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CASES ON STRICT LIABILITY

INTRODUCTION

R v Prince (1875) LR 2 CCR 154.

The defendant ran off with an under-age girl. He was charged with an offence of taking a girl under the age of 16 out of the possession of her parents contrary to s55 of the Offences Against the Person Act 1861 (now s20 of the Sexual Offences Act 1956). The defendant knew that the girl was in the custody of her father but he believed on reasonable grounds that the girl was aged 18. It was held that knowledge that the girl was under the age of 16 was not required in order to establish the offence. It was sufficient to show that the defendant intended to take the girl out of the possession of her father.

R v Hibbert (1869) LR 1 CCR 184.

The defendant met a girl under sixteen years of age in a street, and induced her to go with him to a place at some distance, where he seduced her, and detained her for some hours. He then took her back to where he met her and she returned home to her father. The defendant was charged under s55 OAPA 1861. It was held that in the absence of any evidence that the defendant knew, or had reason for knowing, or that he believed, that the girl was under the care of her father at the time, that a conviction under s55 OAPA 1861 could not be sustained.

GENERAL PRINCIPLES/THE MODERN CRITERIA

R v Blake (1996) The Times, 14 August.

Investigation officers heard an unlicensed radio station broadcast and traced it to a flat where the defendant was discovered alone standing in front of the record decks, still playing music and wearing a set of headphones. Though the defendant admitted that he knew he was using the equipment, he claimed that he believed he was making demonstration tapes and did not know he was transmitting. The defendant was convicted of using wireless telegraphy equipment without a licence, contrary to s1(1) Wireless Telegraphy Act 1949 and appealed on the basis that the offence required *mens rea*.

The Court of Appeal held that the offence was an absolute (actually a strict) liability offence. The Court applied Lord Scarman's principles in *Gammon* and found that, though the presumption in favour of *mens rea* was strong because the offence carried a sentence of imprisonment and was, therefore, “truly criminal", yet the offence dealt with issues of serious social concern in the interests of public safety (namely, frequent unlicensed broadcasts on frequencies used by emergency services) and the imposition of strict liability encouraged greater vigilance in setting up careful checks to avoid committing the offence.

NOTE: The court seems to have been inconsistent in its use of terminology in the present case. The offence is one of strict liability as

the defendant had to be shown to have known that he was using the equipment.

Sweet v Parsley [1970] AC 132.

The defendant was a landlady of a house let to tenants. She retained one room in the house for herself and visited occasionally to collect the rent and letters. While she was absent the police searched the house and found cannabis. The defendant was convicted under s5 of the Dangerous Drugs Act 1965 (now replaced), of "being concerned in the management of premises used for the smoking of cannabis". She appealed alleging that she had no knowledge of the circumstances and indeed could not expect reasonably to have had such knowledge.

The House of Lords, quashing her conviction, held that it had to be proved that the defendant had intended the house to be used for drug-taking, since the statute in question created a serious, or "truly criminal" offence, conviction for which would have grave consequences for the defendant. Lord Reid stated that “a stigma still attaches to any person convicted of a truly criminal offence, and the more serious or more disgraceful the offence the greater the stigma”. And equally important, “the press in this country are vigilant to expose injustice, and every manifestly unjust conviction made known to the public tends to injure the body politic [people of a nation] by undermining public confidence in the justice of the law and of its administration.”

Lord Reid went on to point out that in any event it was impractical to impose absolute liability for an offence of this nature, as those who were responsible for letting properties could not possibly be expected to know everything that their tenants were doing.

Cundy v Le Cocq (1884) 13 QBD 207.

The defendant was convicted of unlawfully selling alcohol to an intoxicated person, contrary to s13 of the Licensing Act 1872. On appeal, the defendant contended that he had been unaware of the customer's drunkenness and thus should be acquitted. The Divisional Court interpreted s13 as creating an offence of strict liability since it was itself silent as to *mens rea*, whereas other offences under the same Act expressly required proof of knowledge on the part of the defendant. It was held that it was not necessary to consider whether the defendant knew, or had means of knowing, or could with ordinary care have detected that the person served was drunk. If he served a drink to a person who was in fact drunk, he was guilty. Stephen J stated:

Here, as I have already pointed out, the object of this part of the Act is to prevent the sale of intoxicating liquor to drunken persons, and it is perfectly natural to carry that out by throwing on the publican the responsibility of determining whether the person supplied comes within that category.

