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*155 Westminster City Council v Croyalgrange Ltd. and Another

Mixed Judicial Consideration

Court
House of Lords

Judgment Date
15 May 1986

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(1986) 83 Cr. App. R. 155

House of Lords

(Lord Bridge of Harwich , Lord Brightman , Lord Mackay of Clashfern , Lord Ackner and Lord Oliver of Aylmerton):

April 10, May 15, 1986

Licensing—Sex Establishment—Knowingly Using or Causing or Permitting Use of Premises as Sex Establishment Without Licence—Exception Where Licence Applied for Before Appointed Day—Whether Knowledge that No Licence Applied For Ingredient of Offence— Local Government (Miscellaneous Provisions) Act 1982(c.30), s.48, Sch.3, paras. 6(1), 20(1)(a) .

Section 48 of and Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 introduced a code which a local authority could adopt by ***156** resolution for the control within their area by means of a licensing system of what were called in the Schedule "sex establishments".

By paragraph 6(1) of Schedule 3 : "Subject to the provisions of this Schedule, no person shall in any area in which this Schedule is in force use any premises … as a sex establishment except under and in accordance with the terms of a licence granted under this Schedule by the appropriate authority."

By paragraph 20(1): "A person who, (*a*) knowingly uses, or knowingly causes or permits the use of, any premises … contrary to paragraph 6 above … shall be guilty of an offence."

To constitute an offence contrary to paragraph 20(1)(a) of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 it is necessary for the prosecution to prove that the defendant knew that the use which he was making of the premises himself (or the use which he was causing or permitting others to make of the premises) was in contravention of the prohibition imposed by paragraph 6 of the said Schedule 3, *i.e.* , that not only that the premises were used as a sex establishment but also that they were being so used without a licence. Such knowledge may be proved on evidence that the defendant had deliberately shut his eyes to the obvious or that he had refrained from inquiry because he suspected the truth but did not want to have his suspicion confirmed.

Decision of the *Queen's Bench Divisional Court [1985] 1 All E.R. 740, affirmed* .

Appeal from the Divisional Court of the Queen's Bench Division.

This was an appeal by the **Westminster City Council** by leave of the House of Lords from the decision of the *Divisional Court of the Queen's Bench Division (Robert Goff L.J. and McCullough J.) [1985] 1 All E.R. 740* on November 29, 1984 dismissing an appeal by the **council** by case stated from the dismissal by Ronald David Bartle, a metropolitan stipendiary magistrate sitting at Bow Street Magistrates' Court, on December 29, 1983, of two informations laid against each of the defendants, **Croyalgrange** Ltd. and Charles Grech, by the **council**.

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The two informations laid against each of the defendants by Terence Frank Neville, City Solicitor, acting for and on behalf of the Westminster City Council alleged, against Croyalgrange Ltd. (i) that on February 8, 1983 they had knowingly permitted the use of premises at 4, Peter Street, London W1 as a sex establishment without the grant of a licence by the council under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 , contrary to F section 2 of and Schedule 3, paragraphs 6(1) and 20(1)(a) , to the Act; (ii) a like offence on February 24, 1983; against Charles Grech (iii) that the offence set out in (i) had been committed with his connivance, he being a director of Croyalgrange Ltd., whereby he, as well as the body corporate, was guilty of the offence, contrary to section 2 of and Schedule 3, paragraphs 6(1), 20(1)(*a*) and 26(1) to the Act; (iv) a like offence in relation to (ii).

