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ARCHBOLDS (FREIGHTAGE) LTD. v. S. SPANGLETT LTD. RANDALL (THIRD PARTY).

the pleading point, it might not matter if the last two cases were not distinguishable, since the plaintiffs could obtain damages for breach of the warranty as in *Strongman* v. *Sincock*.[24]

Appeal dismissed with costs.

Solicitors: *Hart-Leverton & Co.; Herbert Baron & Co.*

I. G. R. M.

[24] [1955] 2 Q.B. 525.

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Nov. 10.

Lord Parker C.J., Ashworth and Elwes JJ.

FISHER *v.* BELL.

Crime—Offensive weapon—"Offers for sale"—"Flick knife" displayed in shop window with ticket bearing description and price—Whether an offence committed—Restriction of Offensive Weapons Act, 1959 (7 & 8 *Eliz.* 2, *c.* 37), *s.* 1 (1).

Statute—Construction—Omission—Interpretation of words used—No power in court to fill in gaps.

A shopkeeper displayed in his shop window a knife of the type commonly known as a "flick knife" with a ticket behind it bearing the words "Ejector knife—4s." An information was preferred against him by the police alleging that he had offered the knife for sale contrary to section 1 (1) of the Restriction of Offensive Weapons Act, 1959,[1] but the justices concluded that no offence had been committed under the section and dismissed the information. On appeal by the prosecutor:—

Held, that in the absence of any definition in the Act extending the meaning of "offer for sale," that term must be given the meaning attributed to it in the ordinary law of contract, and as thereunder the display of goods in a shop window with a price ticket attached was merely an invitation to treat and not an offer

[1] Restriction of Offensive Weapons Act, 1959, s. 1 (1): "Any person "who manufactures, sells or hires or "offers for sale or hire, or lends or "gives to any other person—(*a*) any "knife which has a blade which opens "automatically by hand pressure "applied to a button, spring or other "device in or attached to the handle "of the knife, sometimes known as a "'flick knife' or 'flick gun'; . . . "shall be guilty of an offence and "shall be liable on summary convic-"tion in the case of a first offence to "imprisonment for a term not ex-"ceeding three months or to a fine "not exceeding fifty pounds or to "both such imprisonment and fine, "..."

for sale the acceptance of which constituted a contract, the justices had correctly concluded that no offence had been committed.

Keating v. *Horwood* (1926) 28 Cox C.C. 198, D.C. and *Wiles* v. *Maddison* [1943] W.N. 40; [1943] 1 All E.R. 315, D.C. distinguished.

Per Lord Parker C.J. At first sight it seems absurd that knives of this sort cannot be manufactured, sold, hired, lent or given, but can apparently be displayed in shop windows; but even if this is a casus omissus it is not for the court to supply the omission.

CASE STATED by Bristol justices.

On December 14, 1959, an information was preferred by Chief Inspector George Fisher, of the Bristol Constabulary, against James Charles Bell, the defendant, alleging that the defendant, on October 26, 1959, at his premises in The Arcade, Broadmead, Bristol, unlawfully did offer for sale a knife which had a blade which opened automatically by hand pressure applied to a device attached to the handle of the knife (commonly referred to as a "flick knife") contrary to section 1 of the Restriction of Offensive Weapons Act, 1959.

The justices heard the information on February 3, 1960, and found the following facts: The defendant was the occupier of a shop and premises situate at 15-16, The Arcade, Broadmead, at which premises he carried on business as a retail shopkeeper trading under the name of Bell's Music Shop. At 3.15 p.m. on October 26, 1959, Police Constable John Kingston saw displayed in the window of the shop amongst other articles a knife, behind which was a ticket upon which the words "Ejector "knife—4s." were printed. The words referred to the knife in question. The police constable entered the shop, saw the defendant, and said he had reason to believe it was a flick knife displayed in the shop window. He asked if he might examine the knife. The defendant removed the knife from the window and said he had had other policemen in there about the knives. The constable examined the knife and pursuant to the invitation of the defendant took it away from the premises for examination by a superintendent of police. Later the same day he returned to the defendant's premises and informed him that in his opinion the knife was a flick knife. The defendant said "Why do manufacturers still bring them round for us to sell?" The constable informed the defendant that he would be reported for offering for sale a flick knife and the defendant replied "Fair "enough."

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It was contended by the prosecutor that the defendant by his actions in displaying the knife in the window with the ticket behind it and referring to it, such actions being carried out with the object of attracting the attention of a buyer of such knife and selling the same to such buyer, had on the day in question offered the knife for sale within the meaning of the Restriction of Offensive Weapons Act, 1959.