Sherras v De Rutzen [1895] 1 QB 918.

The defendant was convicted of selling alcohol to a police officer whilst on duty, contrary to s16(2) of the Licensing Act 1872. He had reasonably believed the constable to be off duty as he had removed his arm-band, which was the acknowledged method of signifying off duty. The Divisional Court held that the conviction should be quashed, despite the absence from s16(2) of any words requiring proof of *mens rea* as an element of the offence. Wright J expressed the view that the presumption in favour of *mens rea* would only be displaced by the wording of the statute itself, or its subject matter. In this case the latter factor was significant, in that no amount of reasonable care by the defendant would have prevented the offence from being committed. Wright J stated:

"It is plain that if guilty knowledge is not necessary, no care on the part of the publican could save him from a conviction under section 16, subsection (2), since it would be as easy for the constable to deny that he was on duty when asked, or to produce a forged permission from his superior officer, as to remove his armlet before entering the public house. I am, therefore, of opinion that this conviction ought to be quashed."

Lim Chin Aik v R [1963] AC 160.

The defendant had been convicted of contravening an order prohibiting in absolute terms, his entry into Singapore, despite his ignorance of the order's existence. In allowing the defendant's appeal, Lord Evershed expressed the view that the imposition of strict liability could only really be justified where it would actually succeed in placing the onus to comply with the law on the defendant. If the defendant is unaware that he has been made the subject of an order prohibiting him from entering a country, the imposition of strict liability should he transgress the order would not in anyway promote its observance. Lord Evershed stated:

"But it is not enough in their Lordship's opinion merely to label the statute as one dealing with a grave social evil and from that to infer that strict liability was intended. It is pertinent also to inquire whether putting the defendant under strict liability will assist in the enforcement of the regulations. That means that there must be something he can do, directly or indirectly, by supervision or inspection, by improvement of his business methods or by exhorting those whom he may be expected to influence or control, which will promote the observance of the regulations. Unless this is so, there is no reason in penalising him, and it cannot be inferred that the legislature imposed strict liability merely in order to find a luckless victim."

MODERN EXAMPLES

Warner v MPC [1969] 2 AC 256.

The defendant, who was a floor-layer by occupation, sold scent as a side-line. He went to a café and asked if anything had been left for him. He was given two boxes, one containing perfume and the other 20,000 tablets of drugs. He was charged with being in possession of a prohibited drug contrary to s1 of the Drugs (Prevention of Misuse)

Act 1964 (now replaced). He said he thought they both contained perfume.

In the House of Lords, Lord Morris held that the defendant being in physical control of the package and its contents either:
(a) with his consent thereto knowing that it had contents, or
(b) with knowledge that the package was in his control,
his possession of the tablets was established for the purposes of s1, whether or not the defendant realised that he was in possession of a prohibited drug.

Lord Reid held that the strong inference that possession of a package by an accused was possession of its contents could be rebutted by raising real doubt either (a) whether the accused (if a servant) had both no right to open the package and no reason to suspect that the contents of the package were illicit, or (b) that (if the accused were the owner of the package) he had no knowledge of, or was genuinely mistaken as to, the actual contents or their illicit nature and received them innocently, and also that he had no reasonable opportunity since receiving the package to acquaint himself with its contents.

Note: a limited defence now exists under the Misuse of Drugs Act 1971. Section 5 creates the offence of possessing a controlled drug, but s28 goes on to provide that a defendant should be acquitted if he can show that he did not know or suspect, and could not reasonably have known or suspected, that the substance was a prohibited drug.

Alphacell Ltd v Woodward [1972] AC 824.

The defendants were charged with causing polluted matter to enter a river contrary to s2 of the Rivers (Prevention of Pollution) Act 1951. The river had in fact been polluted because a pipe connected to the defendant's factory had been blocked, and the defendants had not been negligent. The House of Lords nevertheless held that the defendants were liable. Lord Salmon stated:

If this appeal succeeded and it were held to be the law that no conviction be obtained under the 1951 Act unless the prosecution could discharge the often impossible onus of proving that the pollution was caused intentionally or negligently, a great deal of pollution would go unpunished and undeterred to the relief of many riparian factory owners. As a result, many rivers which are now filthy would become filthier still and many rivers which are now clean would lose their cleanliness. The legislature no doubt recognised that as a matter of public policy this would be most unfortunate. Hence s2(1)(a) which encourages riparian factory owners not only to take reasonable steps to prevent pollution but to do everything possible to ensure that they do not cause it.

