3rd March, 1988.

IN THE ROYAL COURT OF THE ISLAND OF JERSEY

Before : Commissioner R. Vibert O.B.E.
Jurat M.G. Lucas
Jurat J.J.M. Orchard

H.M. Attorney General

v.

F.P.R. Roberts & Son (Holdings) Ltd.

Paul Brent Ashworth and

Carol Ashworth neé Crawford

Advocate S.C. Nicolle, Crown Advocate, for the Attorney General

Advocate G.R. Boxall, for the Respondents

The facts

The facts were not in dispute. The Respondent Company is the tenant on a long lease of garage premises which include a flat. The consent granted by the Housing Committee to take these premises included a condition in the following terms:

> 'that the existing unit of private dwelling accommodation at the property shall be offered for sale to, or be otherwise occupied by, persons approved by the Committee as being persons of a category specified in Regulation 1(1)(a), (b), (c), (d), (e), (f), (g) or (h) of the Housing (General Provisions) (Jersey) Regulations, 1970 as amended.'

The private dwelling accommodation referred to in the condition was the flat, which consisted of a living room, a kitchen, two bedrooms and a bathroom. Miss Donna Le Claire, who gave evidence, moved into the flat in March, 1986. She was a qualified 1(1)(a) resident, and a form, giving particulars of an exempted transaction, signed by herself and on behalf of the Company, was sent to the Housing Department. In this form the accommodation was described as a two-bedroom furnished flat. Miss Le Claire was not however given the occupation of the whole of the flat. It was also occupied by the manageress of part of the Company's business, Miss Julie Norris, who occupied one of the bedrooms, and shared with Miss Le Claire the use of the living room, kitchen and bathroom. As the period of time stated in the charge does not include Miss Norris' occupation, we will not go into the arrangements between herself, Miss Le Claire and the Respondent Company.

Before Miss Norris left the flat, in September 1986, Miss Le Claire asked her whether the Company would agree to her brother taking Miss Norris' place. Miss Norris said that she would ask Mr. Francis Roberts, the owner of the Company, and later said that he would not so agree and her place would be taken by another employee, Mrs. Carol Ashworth, with her husband and infant child. The flat was redecorated at the expense of the Company, and recarpeted at the expense of the Ashworths, who then moved in. The arrangements between the parties were that Miss Le Claire occupied her bedroom; the Ashworths occupied theirs; and the remainder of the flat could be jointly used, though Miss Le Claire usually preferred to stay in her room rather than use the living room with the family. Both Miss Le Claire and the Ashworths paid rent to the Company, £25 and £35 per week respectively; Miss Le Claire paid hers to Mrs. Ashworth, who paid the total rent of £60 to the Company. Miss Le Claire paid £30 a quarter for electricity to Mrs. Ashworth. The telephone was in the name of Ashworth.

In November, 1986, Miss Le Claire moved out. Mrs. Ashworth on behalf of the Company placed an advertisement in the Evening Post, seeking "one person with housing qualifications to share a furnished two-bedroom flat". As a result, Mr. Roger Marie, also a witness, was approved by Mr. Roberts and the Ashworths, signed the form "Particulars of Exempted Transaction" and moved in. In the form the accommodation was again described as a two-bedroom flat. The rental to be paid is not included in the information sought by the form. The rental and other arrangements, were the same as with Miss Le Claire. Mr. Marie told us that he regarded himself as the tenant of a room rather than of a flat. He was not found to be a satisfactory tenant, in that he fell behind with his rent, and moved out in February, 1987.

The charge against the Respondents is that, between the 1st September, 1986, and the 31st March, 1987, they acted in contravention of Article 14(1)(d) of the Housing (Jersey) Law, 1949, by being parties to a device, plan or scheme for an arrangement whereby Mr. and Mrs. Ashworth would occupy part of the flat in question, which was inconsistent with the consent granted by the Housing Committee, the second condition of which provided that the flat should be occupied by persons approved by the Committee as qualified residents, inasmuch as neither Mr. nor Mrs. Ashworth fell into any of the approved categories of qualified residents.