The magistrate heard the informations on December 29, 1983, the defendants having each entered pleas of not guilty to each information, and found the following facts. At all material times (*i.e.* April 10, 1981 to June 22, 1983) no licence for the premises in question had been applied for or had been in effect. At all material times the premises had been used by the tenant Charles Buttigieg as a sex establishment within the meaning of the Act of 1982, Croyalgrange Ltd. had been the freehold owner of the premises and Grech had been a director of Croyalgrange Ltd. The defendants had been notified on March 4, 1982 and November 26, 1982 that the premises were being used as a sex shop and that on the latter date an enforcement notice had been served on them; Croyalgrange ***157*** Ltd. had appealed against the notice but had withdrawn its appeal on September 8, 1983. Throughout the material times the premises in question had been let by Grech on behalt of Croyalgrange Ltd. to Buttigieg (who had been convicted of using the premises without a licence) by a series of six-monthly agreements the first of which had been dated April 10, 1981. The agreements dated April 10, 1981, October 12, 1981 and April 12, 1982 had required the tenant to use the premises only for the sale of sexual aids, videos and books. In the agreement dated April 12, 1982 there had been inserted a clause forbidding activity that would jeopardise (sic) “any forthcoming sex establishment laws”; that clause had been repeated in the agreement dated October 11, 1982. On September 5, 1982 Buttigieg had written to Croyalgrange Ltd. seeking consent to sub-let the premises to one Thomas and on September 9, 1982 Grech had written to Buttigieg indicating that there was no objection to the proposed sub-letting of the premises provided that Buttigieg ensured that his agreement with Thomas covered all the requirements set out in the then current agreement between Croyalgrange Ltd. and Buttigieg, which requirements, *inter alia* , provided that the premises should continue to be used for the sale of sexual aids, videos and books whilst forbidding any activity that would “jeopardise” any forthcoming sex laws. The agreement dated October 11, 1982 had purported to change the use of the premises from the sale of sexual aids, videos and books to that of peep-show, bar and club for which no licence would have been required; that agreement had not been drawn up by Croyalgrange Ltd.'s solicitors. During an interview with Detective Constable Brian Dowling on February 28, 1983 Grech had asserted that he was not aware that pornographic material was being sold in the premises and that he had not been to the premises for about two years; he had further asserted that since February 1, 1983 a clause had been inserted in the lease specifying that the premises should not be used for immoral or illegal purposes and that the purpose of that clause was to enable the occupants of the premises to apply for a licence. During the interview held on February 28 Grech had admitted that “girlie” magazines and books like *Penthouse* and *Mayfair* were on sale at the premises. On March 9, 1983 Grech had written to Gideacrest Ltd. (a company run by Buttigieg) indicating his (Grech's) concern that the premises were being used as a cinema and requesting written confirmation that the appropriate licence had been applied for and on March 11, 1983 Buttigieg had written to Croyalgrange Ltd. reminding them that he had sub-let the premises and informing them that the present tenant had assured him that the necessary licence had been applied for. By a letter dated June 22, 1983 addressed to Buttigieg, Grech had purported to confirm a verbal agreement of the same date that the premises would be closed by June 27, 1983.

It had been put by the prosecutor in opening that there were two alternative interpretations of the relevant statutory provision relating to knowledge, *viz.* , that to establish knowledge (i) it was sufficient to show that the defendants had known that the premises were at all material times a sex establishment within the meaning of the Act of 1982; (ii) it had to be shown that the defendants had known that no licence to operate the premises as a sex establishment had been granted or applied for. It was contended that the first of those interpretations was the correct one. The magistrate took the view that the interpretations were not mutually exclusive and that absence of knowledge that a licence had not been applied for would amount to a defence if the defendants could show that they had taken all reasonable steps to ensure that the licensing requirements were met by the lessees.

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At the end of the prosecution case a submission was made on behalf of the defendants that there was no case to answer. The magistrate found that the facts presented by the prosecution amounted to a prima facie case that on February 8 and 24, 1983 the premises had been used as a sex establishment and it was therefore for the defence to establish by evidence absence of knowledge that a licence had not been applied for. The case for the defendants rested on the proposition that, in view of the agreements dated April 12 and October 11, 1982 and the correspondence referred to they had been entitled to assume that the sub-tenant had applied to the appropriate authority for the requisite licence when such requirement had come into force on February 1, 1983.

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The issues for the magistrate to decide, as he saw it, were (a) was it proved that after February 1, 1983, the date from which a licence had been obligatory **Croyalgrange** Ltd. with knowledge, actual or constructive, had permitted the use of the premises as a sex establishment without a licence, or without application in proper form having been made to the appropriate authority for the grant of a licence; (b) if so, had Grech connived at the same. He was of the opinion that, although considerable suspicion existed, it had not, as a matter of fact, been proved beyond a reasonable doubt that on February 8 and 24, 1983 either defendant had had the requisite knowledge to constitute the offences charged. For that reason he dismissed all four informations.

