R v Calder and Boyars Ltd

[1969] 1 QB 151, [1968] 3 All ER 644, [1968] 3 WLR 974, 52 Cr App Rep 706, 133 JP 20, 112 Sol Jo 688

Court: CACrimD

Judgment Date: 31/07/1968

Catchwords & Digest

CRIMINAL LAW, EVIDENCE AND PROCEDURE - OFFENCES AGAINST THE GOVERNMENT AND THE PUBLIC - OFFENCES AGAINST DECENCY AND MORALITY - OBSCENE PUBLICATIONS - TEST OF OBSCENITY

Early in 1966 appellants, a reputable publishing company, published in UK a book entitled '**Last Exit to Brooklyn**', a serious work the publication of which was genuinely believed by appellants to be in the interests of literature although they realised that it was likely to be highly controversial and might be regarded by some as offending against Obscene Publications Act 1959. The book gave a graphic description of the depths of depravity and degradation of life in Brooklyn but the description was compassionate and condemnatory in nature. After publication proceedings under s 2 of 1959 Act were instituted by the DPP. During the proceedings, appellants conceded that the intent with which the book was written was irrelevant to the main issue but maintained, inter alia, that the tendency of the book was to shock the reader into a rejection of the evils described. The trial judge ruled that on the defence of public good under s 4 appellants' witnesses should be heard first and the Crown's witnesses only in rebuttal. In his summing-up the trial judge gave no guidance to the jury on the question what s 1 of the Act meant by persons who were likely to read the book; nor did he put appellants' defence on the issue of obscenity to the jury except when he touched on this matter in the course of dealing with the defence of public good under s 4. With regard to the defence of public good, he gave the jury no guidance beyond telling them that if they were satisfied on the balance of probabilities that the book was published justifiably for the public good on account of its literary, sociological or ethical merits they should return a verdict of not guilty. Appellants were convicted. On appeal against conviction: Held the appeal would be allowed because – (1) the jury should have been directed to consider whether the effect of the book was to tend to deprave and corrupt a significant proportion of those persons who were likely to read it; what would amount to a significant proportion was a matter for the jury to decide; (2) although the jury were rightly told to consider the issue of obscenity by itself and to decide on the tendency of the book without reference to the evidence of expert witnesses, in the present case the failure to put appellants' case on obscenity to the jury and to tell them what appellants alleged the tendency of the book to be, was a serious defect in the summing-up and could not be rectified by anything said in the summing-up in relation to the defence of public good; (3) the onus was on appellants to make out their defence under s 4 (public good) on a balance of probabilities; and no criticism could be made of the way the judge exercised his discretion in the circumstances of the case when he ruled that, on the defence of public good appellants' witnesses should be called first since the Crown could not know in advance on which of the grounds in s 4 reliance would be placed, and if the Crown's witnesses were called first there was danger that time and money would be wasted; (4) the proper direction to be given in a case such as this was that the jury must consider on the one hand the number of readers they believed would tend to be depraved and corrupted by the book, the strength of the tendency to deprave and corrupt, and the nature of the depravity or corruption; on the other hand, they should assess the strength of the literary, sociological or ethical merit which they considered the book to possess; they should then weigh up all these factors and decide whether on balance the publication was proved to be justified as being for the public good; (5) the absence of a

proper direction on the defence of public good taken together with the failure to put the case for the defence on obscenity constituted fatal flaws in the summing-up; and it was impossible for the court to be satisfied that these caused no miscarriage of justice.

Cases referring to this case
Annotations: All Cases**Court:** ALL COURTS
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Treatment	Case Name	Citations	Court	Date	
Considered	**R v Perrin**	[2002] EWCA Crim 747, [2002] All ER (D) 359 (Mar)	CACrim D	22/03/2002	
Considered	**DPP v Whyte**	[1972] AC 849, [1972] 3 All ER 12, [1972] 3 WLR 410, 57 Cr App Rep 74, 136 JP 686, 116 Sol Jo 583	HL	19/07/1972	
Applied	**R v Stamford**	[1972] 2 QB 391, [1972] 2 All ER 427, [1972] 2 WLR 1055, 56 Cr App Rep 398, 136 JP 522, 116 Sol Jo 313	CACrim D	29/02/1972	

Document information

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