It was contended in the first place, by and on behalf of the Respondents, that during the period charged, the flat was occupied first by Miss Le Claire and then by Mr. Marie, that is by qualified residents approved by the Committee, that the Ashworths were their lodgers, and that the requirements of the second condition had therefore been fulfilled. The Crown Advocate accepted that the right of occupation by a qualified resident carries with it the right to take in immediate members of the family and also lodgers up to the maximum of five, the number above which the premises are required to be registered under the Lodging Houses (Registration) (Jersey) Law 1962. If therefore the Committee had intended to exclude non-qualified lodgers, the conditions would have had to be expressly drafted to that effect.

But were the Ashworths lodgers? It is not easy to give an all-purpose definition of a lodger, and we do not propose to try to do so. But, in the view of the Court it is obvious that they were not. They received neither board nor service from Miss Le Claire, to take her example (the arrangements were the

same with Mr. Marie) though one can be a lodger without receiving either. Apart from the fact that they were not qualified and had signed no form, they were in exactly the same position as Miss Le Claire. Both parties were selected by the landlord; both paid him rent; both had exclusive enjoyment of a bedroom and joint enjoyment of the rest of the flat; the occupation of the Ashworths was not by the wish nor under the direction of Miss Le Claire. In our view, both Miss Le Claire and Mr. and Mrs. Ashworth were tenants of the Respondent Company. The only difference between the tenants was that one was authorised and the other was not. There was no contractual relationship between Miss Le Claire and Mr. and Mrs. Ashworth. Both parties, on the other hand, had a legal relationship with the Company. Mr. and Mrs. Ashworth were not the lodgers, nor the sub-tenants, nor anything else of Miss Le Claire. They merely shared the same flat and the same landlord.

Their occupation of the flat was therefore contrary to the terms of the condition, because they were neither qualified nor the lodgers of someone who was.

However, in so far as legal argument was concerned, consideration of the above was but a prelude. The main line of defence was that the Respondents did not possess the mens rea necessary for the commission of the offence charged. A great number of authorities were laid before us, and we compliment both Counsel on their research and industry.

Made clear to us was the distinction made, in relation to mens rea, between crimes in the ordinary sense of the word, such as rape or burglary, crimes 'mala per se', and offences created by statute for the better ordering of the social life of a civilised community, 'mala prohibita'.

Mr. Boxall submitted that in these days of proliferating statutory offences, hedging the citizen about, and not least in this Island, care needed to be taken to ensure, as the English Courts were now tending to do, that offences carrying absolute liability were kept to a minimum. That while some requirements of the Housing Law carried absolute liability, this Article 14(1)(d) did not. That the Respondents had a genuine belief that what they had done was perfectly legal. That the reasonableness of their belief was immaterial - the test was subjective, and the Court only needed to determine whether their belief was genuinely held.

The Respondents' state of mind on which Mr. Boxall relied was the belief that, as he had previously argued, the Ashworths were lodgers, and so entitled to occupy part of the flat. Or, as the Respondents themselves put it more widely, they believed that so long as one authorised person was in the flat and approved by the Committee, anybody else could occupy it too. We will assume, for the purpose of the argument, as the Crown Advocate appeared generously to do, that this belief was genuinely held.

Mr. Boxall's case falls, as it seems to us, at a very early fence. This is because the honest misapprehension required to remove mens rea, in cases where mens rea is necessary, needs to be one of fact, not one of law. This is well put in the following extract from Bank of N.S.W. v. Piper (1897) A.C. 383 and quoted by Archbold (42nd Ed.) at p.1153:

> 'The absence of mens rea really consists in an honest and reasonable belief entertained by the accused of the existence of facts which if true would make the act charged against him innocent'

Archbold follows this quotation with the following statement:

> 'The principle can therefore be expressed thus - mens rea is the absence of a reasonable and honest belief in the existence of circumstances which, if true, would make the act or omission for which the accused is indicted innocent i.e. not amounting to the offence charged'.