The questions for the opinion of the High Court were (i) whether, **Croyalgrange** Ltd. having admitted [permitted] and/or been proved to have permitted the use of premises at 4, Peter Street as a sex establishment at all materials times prior to February 1, 1983, it had in law permitted the continued use thereof as a sex establishment without a licence on February 8 or 24, 1983, and, if so, (ii) whether Grech had connived at the commission of such offences by **Croyalgrange** Ltd.

The Divisional Court certified that the following point of law of general public importance was involved in their decision:

> "To constitute an offence contrary to paragraph 20(1)(a) of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 is it necessary for the prosecution to prove that the defendant knew that the use which he was making of the premises himself (or the use which he was causing or permitting others to make of the premises) was other than under and in accordance with the terms of a licence granted under the said Schedule 3?"

but refused the **council** leave to appeal. On February 4, 1985, the Appeal Committee of the House of Lords (Lord Fraser of Tullybelton, Lord Keith of Kinkel and Lord Brightman) allowed a petition by the **council** for leave.

The appeal was argued on April 10, 1986, when the following cases were cited in argument in addition to those referred to in Lord Bridge's opinion: *Edwards (1974) 59 Cr.App.R. 213; [1975] Q.B. 27* ; *Hunt (Richard) (1986) 82 Cr.App.R. 244; [1986] 1 All E.R. 184* and *Roper* **v**. *Taylor's Central Garages (Exeter) Ltd. [1951] 2 T.L.R. 284* .

John E. A. Samuels Q.C. and *Roger McCarthy* for the **council**.

John W. Rogers Q.C. and *Pamela Shaw* for the defendants.

Their Lordships took time for consideration. May 15. The following opinions were read.

LORD BRIDGE OF HARWICH:

My Lords, The defendants were accused of offences alleged to have been committed in February 1983 under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 ("the Act"). They were tried at Bow Street Magistrates' Court by Mr. Ronald Bartle, a metropolitan stipendiary magistrate, on December 29, 1983 and acquitted. The **council** appealed by case stated to the *Divisional Court (Robert Goff L.J. and McCullough J.) [1985] 1 All E.R. 740* who on November 29, 1984 dismissed the appeal but certified that a point of law of general public importance was involved in their decision. I will refer to the certified question later. The **Council** now appeal by leave of your Lordship's House. They have made clear that, having regard to the nature of the case and the lapse of time since the alleged offences were committed, your Lordships would not be asked, if the appeal were successful, to remit the case for the defendants to be convicted. The sole purpose of the appeal, so it is said, is to clarify the law for the future. The House will not, of course, entertain appeals on academic questions, but since the issue of costs remains at large, it cannot be said that there is no lis sufficient to keep the appeal alive.

Before turning to the facts of the case and the issues of law which arise for consideration, it will be convenient to give some account of the statutory machinery with which the case is concerned. The Act by section 48 and Schedule 3 introduced a code which a local authority could adopt by resolution for the control within their area by means of a licensing system of what are called in the Schedule "sex establishments." Section 48 requires that the local authority's resolution to apply the Schedule to their area should be appropriately advertised in local newspapers before the date on which the Schedule will come into force.

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The following paragraph references are all references to paragraphs of Schedule 3. Paragraph 2 defines "sex establishment" as meaning a "sex cinema" or a "sex shop" which are then elaborately defined by paragraphs 3 and 4. I think it will be sufficient for present purposes to say that "sex cinema" means premises "used to a significant degree for the exhibition of what the layman would call pornographic films and "sex shop" means premises "used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating" what the layman again would call pornographic material generally, including pornographic books, magazines, video cassettes and records and articles designed for use as stimulants in the course of sexual activity.

Paragraph 6(1) contains the prohibition of unlicensed user in the following terms:

> "Subject to the provisions of this Schedule, no person shall in any area in which this Schedule is in force use any premises, vehicle, vessel or stall as a sex establishment except under and in accordance with the terms of a licence granted under this Schedule by the appropriate authority."

