Winter v Woolfe

Also reported [1931] 1 KB 549; 100 LJKB 92; 144 LT 311; 95 JP 20; 47 TLR 145; 29 LGR 89; 29 Cox CC, 214

KING'S BENCH DIVISION

Avory, Swift and Acton JJ

1 DECEMBER 1930

Criminal Law – Brothel – Occupier permitting premises to be used as brothel – Permitting illicit sexual intercourse – Women resorting to premises not known by police as prostitutes – No payment received by them – Criminal Law Amendment Act, 1885 (48 & 49 Vict, c 69) s 13(2).

To establish that premises are used as a brothel it is sufficient to prove that persons of opposite sexes have come there and had illicit sexual intercourse on the premises. It is not necessary to prove that the women resorting to the premises were known prostitutes or that they received payment. On a prosecution under sub-s (2) of s 13 of the Criminal Law Amendment Act, 1885, of the occupier of premises for unlawfully and knowingly permitting them to be used as a brothel, evidence was given that the premises were used for acts of gross indecency and for acts of fornication between men and women resorting there, but it was not shown that the women who resorted to the premises were prostitutes known as such to the police or that they had received any payment for their acts of impropriety or fornication.

Held: there was evidence on which it could be found that persons of opposite sexes had been permitted to come to the premises and there have illicit sexual connection, and, therefore, that the occupier of the premises had committed an offence under the section.

Definition by GROVE, J, and LOPES, J, of a "brothel" in *R v Holland, Lincolnshire, Justices* (1) (1882) 46 JP 312, applied.

Notes

Section 13(2) of the Criminal Law Amendment Act 1885 has been replaced by ss 35 and 36 of the Sexual Offences Act 1956 Considered: *Egerton v Esplanade Hotels London Ltd* [1947] 2 All ER 88.

As to offences relating to brothels see 10 HALSBURY'S LAWS (3rd Edn) 671-675; and for cases see 15 DIGEST (Repl) 902-907. For Sexual Offences Act 1956 see 36 HALSBURY'S STATUTES (2nd Edn) 215.

Cases referred to:

(1) *R v Holland, Lincolnshire, Justices* (1882) 46 JP 312; 15 Digest (Repl) 903, 8708.

(2) *Singleton v Ellison*, [1895] 1 QB 607; 64 LJMC 123; 72 LT 236; 59 JP 119; 43 WR 426; 18 Cox CC 79; 15 R 201, DC; 15 Digest (Repl) 904, 8715.

(3) *Durose v Wilson* (1907) 96 LT 645; 71 JP 263; 21 Cox CC 421, DC; 15 Digest (Repl) 904, 8719.

(4) *R v de Munck*, [1918] 1 KB 635; 87 LJKB 682; 119 LT 88; 82 JP 160; 34 TLR 305; 62 Sol Jo 405; 26 Cox CC 302, CCA; 15 Digest (Repl) 1021, 10,042.

Case Stated by justices.

An information was preferred by the appellant, William Winter, deputy chief constable for the county of Cambridge, under s 13(2) of the Criminal Law Amendment Act, 1885, against the respondent, Eileen Allen Woolfe, for that she, between 24 November 1929, and 2 February 1930, being the occupier of certain premises known as River Cottage and a dance room at Fen Ditton, Cambridge, unlawfully and knowingly did permit such premises to be used as a brothel or for the purposes of habitual prostitution. At the close of the case for the Crown the justices dismissed the information, but consented to state and sign this Case.

The respondent was the occupier of a house known as River Cottage, Fen Ditton (about two miles from Cambridge) and of a dance room on ground adjoining.

[1930] All ER Rep 623 at 624

The dance room was open for dancing and was every Sunday from 4 pm to 7 pm, the music for dancing being sometimes supplied by a band and sometimes by a gramophone. In the Case Stated were described in detail acts of lewdness and impropriety which were said to have taken place between 7 and 11 pm at these premises by men and women resorting to them on several occasions between the dates charged. There was contained in the Case Stated evidence of actual sexual intercourse having taken place between a man and a woman on 24 November 1929, 8 December 1929 (twice) 2 February 1930 (in a motor car on land adjoining the premises) and on 26 January 1930 At 840 pm on 24 November 1929, a motor car arrived at the boundary of the premises containing four men and two girls. The occupants went to River Cottage, where the respondent came to the door and said: "Have you been here before to-night," and one of the girls replied: "The men have not, but we girls have." The respondent then went across to the dance room with the party, and put on a gramophone record. Among the females present on the respondent's premises on the evening of 26 January 1930, were two women known to the police of Cambridge (who were keeping observation on these premises) as morally undesirable characters, who, because of their behaviour in Cambridge, had been cautioned by the police, but had never been convicted as prostitutes. There was no evidence that either of these two women behaved improperly at any time on these premises. The respondent was not present on any of the occasions when sexual intercourse took place, but she had knowledge that the couples were on the premises. She was present on various occasions when couples were seen in suggestive and indecent positions. The men present

were mostly undergraduate members of the university of Cambridge, and the women were of the working-class type. There was no evidence that the women resorting to the premises were convicted prostitutes, or received any payments for the acts of indecency that had taken place, and there was no evidence that the respondent made any profit out of the conduct of the premises other than that arising out of the sale of teas and similar refreshments.