It was contended by the defendant that on the facts he at no time offered the knife for sale within the meaning of the Act.

The justices were of opinion that in the absence of a definition in the Act of 1959, the words " offer for sale " ought to be construed as they were in the law of contract, so that, in this instance, the defendant's action was but an invitation to treat, and not a firm offer which needed but a customer's acceptance to make a binding contract of sale. They accordingly dismissed the information. The prosecutor appealed.

J. A. Cox for the prosecutor. The sole question is whether this knife exhibited in the shop window with the price ticket behind it was an offer for sale within the meaning of section 1 (1) of the Restriction of Offensive Weapons Act, 1959. Having regard to the context in which the words are found and the mischief at which the Act is aimed, the words " offer for sale " should be construed to cover circumstances such as the present, although it is conceded that in the ordinary law of contract the exhibition of goods in a shop window amounts to no more than an invitation to treat. Support for that submission is to be found in *Keating* v. *Horwood*,[2] where, in a prosecution under the Sale of Food Order, 1921, which prohibited the offering or exposing for sale of under-weight bread, Lord Hewart C.J. held [3] that a quantity of bread placed in a baker's motor-car and taken on a delivery round was both offered and exposed for sale. See also *Wiles* v. *Maddison*,[4] where there was a prosecution under the Meat (Maximum Retail Prices) Order, 1940. Reliance is placed on the words of Viscount Caldecote C.J.[5] to the effect that a person who put goods in his shop window to be sold at an excessive price could be convicted of making an offer at too high a price. That case also shows that for the purpose of provisions of this kind an offer can exist without its actually being communicated to the offeree. This knife in the shop window was offered

[2] (1926) 28 Cox C.C. 198, D.C.
[3] Ibid. 201.
[4] [1943] 1 All E.R. 315, D.C.
[5] Ibid. 317.

for sale. It may have been a conditional offer, but if a person entered the shop and asked why it was in the window the answer must have been: It is for sale.

[LORD PARKER C.J. In *Keating* v. *Horwood* [6] two members of the court are in your favour, but this point was not argued.]

The original authority for the proposition that under the law of contract putting something in a shop window is merely an invitation to treat is the old case of *Timothy* v. *Simpson*,[7] which is cited in *Pharmaceutical Society of Great Britain* v. *Boots Cash Chemists (Southern) Ltd.*[8] The latter case is not of assistance as it turned on the provisions of an Act which was concerned solely with completed sales as opposed to offers for sale. *Phillips* v. *Dalziel*,[9] which was concerned with emergency legislation relating to the sale of footwear, turned on a statutory definition, but the facts there were similar to those in *Wiles* v. *Maddison*.[10] In both cases there was an intention to sell goods later. Had the court not had to consider a statutory definition in *Phillips* v. *Dalziel*,[11] it would not have been surprising if it had decided that the transaction in that case had reached the stage reached in *Wiles* v. *Maddison*.[12] Once the legislature embarks on a definition the expressio unius rule applies. Where there is no definition *Wiles* v. *Maddison* [12] is authority for the proposition that in legislation which is aimed at a particular mischief it is permissible to construe words more widely than they can be construed in the general law of contract. The Act of 1959 is clearly intended to effect a complete ban on flick knives, and therefore the words " offer for sale " in section 1 (1) should be given a meaning wide enough to prevent such goods being placed in shop windows with price tickets behind them.

P. Chadd for the defendant. The Act upon its face prohibits the manufacture, disposition and marketing of flick knives, but it is not aimed against possession. Mere possession of such a knife, even if it is in a shop window, is not an offence within the Act. The expression " offer for sale " is not defined by the Act and therefore it can only be interpreted by reference to the general law. Displaying goods in a shop window does not amount to an offer for sale; it is merely an invitation to treat: *Timothy*

[6] 28 Cox C.C. 198.
[7] (1834) 6 C. & P. 499.
[8] [1953] 1 Q.B. 401; [1953] 2 W.L.R. 427; [1953] 1 All E.R. 482, C.A.
[9] (1948) 64 T.L.R. 628; [1948] 2 All E.R. 810, D.C.
[10] [1943] 1 All E.R. 315.
[11] [1948] 2 All E.R. 810.
[12] [1943] 1 All E.R. 315.