There are three situations where the use of premises as a sex establishment in an area to which the Schedule applies will not contravene this prohibition. The first is where the use is "under and in accordance with the terms of a licence" granted by the local authority. The second, arising from the opening words "Subject to the provisions of this Schedule" and from paragraph 7, is where the local authority have waived the requirement of a licence. The third, arising from the same opening words and from paragraph 28, is where a person who was using premises as a sex establishment immediately before the first advertisement of the local authority's resolution to apply the Schedule to their area applied for a licence before the Schedule came into force and that application has not been determined.

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There are elaborate provisions governing the procedure for the determination of applications for the grant, renewal or transfer of licenses, the grounds on which such applications may, or in some cases must, be refused, and the conditions which may be imposed on licenses. Nothing turns on these provisions. By paragraph 14 a licence is required to be exhibited "in a suitable place to be specified in the licence," presumably a prominent place on the licensed premises.

The relevant paragraphs creating offences are paragraphs 20(1) and 26(1). Paragraph 20(1) provides:

> "A person who, (*a*) knowingly uses, or knowingly causes or permits the use of, any premises, vehicle, vessel or stall contrary to paragraph 6 above; or (*b*) being the holder of a licence for a sex establishment, employs in the business of the establishment any person known to him to be disqualified from holding such a licence; or (*c*) being the holder of a licence under this Schedule, without reasonable excuse knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in the licence; or (*d*) being the servant or agent of the holder of a licence under this Schedule, without reasonable excuse knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in the licence, shall be guilty of an offence."

Paragraph 26(1) provides:

> "Where an offence under this Schedule committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any

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> director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of the offence."

The informations against the defendants related to the use of premises at 4 Peter Street, Soho ("the premises"). They alleged two offences by the first defendant ("the company") on February 8 and 24, 1983 under paragraph 20(1)(*a*) of knowingly permitting the use of the premises as a sex establishment contrary to paragraph 6 and two offences by the second defendant ("the director"), as a director of the company, under paragraph 26(1) of conniving at the commission of the offences by the company.

The case stated is drafted in such a way as to obscure, rather than clarify, the real issue for decision. Saying this implies no criticism of the stipendiary magistrate. It is to be assumed that, in accordance with the usual practice, the parties' advisers agreed the form of case and submitted it for his signature. By ignoring irrelevant material, ferreting out from the case and the annexed exhibits that which is relevant and supplementing this by inference and by reference to some general background information provided by counsel which is not in any way controversial it is possible to arrive at a distillation of the essential facts.

1. The **council** resolved, pursuant to section 48 of the Act, that Schedule 3 should apply to their area, which includes Soho. The resolution was duly advertised. Schedule 3 came into force in the area on February 1, 1983.

2. The company was the freehold owner of the premises.

3. The premises were continuously used as a sex establishment by one Thomas, as sub-tenant, from a date immediately before the first advertisement of the **council's** resolution that Schedule 3 should apply to their area until a date after February 24, 1983. That use was permitted by the company.
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4. No licence to use the premises as a sex establishment had ever been granted.

5. No application for a licence to use the premises as a sex establishment had been made by or on behalf of Thomas before February 1, 1983.

None of these facts was disputed, nor was it disputed that all the facts recited in paragraphs 1 to 4 were well known to the director, whose knowledge was properly imputed to the company. The only issue of fact was whether the director, and through him the company, knew the fact recited in paragraph 5. The **council** as prosecutor invited the magistrate to infer this knowledge. The defendants' case rested on the contention that the director, and therefore the company, honestly believed that application for a licence had been made by or on behalf of Thomas in due time and had not been determined. If this was indeed the defendants' state of mind, then, on the facts as the defendant believed them to be, there would have been no contravention of the prohibition imposed by paragraph 6(1); the legality of the use would have been saved by paragraph 28.