The following quotation from Smith and Hogan on Criminal Law (5th Ed.) at p.68, under the heading 'Ignorance of the Law is no Defence', distinguishes such a mistake from a mistake of law:

> 'It must usually be proved that D intended to cause, or was reckless whether he caused, the event or state of affairs which, as a matter of fact, is forbidden by law. But it is quite immaterial to his conviction, though it may affect his punishment, whether he knew that the event or state of affairs was forbidden by law'

This passage is followed by a number of examples where the defendant was found guilty, notwithstanding that his failure to know the law was easily to be understood. This is strikingly so in the case of poor Mr. Bailey, who was on the high seas when the statute was passed, and committed the act before the end of the voyage, when he could not possibly have heard of it.

The case of A.G. -v- Frost, referred to more fully below, is also very relevant, though decided on a somewhat different basis.

Mr. Boxall acknowledged that the misapprehension required to displace mens rea needed to be a mistake of fact, but maintained that the question whether an occupant was a lodger or a tenant was a question of fact or at the worst, from his point of view, a mixed question of fact and of law. It is of course true that the determination of the status of Mr. and Mrs. Ashworth in the flat involves consideration both of the facts and of the law applying to those facts. But there is no doubt about the facts, including and in particular the arrangements made between the Company, Miss Le Claire and Mr. and Mrs. Ashworth. Those arrangements were well known to the Respondents. They made the arrangements. It can be said indeed that the Company, in the form of Mr. Roberts, created the facts. If they were mistaken at all, and we are assuming at this stage that they were, it was in the legal consequences of those facts. Their mistake was one of law.

We therefore find that if the Respondents believed that the occupation by Mr. and Mrs. Ashworth of part of the flat was in accordance with the condition imposed by the Committee, such belief would not render them innocent of the charge as laid, even if mens rea was a necessary element of that charge.

Absolute liability

If we had found otherwise as to the nature of the mistaken belief claimed by the Respondents, that is if we had found that it was a mistake of fact, we would have had to go on to decide whether the Article in question

imposes an absolute liability, in which case the question of mens rea is irrelevant. While we do not now have to decide this point, the efforts of Counsel have made it impossible for us not to have considered it, and we think it may be useful if we go on to express our views.

A very similar point has already been considered by this Court on at least one previous occasion, that is in the case of A.G. -v- Hilda Frost, wife of Ernest Stanley Hales (J.J.22:11:78) before the present Bailiff, Sir Peter Crill, then Deputy Bailiff. There is no written judgment, but we have had the advantage of reading the manuscript note taken by the Greffier at the time the Judgment was given. From this it appears that in one respect the case was very much stronger, from the defendant's point of view, than the present case. Before entering into the transaction in relation to which she was eventually convicted, the Defendant had taken the trouble to seek legal advice, and had been told that the transaction was perfectly in order. The learned Deputy Bailiff considered the question of mens rea, and found that the Housing Law, being designed to remedy an acute housing shortage, was 'a remedial or social' statute, rather than one which created a crime in the usual sense of the word. The defendant had been charged under Article 14(1)(a) of the Law - failing to comply with a condition attached to a consent, and the Court found that this was an offence of strict liability.

Mr. Boxall contended that although one provision of a Law could properly be interpreted as imposing absolute liability, another provision of the same Statute could be interpreted otherwise. We agree. He pointed out that some Articles in the Housing Law specifically required wilfulness for the commission of an offence, but this appears to us to be contrary to his general argument, because if some Articles specifically require a state of mind, one can more readily assume the contrary in respect of those which do not. He conceded that sub-paragraph 1(a) of Article 14 (the provision in the Frost case) imposed absolute liability, but submitted that sub-paragraph (d) (the basis of the present charge) did not. The major difference between the two provisions is that (d) is much wider; it is a sweeping-up clause. Indeed it is difficult to envisage an offence under (a) that would not be caught by (d). Applying the facts of this case, as we find them, to the somewhat tortuous wording of (d), we consider that the Respondents were "parties....to a device....for an arrangement that is....inconsistent with....the consent given". There does not appear to us to be anything in these words which require a particular state of mind. The tests are whether the Respondents were party to the device for the arrangement, as they clearly were; and whether that arrangement was inconsistent with the condition attached to the consent given, as again it clearly was.

We would therefore have found, if we had been required to decide the point, that Article 14(1)(d) imposes a strict liability.

For the reasons stated earlier in the judgment, we find the offence proved.

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