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v. *Simpson*.[13] Where Parliament wishes to extend the ordinary meaning of "offer for sale" it usually adopts a standard form: see Prices of Goods Act, 1939, s. 20, and Goods and Services (Price Control) Act, 1941, s. 20 (4). It would have been simple for the draftsman to have included a definition of "offer for "sale" in the Act of 1959, but he has not done so. The words of section 1 are clear. "Exposed for sale" is not an offence under the section. This is not an omission or a mistake on the part of Parliament, and, even if it were, it would not be for this court to read words into the Act to perfect it: *Bristol Guardians* v. *Bristol Waterworks Co.*[14]

[LORD PARKER C.J. There is a stronger statement of the principle by Lord Simonds in *Magor and St. Mellons Rural District Council* v. *Newport Corporation*.[15]]

Yes; it is not necessary to read words into the Act in order to make it effective. In a civil case no one would contend that it was. Still less should such a course be adopted in a criminal case. In a penal statute the court should not do violence to the words of a statute in order to bring people within it.

As to *Keating* v. *Horwood*,[16] there was there an obvious exposure for sale, so that it was unnecessary for the court to decide whether there was an offer for sale or not. No authorities on this point were cited in that case, nor was this point argued in *Wiles* v. *Maddison*,[17] the whole basis of which was that the prosecution only proved an intention to commit an offence the following day. It would be wrong to attach importance to the incidental words of Viscount Caldecote C.J.[18] on which the appellant relies.

Cox in reply. The Act of 1959 may not be aimed at possession, but it is aimed at preventing people from getting possession of flick knives. Its object is to prevent trafficking in such articles. The meaning of the words "offer for sale" in this particular statute must be drawn from the four corners of the statute itself, and if, interpreting the statute as a whole, and bearing in mind its object, the words are seen to be given a wider meaning than they would bear in the law of contract, that is the meaning that should be given to them.

The definitions in the Prices of Goods Act, 1939, and the Goods and Services (Price Control) Act, 1941, cover matters so

[13] 6 C. & P. 499.
[14] [1914] A.C. 379, H.L.
[15] [1952] A.C. 189; [1951] 2 T.L.R. 935; [1951] 2 All E.R. 839, H.L.
[16] 28 Cox C.C. 198.
[17] [1943] 1 All E.R. 315.
[18] Ibid. 317.

widely different, e.g., publishing a price list, making a quotation, that, were it not for the definitions, they could not amount in law to an offer for sale and so would have fallen outside the statutes, but that is no reason for saying that where there is no definition section the words must necessarily be construed as in the law of contract. It is not suggested that words should be read into the Act. The intention of the Act is clear and the court should give the words the meaning they ought to bear having regard to the object of the Act.

LORD PARKER C.J. read section 1 (1) of the Restriction of Offensive Weapons Act, 1959, stated the facts and continued:

The sole question is whether the exhibition of that knife in the window with the ticket constituted an offer for sale within the statute. I confess that I think most lay people and, indeed, I myself when I first read the papers, would be inclined to the view that to say that if a knife was displayed in a window like that with a price attached to it was not offering it for sale was just nonsense. In ordinary language it is there inviting people to buy it, and it is for sale; but any statute must of course be looked at in the light of the general law of the country. Parliament in its wisdom in passing an Act must be taken to know the general law. It is perfectly clear that according to the ordinary law of contract the display of an article with a price on it in a shop window is merely an invitation to treat. It is in no sense an offer for sale the acceptance of which constitutes a contract. That is clearly the general law of the country. Not only is that so, but it is to be observed that in many statutes and orders which prohibit selling and offering for sale of goods it is very common when it is so desired to insert the words "offering or "exposing for sale," "exposing for sale" being clearly words which would cover the display of goods in a shop window. Not only that, but it appears that under several statutes—we have been referred in particular to the Prices of Goods Act, 1939, and the Goods and Services (Price Control) Act, 1941—Parliament, when it desires to enlarge the ordinary meaning of those words, includes a definition section enlarging the ordinary meaning of "offer for sale" to cover other matters including, be it observed, exposure of goods for sale with the price attached.

In those circumstances I am driven to the conclusion, though I confess reluctantly, that no offence was here committed. At first sight it sounds absurd that knives of this sort cannot be

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manufactured, sold, hired, lent, or given, but apparently they can be displayed in shop windows; but even if this—and I am by no means saying it is—is a casus omissus it is not for this court to supply the omission. I am mindful of the strong words of Lord Simonds in *Magor and St. Mellons Rural District Council* v. *Newport Corporation.*[1] In that case one of the Lords Justices in the Court of Appeal[2] had, in effect, said that the court having discovered the supposed intention of Parliament must proceed to fill in the gaps—what the Legislature has not written the court must write—and in answer to that contention Lord Simonds in his speech said[3]: "It appears to me to be a naked usurpa- "tion of the legislative function under the thin disguise of "interpretation."