The magistrate proceeded on the footing that the onus lay on the prosecution to prove not only that the company permitted and the director connived at the use of the premises as a sex establishment, but also that the director, and through him the company, knew that the use contravened the prohibition imposed by paragraph 6, which in this case required proof of knowledge that no application for a licence had been made by or on behalf of Thomas in due time under paragraph 28. The magistrate rejected a submission at the close of the case for the prosecution that there was no case for the defendants to answer, which must mean that he considered that there was evidence from which, prima facie, he could infer the requisite guilty knowledge. He concluded, however, on the totality of the evidence:

> "that although considerable suspicion existed it had not, as a matter of fact, been proved beyond a reasonable doubt that on February 8, 1983 and February 24, 1983 either defendant had the requisite knowledge to constitute the offences charged."

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The **council's** submission is that, in order to prove an offence under paragraph 20(1)(*a*), all the prosecution needs to establish is that the defendant knowingly used, or knowingly caused or permitted the use, of premises as a sex establishment. The onus will then lie on the defendant under section 101 of the Magistrates' Courts Act 1980 to prove that the use was *in fact* exempt from the prohibition imposed by paragraph 6 by showing: (1) that the use was "under and in accordance with the terms of a licence granted" by the local authority; or (2) that the local authority had waived the requirement of a licence; or (3) that an application for a licence had been made in circumstances attracting the protection of paragraph 28 and had not yet been determined. If the defendant proves none of these exemptions, he must then, it is submitted, be convicted.

The first point to be observed is one to which McCullough J. drew attention, if I read his judgment correctly almost as an afterthought, remarking that it had not been referred to in argument. It is the contrast between the offences under paragraph 20(1)(*a*) and (*c*). Under (*c*) a defendant charged with knowingly contravening or permitting the contravention of a term, condition or restriction specified in the licence must be shown to have acted without reasonable excuse. But if the offence under (*a*) is committed when a licence has been granted, but the use is not "in accordance with the terms" of the licence, this would enable the prosecution, by proceeding under (*a*), to deprive the defendant of the ***162** defence of reasonable excuse under (*c*). This cannot have been intended. It follows that prosecution under paragraph 20(1)(*a*) must be limited to cases where no licence has been granted. If one then contrasts (*a*) with (*c*) it is a curious anomaly if the only *mens rea* required under (*a*) is knowledge that the premises are used as a sex establishment, whereas the mens rea required under paragraph (*c*) must clearly be knowledge that the use is in breach of the terms of the licence.

Quite apart, however, from this anomaly, it seems to me that the word "knowingly" in paragraph 20(1)(*a*) cannot sensibly have been introduced merely to apply to the use which the defendant is making, or causing or permitting another to make, of premises as a sex establishment. I can conceive of no circumstances in which a person could be said to be using premises, still less of causing or permitting them to be used, "to a significant degree for the exhibition" of pornographic films or "for a business which consists to a significant degree" of the sale of pornographic material if that person were ignorant of the nature of the offending use. If the argument for the **council** is right, the word "knowingly" is tautologous.

Moreover, the reliance on section 101 of the Act of 1980 is quite misconceived. That section places the onus of proof on a defendant who relies for his defence on "any exception, exemption, proviso, excuse or qualification, whether or not it accompanies the description of the offence … in the enactment creating the offence …" The exceptions and exemptions under Schedule 3 to the Act qualify the prohibition created by paragraph 6, not the offence created by paragraph 20(1)(*a*).

Since we are here concerned with a penal statute, any ambiguity in the provision creating the offence would need to be resolved in favour of the defendants. But I do not believe there is any ambiguity. If the argument for the **council** were accepted, it would lead to the conclusion that paragraph 20(1)(*a*) had in effect created an offence of strict liability. The offence would consist in the unlawful use of premises as a sex establishment and even an honest belief in facts which, if true would make the use lawful would afford no defence. It is trite law that the legislature's intention to create an offence of strict liability must be signified by clear language. To find such an intention in paragraph 20(1)(*a*) with its iteration of the word "knowingly" is obviously impossible. The only meaning of which the language is reasonably capable makes knowledge that the use of premises as a sex establishment is in contravention of the prohibition imposed by paragraph 6 a necessary ingredient of the offence.