At the close of the case for the Crown it was submitted on behalf of the respondent that upon this charge there was no case to answer. The justices expressed the opinion (i) that the premises were used for acts of gross indecency and for acts of fornication, the acts of fornication being, in the opinion of one of them, "occasional," and, in the opinion of the other, of such frequency as to be "habitual"; (ii) that the premises were so used with the knowledge, or at all events with the connivance, of the respondent; (iii) that the women resorting to the premises were not prostitutes within the meaning of the legal definition of the word "prostitute," as laid down in the decisions of *Singleton v Ellison* (2) *Durose v Wilson* (3) and *R v de Munck* (4); (iv) that the acts of gross indecency and fornication did not amount to "prostitution" within the meaning of s 13; and (v) that the respondent had not committed the offence alleged. Accordingly, they dismissed the information, and the appellant appealed.

By the Criminal Law Amendment Act, 1885, s 13:

> "Any person who (1) keeps or manages or acts or assists in the management of a brothel, or (2) being the tenant, lessee, or occupier of any premises, knowingly permits such premises or any part thereof to be used as a brothel or for the purposes of habitual prostitution or … shall on summary conviction in manner provided by the Summary Jurisdiction Acts be liable [to the penalty or punishment therein provided]. The Criminal Law Amendment Act, 1922, s 3, has substituted other penalties for those in s 13, the provisions for which are repealed."

Grafton D Pryor for the appellant.

Eustace Fulton for the respondent.

1 December 1930

AVORY J:

The respondent was charged upon an information for that she on divers days and at divers times on and between 24 November 1929, and 2 February 1930, at the parish of Fen Ditton in the county of Cambridge, being the occupier of certain

premises known as River Cottage and a dance room adjoining, unlawfully and knowingly did permit such premises to be used as a brothel or for the purposes of habitual prostitution, contrary to s 13 of the Criminal Law Amendment Act, 1885. The justices dismissed that information upon the findings and grounds which are set out in the Case Stated. They say (a) that the premises were used for acts of gross indecency and for acts of fornication - the acts of fornication being in the opinion of one of them "occasional" and of the other of such frequency as to amount to "habitual"; (b) that the premises were so used with the knowledge, or at all events with the connivance, of the respondent; but (c) that the women resorting to the premises were not prostitutes within the meaning of the legal definition of the word "prostitute" as laid down in the decisions that had been cited to them, namely, *Singleton v Ellison* (2) *Durose v Wilson* (3). and *R v de Munck* (4). Lastly, the justices said that in their opinion the acts of gross indecency and fornication did not amount to prostitution within the meaning of this Act. For these reasons the justices came to the conclusion that the respondent had not committed the legal offence that was alleged in the information.

In my opinion, the justices have given too restricted a meaning to the word "brothel" as it is used at common law and in s 13 of the Criminal Law Amendment Act, 1885. It is not disputed that the justices have dismissed this information on the ground that the women resorting to these premises were not known by the police as prostitutes, and that there was no evidence that the women resorting to these premises for the purpose of fornication, and resorting to them frequently, received any payment. That appears from the statements of counsel on the arguments advanced to the court to have been the reasoning that influenced the justices. There was evidence before them from which the reasonable inference was that a number of men were resorting to these premises for the purpose of committing fornication with women who resorted there for the same purpose. One example of this evidence is in the Case Stated, from which it appears that on 24 November 1929, at 840 pm, a motor car arrived containing four men and two girls. The occupants went to River Cottage and the respondent came to the door and said: "Have you been here before to-night," and a girl replied: "The men have not, but we girls have." From this and the other evidence in the case the inference is that these girls had been resorting to the place for improper purposes with the men who came with them. That of itself is quite sufficient to justify the inference that these premises were being used for the purposes of prostitution in the ordinary sense of the word - quite apart from any inference that these women could be described in the ordinary sense of the word as public prostitutes. I am content to accept the definition of a brothel given by GROVE, J and LOPES, J, in *H v Holland, Lincolnshire, Justices* (1). GROVE, J, said:

> "The sole question is whether there was any evidence to support this conviction before the justices for permitting these licensed premises to be a brothel … I do not think that the matter of nuisance is of any importance, for it is too well known that these places are often kept in such a way as to be no nuisance at all, but kept perfectly private. But what needs only to be proved is this, namely, that the premises were kept knowingly for the purpose of people having illicit sexual connection there."

LOPES, J, said:

> "Now the sole question before the justices was whether the applicant permitted his premises to be a brothel. What is the meaning of permitting the premises to be a brothel? I think my brother GROVE has given a very apt definition, namely, that it is permitting people of opposite sexes to come there and have illicit sexual intercourse. That is a very complete and satisfactory definition of the whole matter."

There was in this case evidence upon which the only reasonable inference was that these men and women were resorting to these premises habitually for the purpose of having illicit sexual intercourse, and of this, on the evidence. it is not

really disputed that the respondent must have known. In fact, the justices stopped the case at the conclusion of the evidence for the Crown on the ground that the women who resorted to the premises were not shown to be prostitutes within the ordinary meaning of that word. The appeal will be allowed and the case remitted to the justices to hear and determine according to the law as it is now laid down by this court.

SWIFT J:

I am satisfied that there was evidence on which, if uncontradicted, the justices ought to have come to the conclusion that the respondent was unlawfully and knowingly permitting these premises to be used as a brothel. As the evidence stands at present it appears that these premises were being used with the knowledge or connivance of the respondent for the purpose of people of opposite sexes having illicit sexual connection there - that is to say, at premises of which the respondent had the control, being a bawdy-house at common law and a "brothel" within the meaning of s 13(2) of the Criminal Law Amendment Act, 1885. I say nothing as to whether it appeared that these premises were being used for the purposes of habitual prostitution. It is sufficient for my judgment to say that, in my opinion, the evidence as it stands shows that these premises were being used as a brothel.

ACTON J:

I agree.

Appeal allowed. Case remitted.

Reported by CG MORAN, ESQ, Barrister-at-Law.