Approaching this matter apart from authority, I find it quite impossible to say that an exhibition of goods in a shop window is itself an offer for sale. We were, however, referred to several cases, one of which is *Keating* v. *Horwood,*[4] a decision of this court. There, a baker's van was being driven on its rounds. There was bread in it that had been ordered and bread in it that was for sale, and it was found that that bread was under weight contrary to the Sale of Food Order, 1921. That order was an order of the sort to which I have referred already which prohibited the offering or exposing for sale. In giving his judgment, Lord Hewart C.J. said this[5]: "The question is whether on "the facts there were, (1) an offering, and (2) an exposure, for "sale. In my opinion, there were both." Avory J. said[6]: "I "agree and have nothing to add." Shearman J., however, said[7]: "I am of the same opinion. I am quite clear that this "bread was exposed for sale, but have had some doubt whether "it can be said to have been offered for sale until a particular "loaf was tendered to a particular customer." There are three matters to observe on that case. The first is that the order plainly contained the words "expose for sale," and on any view there was an exposing for sale. Therefore the question whether there was an offer for sale was unnecessary for decision. Secondly, the principles of general contract law were never referred to, and thirdly, albeit all part of the second ground.

[1] [1952] A.C. 189; [1951] 2 T.L.R. 935; [1951] 2 All E.R. 839, H.L.
[2] [1950] 2 All E.R. 1226, 1236, C.A.
[3] [1952] A.C. 189, 191.
[4] (1926) 28 Cox C.C. 198, D.C.
[5] Ibid. 201.
[6] Ibid.
[7] Ibid.

the respondent was not represented and there was in fact no argument. I cannot take that as an authority for the proposition that the display here in a shop window was an offer for sale.

The other case to which I should refer is *Wiles* v. *Maddison*.[8] I find it unnecessary to go through the facts of that case, which was a very different case and where all that was proved was an intention to commit an offence the next day, but in the course of his judgment Viscount Caldecote C.J. said[9]: "A "person might, for instance, be convicted of making an offer of "an article of food at too high a price by putting it in his shop "window to be sold at an excessive price, although there would "be no evidence of anybody having passed the shop window or "having seen the offer or the exposure of the article for sale at "that price." Again, be it observed, that was a case where under the Meat (Maximum Retail Prices) Order, 1940, the words were "No person shall sell or offer or expose for sale or buy or "offer to buy." Although the Lord Chief Justice does refer to the making of an offer by putting it in the shop window, before the sentence is closed he has in fact turned the phrase to one of exposing the article. I cannot get any assistance in favour of the prosecutor from that passage. Accordingly, I have come to the conclusion in this case that the justices were right, and this appeal must be dismissed.

ASHWORTH J. I agree.

ELWES J. I also agree.

Appeal dismissed with costs.

Solicitors: *Robins, Hay & Waters for T. J. Urwin, Town Clerk, Bristol; Haslewoods for Cooke, Painter, Spofforth & Co., Bristol.*

E. M. W.

[8] [1943] W.N. 40; [1943] 1 All E.R. 315, D.C.

[9] [1943] 1 All E.R. 315, 317.

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STAMP J.

despotic but necessary principle the ordinary rules of the common law are made to bend."

I am content to leave the matter there, for I must follow *Carlisle & Cumberland Banking Company* v. *Bragg*[29] and not equate an assignment or conveyance of immovables with instruments to which the law merchant is applicable.

It was urged on behalf of the building society that this case fell within the principle of the decision of the House of Lords in *Brocklesby* v. *Temperance Building Society*.[30] But what was there in question was, I think, another kind of estoppel, and in reference to that case I simply echo the remark of Lord Sumner in *R. E. Jones Ltd.* v. *Waring & Gillow Ltd.*,[31] that that case is inapplicable since Lee was in no sense the agent for Mrs. Gallie and she never knowingly held him out as authorised to deal with her property to the slightest extent.

The plaintiff is, in my judgment, entitled to succeed against both defendants.

Declaration accordingly against both defendants. Inquiry as to damages against first defendant. Order that second defendant deliver up deeds. Costs against second defendant. No order against first defendant (who was legally aided with a minimal contribution).

Solicitors: *Hunt & Hunt; Gerald Block & Co.; Sharpe, Pritchard & Co. for Shoosmiths & Harrison, Northampton.*

[29] [1911] 1 K.B. 489.
[30] [1895] A.C. 173, H.L.(E.).
[31] [1926] A.C. 670, H.L.

[QUEEN'S BENCH DIVISION]

1968
April 5

LORD PARKER C.J., ASHWORTH and BLAIN JJ.