The question of law certified by the Divisional Court was in the following terms:

> "To constitute an offence contrary to paragraph 20(1)(a) of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 is it necessary for the prosecution to prove that the defendant knew that the use which he was making of the premises himself (or the use which he was causing or permitting others to make of the premises) was other than under and in accordance with the terms of a licence granted under the said Schedule 3?"

I have no doubt that this formulation of the question reflects the way in which the case was presented and argued in the Divisional Court. But the fuller consideration which it has been possible for your Lordships to give to the issues, as appears from what I

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have already said, reveals that the question is too narrowly stated. I would propose to amend the question by deleting the words "other than under and in accordance with the terms of a licence granted under *163 the said Schedule 3?" and substituting the words "in contravention of the prohibition imposed by paragraph 6 of the said Schedule 3?" For the reasons already indicated, I would answer the question as so amended in the affirmative.

Strictly speaking that would be sufficient to dispose of the appeal. But it would be unsatisfactory not to address a further aspect of the matter which, although not arising directly for decision, is of great practical importance in relation to the enforcement of licensing control under Schedule 3 to the Act and which explains the anxiety of the **council** as an authority responsible for such enforcement which has prompted them to pursue this appeal to your Lordship's House. The main thrust of the argument for the **council** was not that the relevant statutory language unambiguously bore the meaning contended for. Indeed I understood their counsel to accept that it was at least ambiguous. He nevertheless boldly submitted that it should be construed as they propose to avoid frustrating the policy of the Schedule and to enable authorities who have adopted the Schedule to maintain effective control of sex establishments. The typical sex establishment, so it is said, is operated by "front men" who are here today and gone tomorrow. The real controllers hide in the shadows and behind corporate identities. It will put an impossible burden on the controlling authorities, the **council** submit, if they are required to prove against those who use, or permit the use of, premises as sex establishments that they knew that the use was unlicensed. What is said about the manner in which this somewhat unsavoury trade is carried on may well be true, but I doubt if your Lordships are permitted to take judicial notice of it. In any event, if the problem of controlling sex establishments is so acute as to require the creation of an offence of strict liability, it is, of course, for Parliament, not for your Lordships, exercising the judicial function of the House, to take that step.

The difficulties, however, of proving the necessary element of knowledge, which, in accordance with the view I have expressed, is a necessary ingredient of the offence under paragraph 20(1)(*a*), should not be exaggerated. Questions in relation to the burden of proving this ingredient may arise at two stages. At the conclusion of the case for the prosecution it will have been established by evidence or admission: (1) that the authority resolved that Schedule 3 should apply to their area and that the resolution was duly advertised; (2) that the premises, the subject of the alleged offence, were used as a sex establishment; (3) that the defendant was so using the premises or that he caused or permitted the use; (4) that no licence for the use had been granted and the requirement of a licence had not been waived; (5) in a case where applications for licences made before the Schedule came into force in the area had not all been determined before the date of the alleged offence, that no such application had been made in respect of the relevant premises. If all these facts are proved and nothing more, I can see no reason in logic or in justice why the court should not hold that a sufficient prima facie case has been established on the basis that the defendant's knowledge of the true position in regard to the licensing of the use of the premises can properly be inferred. If the defendant himself is using the premises as a sex establishment, he is in the best position to know whether application for a licence or for waiver of the requirement of a licence was made by him or on his behalf, whether the application has been determined and in what sense. If the defendant is causing or permitting another to use the premises as a sex establishment, he likewise has the means of knowledge readily available to him. The second stage will only arise if there is some evidence to suggest that the defendant held or may have held a mistaken but honest belief that a licence had been granted, that the requirement of a licence had been waived or, in *164 circumstances to which paragraph 28 applies, that an application for a licence had been duly made but not determined. If at the second stage the court is not satisfied beyond a reasonable doubt that the defendant held no such belief, the prosecution will have failed to prove a necessary ingredient of the offence and the defendant must be acquitted.