Smedleys Ltd v Breed [1974] AC 839.

Four tins of peas, out of three-and-a-half million tins, produced by the defendants had contained caterpillars. The defendant company was convicted of "selling food not of the substance demanded by the purchaser" contrary to s2(1) of the Food and Drugs Act 1955 (now replaced). They contended that the presence of the caterpillar in the tin was an unavoidable consequence of the process of collection or

preparation and that they therefore had a defence under s3(3) of the 1955 Act. They also claimed that they had taken all reasonable care.

It was held by the House of Lords that in order to establish a defence under s3(3) it was necessary to show that the presence of the extraneous matter was a consequence of the process of collection or preparation of the food and that that consequence could not have been avoided by any human agency; it was not sufficient for the defendant to show that he had taken all reasonable care to avoid the presence of the extraneous matter.

Even if it were accepted that the presence of the caterpillar was a consequence of the process of collection or preparation rather than something which had occurred despite those processes, the defendants were not entitled to rely on s3(3) since the caterpillar could have been removed from the peas during the process of collection or preparation and its presence could thereby have been avoided.

Note: the offence is now contained in the Food Safety Act 1990. Under s21 of the 1990 Act, a defendant has a defence if he proves that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or a person under his control.

R v Howells [1977] 3 All ER 417.

The defendant bought a revolver believing it to be an antique firearm, apparently manufactured in 1860 or 1870. As it was purchased as a "curiosity or ornament", he believed that no firearm certificate was required for it by virtue of s58(2) of the Firearms Act 1968. He was charged with possessing a revolver without a firearm certificate, contrary to s1(1)(a).

The Court of Appeal held that s1 was to be construed strictly: the wording of the section, on the face of it, so indicated; the danger to the community resulting from the possession of lethal firearms was so obviously great that an absolute prohibition against their possession without proper authority must have been the intention of Parliament when considered in conjunction with the words of the section; and to allow a defence of honest and reasonable belief that the firearm was an antique and therefore excluded was likely to defeat the clear intention of the Act.

R v Lemon; R v Gay News Ltd [1979] 1 All ER 898

The defendants were the editor and publishers of a newspaper for homosexuals. They were charged with the offence of blasphemous libel. The particulars of the offence alleged that they unlawfully and wickedly published or caused to be published a blasphemous libel concerning the Christian religion, namely 'an obscene poem and illustration vilifying Christ in His life and in His crucifixion'. The trial judge directed the jury that they could convict the defendants if they took the view that the publication vilified Christ and that it was not necessary for the Crown to prove an intention other than an intention to publish that which in the jury's view was a blasphemous libel. The defendants were convicted and appealed

The House of Lords held (3-2) that in order to secure a conviction for the offence of publishing a blasphemous libel it was sufficient, for the purpose of establishing mens rea, for the prosecution to prove an intention to publish material which was in fact blasphemous and it was not necessary for them to prove further that the defendants intended to blaspheme. The defendants appeal against conviction was dismissed.

P.S.G.B. v Storkwain Ltd [1986] 2 All ER 635.

Section 58(2) of the Medicines Act 1968 provides that no person shall sell specified medicinal products except in accordance with a prescription given by an appropriate medical practitioner. The defendant supplied specified drugs on prescriptions purporting to be signed by a Doctor. The prescriptions were forged. However, there was no finding that the defendant acted dishonestly, improperly or even negligently. Yet the House of Lords held that the Divisional Court was right to direct the magistrates to convict.

Lord Goff's opinion was that Parliament must have intended that the presumption of *mens rea* should be inapplicable to s58. It appeared from the 1968 Act that where Parliament wished to recognise that *mens rea* was required it had expressly so provided. There was no provision for a requirement of *mens rea* in s58. His Lordship approved the following statement of Farquharson J, in the Divisional Court:

it is perfectly obvious that pharmacists are in a position to put illicit drugs and perhaps other medicines on the market. Happily this rarely happens but it does from time to time. It can therefore be readily understood that Parliament would find it necessary to impose a heavier liability on those who are in such a position, and make them more strictly accountable for any breaches of the Act.