* PARTRIDGE *v.* CRITTENDEN

Animal—Bird—Protection—"Offers for sale"—Advertisement under "classified advertisements"—"bramblefinch cocks, bramblefinch hens, 25s. each"—Whether offer for sale—Whether invitation to treat—Bird with easily removable ring—Whether "close ringed"—Protection of Birds Act, 1954 (2 & 3 *Eliz.* 2, *c.* 30), *s.* 6 (1) (*a*).

The appellant inserted an advertisement in a periodical, "Cage and Aviary Birds" for April 13, 1967, containing the words "Quality British A.B.C.R. . . . bramblefinch cocks, bramblefinch hens . . . 25s. each," which appeared under the general

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[Reported by HOOSEN COOVADIA, ESQ., Barrister-at-Law.]

heading "classified advertisements." In no place was there any direct use of the words "offers for sale." In answer to the advertisement, T. wrote, enclosing a cheque for 25s., and asked that a hen be sent to him. The hen arrived wearing a closed ring which could be removed without injury to the bird.

The appellant was charged with unlawfully offering for sale a bramblefinch hen contrary to section 6 (1) of the Protection of Birds Act, 1954.[1] The justices were of the opinion that the hen, being a bird included in schedule 4 to the Act of 1954, was not a closed-ringed specimen bred in captivity because it was possible to remove the ring, convicted him.

On appeal, the appellant contending that his advertisement was merely an invitation to treat and not an offer for sale, and that the mere fact that it was possible to remove the ring from the bird's leg did not mean that it was not of a closed-ring specimen:—

Held, allowing the appeal, that while "close-ringed" in section 6 (1) (*a*) of the Act meant ringed by a complete ring which was not capable of being forced apart or broken except by damaging it, so that the bird in question was not a closed-ring specimen (post, p. 1208C); the advertisement inserted by the appellant under the title "classified advertisements" was not an offer for sale but merely an invitation to treat; and that, accordingly, the appellant was not guilty of the offence charged.

Fisher v. *Bell* [1961] 1 Q.B. 394; [1960] 3 W.L.R. 919; [1960] 3 All E.R. 731, D.C. and dicta of Lord Herschell in *Grainger & Son* v. *Gough* [1896] A.C. 325, 334, H.L.(E.), applied.

Per Lord Parker C.J.: There is business sense in construing advertisements and circulars, unless they come from manufacturers, as invitations to treat and not offers for sale (post p. 1209G).

CASE STATED by Chester Justices.

On June 19, 1967, an information was preferred by the prosecutor, Anthony Ian Crittenden, on behalf of the R.S.P.C.A., against the appellant, Arthur Robert Partridge, that he did unlawfully offer for sale a certain live wild bird, a brambling, being a bird included in schedule 4 to the Protection of Birds Act, 1954, of a species which is resident in or visits the British Isles in a wild state, other than a close-ringed specimen bred in captivity, contrary to section 6 (1) of the Act of 1954.

The justices heard the information on July 19, 1967, and found the following facts. On April 13, 1967, there appeared in the periodical "Cage and Aviary Birds" an advertisement inserted by the appellant containing, inter alia, the words "Quality British A.B.C.R. . . . bramblefinch cocks, bramblefinch hens, 25s. each." By letter to the appellant dated April 22, 1967, Thomas Shaw Thompson of Hoole, Chester, requested the dispatch to himself of an A.B.C.R. bramblefinch hen as advertised in "Cage and Aviary

[1] Protection of Birds Act, 1954, s. 6 (1): "If, save as may be authorised by a licence granted under section 10 of this Act, any person sells, offers for sale or has in his possession for sale—(*a*) any live wild bird, being a bird included in schedule 4 to this Act of a species which is resident in or visits the British Isles in wild state, other than a close-ringed specimen bred in captivity . . . he shall be guilty of an offence against this Act."

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Birds" and enclosed a cheque for 30s. On May 1, 1967, the appellant dispatched a bramblefinch hen which was wearing a closed ring to Mr. Thompson in a box by British Rail. Mr. Thompson received the bird on May 2, 1967. A

The box was opened by Mr. Thompson in the presence of the prosecutor. Mr. Thompson attempted to and was, in fact, able to remove the ring without injury to the bird. Even taking into account that the bird had travelled from Leicester in a box on British Rail its condition was rough, it was extremely nervous, had no perching sense at all and its plumage was rough. B

A bramblefinch or brambling, as it is also called, was a bird included in schedule 4 to the Act of 1954. The expression "close-ringed" was nowhere defined nor was there any universally recommended size ring for a bramblefinch. The ring was placed on the bird's leg at the age of three to 10 days at which time it was not possible to determine what the eventual girth of the bird's leg would be. C