If authority to support this analysis is required, I find it in the speech of Lord Diplock in *Sweet* **v.** *Parsley (1969) 53 Cr.App.R. 221, 248, [1970] A.C. 132, 164* where he said:

> " *Woolmington* **v.** *Director of Public Prosecutions (1935) 25 Cr.App.R. 22; [1935] A.C. 462* affirmed the principle that the onus lies upon the prosecution in a criminal trial to prove all the elements of the offence with which the accused is charged. It does not purport to lay down how that onus can be discharged as respects any particular elements of the offence. This, under our system of criminal procedure, is left to the common sense of the jury. *Woolmington's* case did not decide anything so irrational as that the prosecution must call evidence to prove the absence of any mistaken belief by the accused in the existence of facts which, if true, would make the act innocent, any more than it decided that the prosecution must call evidence to prove the absence of any claim of right in a charge of larceny. The jury is entitled to presume that the accused acted with knowledge of the facts, unless there is some evidence to the contrary originating from the accused who alone can know on what belief he acted and on what ground the belief, if mistaken, was held. What *Woolmington's* case did decide is that where there is any such evidence the jury after considering it and also any relevant evidence

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> called by the prosecution on the issue of the existence of the alleged mistaken belief should acquit the accused unless they feel sure that he did not hold the belief or that there were no reasonable grounds upon which he could have done so."

In the light of *D.P.P. v. Morgan (1975) 61 Cr.App.R. 136; [1976] A.C. 182* the passage cited may require modification by deleting the concluding words "or that there were no reasonable grounds upon which he could have done so." With this modification and with the substitution of references to the magistrate for references to the jury this passage fully supports the way in which the stipendiary magistrate approached the issue of knowledge in the instant case. He cannot in any way be faulted. But it is perhaps worth remarking, in the hope that it may further allay the anxiety of the **council** about the enforcement of licensing control of sex establishments, that it is always open to the tribunal of fact, when knowledge on the part of a defendant is required to be proved, to base a finding of knowledge on evidence that the defendant had deliberately shut his eyes to the obvious or refrained from inquiry because he suspected the truth but did not want to have his suspicion confirmed.

For the reasons I have indicated I would dismiss the appeal.

LORD BRIGHTMAN:

My Lords, I am in entire agreement with the speech of my noble and learned friend Lord Bridge of Harwich.

On the true construction of paragraph 20(1)(*a*) of Schedule 3 to the Act it is clear that knowledge on the part of the defendant is an ingredient of the offence created by that sub-paragraph: knowledge not only that the premises, vehicle, vessel or stall were being used as a sex establishment, but also knowledge that they were being so used contrary to paragraph 6, that is to say, in the absence of a licence, or of a waiver under paragraph 7 or a pending application under paragraph 28.
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But although such knowledge is an ingredient of the offence under paragraph 20(1)(*a*), and although the onus of establishing all the ingredients of the offence must lie on the prosecution, this does not impose on the prosecution an undue burden: if (1) all the other ingredients of the offence are proved, and (2) the defendant (or the responsible officer of a corporate defendant) chooses not to give evidence of his absence of knowledge, and (3) there are no circumstances which sufficiently suggest absence of knowledge, the court may properly infer without direct evidence that the defendant did indeed possess the requisite knowledge. For this reason the fear expressed by the **council** that Parliament's intention to establish an effective licensing system will be frustrated by the severity of the onus of proof burdening the prosecution, is I think groundless.

My Lords, I agree that the certified question should be amended in the manner proposed by my noble and learned friend, and that such question should be answered in the affirmative, and that subject to such amendment this appeal should be dismissed.

LORD MACKAY OF CLASHFERN:

My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend, Lord Bridge of Harwich, and for the reasons which he gives I too would dismiss this appeal.

LORD ACKNER:

My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend, Lord Bridge of Harwich, and for the reasons which he gives I too would dismiss this appeal.

LORD OLIVER OF AYLMERTON:

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My Lords, I agree that this appeal should be dismissed for the reasons given in the speech to be delivered by my noble and learned friend, Lord Bridge of Harwich.

Representation

Solicitors: G. Matthew Ives , for the appellant **council**. Irwin Shaw , for the respondent defendants.

Appeal dismissed.