Recent Legislation

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ANTIFENCE LEGISLATION

Webster’s Standard Dictionary states that, “A fence is a receiver of stolen goods of a place where stolen goods are received.” The fence necessarily is an invaluable and essential adjunct to crime and theft. Without the fence where the thief can dispose of his loot his business becomes much more dangerous and unprofitable. The fence is primarily a benefit to the criminal because it affords a quick brokerage house for the stolen goods. Secondly the fence affords a quick unloading place for goods that would make excellent evidence for the State and an unexplainable circumstance for the thief if he is apprehended.

Mr. Joseph P. Chamberlain in the American Bar Association Law Journal comments, “The fence is the sensitive spot in the criminal organization. So long as he exists theft is profitable. If he could be done away with the thieves would have to turn to new enterprises. Perhaps a more important result would be that the debutants in crime would not take up theft as a profession. The oldtimers might still eke out a precarious living without the fence, but the attractiveness of the business to young men and girls would be lost with the disappearance of easy money resulting from the easy disposal of goods to the fence.”

Mr. Chamberlain truly states that the criminal organization could not exist without the aid of the fence. Whether curbing the fence would make youths meditate before they took up crime is a question. Nevertheless one of the most effective methods of indirectly destroying crime is to eliminate the fence and many of the states are inserting teeth into their disregarded statutes for the purpose of destroying the fence. The weakness of the antifence statutes lies not in the substantive law but in the procedure. A parasite has clung to the English law that found its way into the laws of the United States. It is the rule of evidence, “that a conviction can’t be had upon the uncorroborated testimony of an accomplice.” Many of the courts held that the thief was an ac-
complice to the fence and since usually a conviction results from the testimony of the thief that took the loot to the indicated fence, convictions were rare.

New York's legislature in 1928, by Chapter 170, overthrew this rule of evidence. The act, prescribes, "the persons selling, offering or delivering such goods shall not be deemed and accomplice of the person receiving them etc." This clearly makes the conviction of the fence possible by the uncorroborated testimony of the thief. It will probably act as a deterrent to the practice of the fence taking goods from the inexperienced amateur who may "squeal".

New York passed another act that is an auxiliary to the destruction of the fence. Chapter 354 says in substance that all second hand dealers in certain articles that are easily stolen shall be guilty of a felony, if they acquired such articles "without ascertaining by diligent inquiry that the persons selling or delivering the same has a legal right to do so." The Supreme Court of New York held that this statute was a valid exercise of the police power. It in fact makes every second hand dealer a policemen and incidently since the passage of this act theoretically speaking the dynasty of Irish extraction on the police force has been supplanted by a different nationality.

New Jersey not to be outdone by New York, passed laws to fortify their ineffective attack on the fence. Chapter 185 of the New Jersey Laws of 1928 prescribes, "If such person (second hand dealers) is shown to have, or to have had possession of such goods (stolen) chattels, choses in action, or other valuable thing within one year from the date of such stealing, robbery or unlawful or fraudulent obtaining, such possession shall be deemed sufficient evidence to authorize conviction". To give the accused a chance they allow him to explain where and under what circumstances he procured the goods. Such a statute comes dangerously close to making a man guilty until he proves himself innocent.

The legislatures have passed these acts with the view of making conviction of the fence easier and to make the fence cautious with whom he deals. However there are two big obstacles that seem to be overlooked. First there is the "racketeer" and secondly it must be kept in mind that the public have a great
tendency to condone crime when it gets them cheaper a commodity they that need. The fence sells his goods cheap. All the rules of evidence and the strictest enforcement of the statutes will be of no avail as long as the racketeer can buy protection. The racketeer has invaded every business, the fence included. Guns of the gang and hush money speak louder than statutes. As Mr. Chamberlain says, "If you want to cook a rabbit, you must first catch your rabbit." But where are the rabbits?

T. V. H.