It was contended by the appellant that there was no offer for sale in the county of Chester as alleged since the advertisement in "Cage and Aviary Birds" was merely an invitation to treat; and that an offence was not committed under section 6 (1) of the Act of 1954 merely because it was possible to remove the ring from the bird's leg. D

It was contended on behalf of the prosecutor that the advertisement was an offer for sale in Chester; and that a bird was not a close-ringed specimen bred in captivity if it was possible to remove the ring from its leg. E

The justices were of opinion that the advertisement was an offer for sale in Chester on April 22, 1967, and that the brambling so offered for sale by the appellant was not a close-ringed specimen bred in captivity because it was possible to remove its ring. They accordingly found the case proved and fined the appellant £5, and ordered him to pay £5 5s. advocate's fee and £4 9s. 6d. witnesses' expenses. F

The question for the opinion of the court was whether the justices were right in law in holding that the advertisement was an offer for sale in Chester on May 1, 1967, and that a bird was not a close-ringed specimen bred in captivity within the meaning of the Act of 1954 if it was possible to remove the ring from its leg. G

C. J. Pitchers for the appellant.

Michael Havers Q.C. and *D. T. Lloyd-Jones* for the prosecutor. H

The following cases, in addition to those referred to in the judgment, were cited in argument: *Rooke* v. *Dawson*[2]; *Harris* v. *Nickerson*[3]; *Carlill* v. *Carbolic Smoke Ball Co.*[4]; and *Spencer* v. *Harding*.[5]

[2] [1895] 1 Ch. 480.
[3] (1873) L.R. 8 Q.B. 286.
[4] [1892] 2 Q.B. 484; [1893] 1 Q.B. 256, C.A.
[5] (1870) L.R. 5 C.P. 561.

LORD PARKER C.J. Ashworth J. will give the first judgment.

ASHWORTH J.: This is an appeal by way of case stated from a decision of Chester justices. On July 19, 1967, they heard an information preferred by the prosecutor on behalf of the R.S.P.C.A. alleging against the appellant that he did unlawfully offer for sale a certain live wild bird, to wit a brambling, being a bird included in schedule 4 to the Protection of Birds Act, 1954, of a species which is resident in or visits the British Isles in a wild state, other than a close-ringed specimen bred in captivity, contrary to section 6, subsection (1) of the Act.

The case arose because in a periodical known as "Cage and Aviary Birds," the issue for April 13, 1967, there appeared an advertisement inserted by the appellant containing, inter alia, the words "Quality British A.B.C.R. . . . bramblefinch cocks, bramblefinch hens, 25s. each." In the case stated the full advertisement is not set out, but by the agreement of counsel this court has seen a copy of the issue in question, and what is perhaps to be noted in passing is that on the page there is a whole list of different birds under the general heading of "Classified Advertisements." In no place, so far as I can see, is there any direct use of the words "Offers for sale." I ought to say I am not for my part deciding that that would have the result of making this judgment any different, but at least it strengthens the case for the appellant that there is no such expression on the page. Having seen that advertisement, Mr. Thompson wrote to the appellant and asked for a hen and enclosed a cheque for 30s. A hen, according to the case, was sent to him on May 1, 1967, which was wearing a closed-ring, and he received it on May 2. The box was opened by Mr. Thompson in the presence of the prosecutor, and the case finds that Mr. Thompson was able to remove the ring without injury to the bird, and even taking into account that the bird had travelled from Leicester in a box on the railway, its condition was rough, it was extremely nervous, it had no perching sense at all and its plumage was rough.

Stopping there, the inference from that finding is that the justices were taking the view, or could take the view, that from its appearance, at any rate, this was not such a bird as a person can legitimately sell within the Act of 1954. The case goes on to find:

> "The expression 'close-ringed' is nowhere defined nor is there any universally recommended size ring for a bramble finch.
>
> "(g) The ring is placed on the bird's leg at the age of three to 10 days at which time it is not possible to determine what the eventual girth of the bird's leg will be."

Having been referred to the decision of this court in *Fisher* v. *Bell*[1] the justices nonetheless took the view that the advertisement did constitute an offer for sale; they went on further to find that

[1] [1961] 1 Q.B. 394; [1960] 3 W.L.R. 919; [1960] 3 All E.R. 731, D.C.

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ASHWORTH J.

the bird was not a close-ringed specimen bred in captivity, because it was possible to remove the ring. Before this court Mr. Pitchers for the appellant, has taken two points, first, this was not an offer for sale and, secondly, that the justices' reason for finding that it was not a close-ringed bird was plainly wrong because the fact that one could remove the ring did not render it a non-close-ringed bird.

