Bart's U. B. Church.
The Lutheran (Communion) services held at St. Bartholomew's church by Rev. George E. Sheffer last Sunday morning, were largely attended.
Mr. and Mrs. Harry Mikesell, of Pennville, recently announced the birth of a son.
A daughter was born to Mr. and Mrs. Roy Dubs, recently.
Frank Leese and William E. Kindig are repairing their properties.
Mrs. James Masemore and son, of Harrisburg, visited relatives in this place last Sunday. The trip was made by motorcycle.
Mr. and Mrs. Clinton Utz, and daughter, Effie, Mr. and Mrs. Orestus Myers and son, Melvin, of Pennville, were recent guests at the home of Mr. and Mrs. Emory Utz.

Miss Clara Sterner, of Sell's Station, spent last Sunday at the home of William E. Kindig.
Miss Relda Stonestier is visiting Orestus Myers and family, of Pennville.

Mr. and Mrs. E. Frock and daughter, of Bittinger's station, were Sunday guests at the home of John A. Brumgard.
Mr. and Mrs. Grant Bish and Paul Bish, of Hanover, spent Sunday at the home of Milton Null.

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