It is convenient, perhaps, to deal with the question of the ring first. For my part I confess I was in ignorance, and in some state of confusion, as to the real meaning and effect of this particular phrase in the section, and I express my indebtedness to Mr. Havers, for the prosecutor, for having made the matter, as far as I am concerned, perfectly clear. I would say if one was looking for a definition of the phrase " close-ringed " it means ringed by a complete ring, which is not capable of being forced apart or broken except, of course, with the intention of damaging it. I contrast a closed-ring of that sort—it might take the form, I suppose, of an elastic band or of a metal circle ring—with the type of ring which sometimes exists which is made into a ring when a tongue is placed through a slot and then drawn back; that is a ring which can be undone and is not close-ringed. In this case what is contemplated, according to Mr. Havers, and I accept it, is that with a young bird of this sort between three and ten days after hatching a closed-ring of the type described is forced over its claws, which are obviously brought together so as to admit the passage of the ring, and it is then permanently on or around the bird's leg, and as it grows, it would be impossible to take that ring off because the claws and the like would have rendered a repetition of the earlier manoeuvre impossible.

Therefore, approaching the matter this way, I can well understand how the justices came to the conclusion that this was not a close-ringed specimen, because they could take the ring off. If that were the only issue, I should not find any difficulty in upholding their decision. But the real point of substance in this case arose from the words " offer for sale," and it is to be noted in section 6 of the Act of 1954 that the operative words are " any person sells, offers for sale or has in his possession for sale." For some reason which Mr. Havers for the prosecutor has not been able to explain, those responsible for the prosecution in this case chose, out of the trio of possible offences, the one which could not succeed. There was a sale here, in my view, because Mr. Thompson sent his cheque and the bird was sent in reply; and a completed sale. On the evidence there was also a plain case of the appellant having in possession for sale this particular bird. But they chose to prosecute him for offering for sale, and they relied on the advertisement.

A similar point arose before this court in 1960 dealing, it is true, with a different statute but with the same words, in *Fisher* v.

Bell.[2] The relevant words of section 1 (1) of the Restriction of Offensive Weapons Act, 1959, in that case were: "Any person who . . . offers for sale . . . . (a) any knife. . . ." Lord Parker C.J., in giving judgment said[3]:

> "The sole question is whether the exhibition of that knife in the window with the ticket constituted an offer for sale within the statute. I confess that I think that most lay people and, indeed, I myself when I first read the papers, would be inclined to the view that to say that if a knife was displayed in a window like that with a price attached to it was not offering it for sale was just nonsense. In ordinary language it is there inviting people to buy it, and it is for sale; but any statute must of course be looked at in the light of the general law of the country."

The words are the same here "offer for sale," and in my judgment the law of the country is equally plain as it was in regard to articles in a shop window, namely that the insertion of an advertisement in the form adopted here under the title "Classified Advertisements" is simply an invitation to treat.

That is really sufficient to dispose of this case. I should perhaps in passing observe that the editors of the publication Criminal Law Review had an article dealing with *Fisher* v. *Bell*[4] in which a way round that decision was at least contemplated, suggesting that while there might be one meaning of the phrase "offer for sale" in the law of contract, a criminal court might take a stricter view, particularly having in mind the purpose of the Act, in *Fisher* v. *Bell*[4] the stocking of flick knives, and in this case the selling of wild birds. But for my part that is met entirely by the quotation which appears in Lord Parker's judgment in *Fisher* v. *Bell,* that[5] "It appears to me to be a naked usurpation of the legislative function under the thin disguise of interpretation."

I would allow this appeal and quash the conviction.

BLAIN J. I agree.

LORD PARKER C.J. I agree and with less reluctance than in *Fisher* v. *Bell,*[6] and *Mella* v. *Monahan*[7] I say "with less reluctance" because I think when one is dealing with advertisements and circulars, unless they indeed come from manufacturers, there is business sense in their being construed as invitations to treat and not offers for sale. In a very different context in *Grainger & Son* v. *Gough*[8] Lord Herschell said dealing with a price-list[9]:

> "The transmission of such a price-list does not amount to an offer to supply an unlimited quantity of the wine described at the price named, so that as soon as an order is given there is a binding contract to supply that quantity. If it were so, the merchant might find himself involved in any

[2] [1961] 1 Q.B. 394.
[3] Ibid. 399.
[4] [1961] 1 Q.B. 394.
[5] Ibid. 400.
[6] [1961] 1 Q.B. 394.
[7] [1961] Crim.L.R. 175, D.C.
[8] [1896] A.C. 325, H.L.(E.).
[9] Ibid. 334.

1968

Partridge v. Crittenden

LORD PARKER C.J.

number of contractual obligations to supply wine of a particular description which he would be quite unable to carry out, his stock of wine of that description being necessarily limited."

It seems to me accordingly that not only is it the law but common sense supports it.

Appeal allowed with costs.

Solicitors: *R. G. Frisby & Small, Leicester; Rex Taylor & Meadows, West Kirby.*

[WAKEFIELD CONSISTORY COURT]

1966
April 15

GRAHAM CH.

* *In re* ST. PAUL, HANGING HEATON

Ecclesiastical Law—Faculty—Headstone—Erection of memorial stone in churchyard—Material not in keeping with church and churchyard walls—Policy of restricting materials of memorials to those in keeping with church and churchyard and each other—Whether reasonable—Discretion of court to refuse faculty.

A faculty was sought to authorise the erection in a churchyard of a headstone in white marble or grey granite, the church and churchyard walls being built of Yorkshire stone and most of the memorials in the churchyard being also in that material, whilst some were in granite, marble and other materials. The faculty was opposed by the vicar and the parochial church council, whose policy in recent years had been to allow nothing but Yorkshire stone to be used for memorials in the churchyard:—

Held, that the policy of restricting memorials to those which were in keeping with the church and churchyard and with each other was reasonable and as the petitioner's proposal would be inconsistent with that policy the faculty would be refused.

In re Little Gaddesden Churchyard, Ex parte Cuthbertson [1933] P. 150 considered.

FACULTY SUIT.

The petitioner, Kenneth Joseph Lockwood, sought a faculty to erect in the churchyard of the Church of St. Paul, Hanging Heaton, Yorkshire, a headstone as a memorial to his dead son. The petitioner proposed that the material to be used should be either white marble or grey granite. The suit was opposed by the vicar and churchwardens of the parish of St. Paul and by the parochial church council, the opposition being solely on the ground of the proposed material to be used for the headstone.

The petitioner appeared in person.

R. H. Carter, solicitor for the parties opponent.

G. B. GRAHAM Ch. This is a petition by Mr. Kenneth Joseph Lockwood for a faculty to introduce into the churchyard of St.

British Car Auctions Ltd v Wright

QUEEN'S BENCH DIVISION
LORD WIDGERY CJ, MELFORD STEVENSON AND MILMO JJ
12th JULY 1972

Road traffic – Motor vehicle – Sale in unroadworthy condition – Offer to sell – Offence – Sale of vehicle by auction – Auctioneer inviting bids for vehicle – Whether auctioneer 'offering to sell' vehicle – Road Traffic Act 1960, s 68 (1), as amended by the Road Traffic Act 1962, s 51 (1), Sch 4, Part I.

A member of the appellant firm of auctioneers auctioned a car at a sale on the appellants' premises. At the time of the auction the steering gear and a tyre were defective. The appellants were convicted of 'offering to sell' a motor vehicle for delivery in such a condition that its use on the road in that condition would be unlawful by virtue of regs 80 and 83 of the Motor Vehicle (Construction and Use) Regulations 1969[a], contrary to s 68 (1)[b] of the Road Traffic Act 1960, as amended. On appeal,

Held – An auctioneer, in the performance of his duties as an auctioneer, did not, when he stood on his rostrum, make an 'offer to sell' the particular goods displayed; he merely invited those present at the auction to make offers to buy them; the offers came from the bidders and the auctioneer's acceptance of the final offer was communicated by the fall of his hammer; accordingly, the appellants were not guilty of an offence under s 68 (1) of the 1960 Act and the appeal would be allowed (see p 466 h, j and p 468 a, c and d, post).

Fisher v Bell [1960] 3 All ER 731 and *Partridge v Crittenden* [1968] 2 All ER 421 applied.

Notes

For the meaning of offer in the law of contract, see 8 Halsbury's Laws (3rd Edn) 69, para 119; and for cases on the subject, see 12 Digest (Repl) 57, *314-316*, 61, 62, *326-337*.

For sale of unroadworthy vehicles, see 33 Halsbury's Laws (3rd Edn) 434, para 734.

For the Road Traffic Act 1960, s 68, as amended, see 28 Halsbury's Statutes (3rd Edn) 250. Section 68 has been replaced, as from 1st July 1972, by s 60 of the Road Traffic Act 1972.

Cases referred to in judgment

Fisher v Bell [1960] 3 All ER 731, [1961] 1 QB 394, [1960] 3 WLR 919, 125 JP 101, DC, Digest (Cont Vol A) 409, *7358c*.

Partridge v Crittenden [1968] 2 All ER 421, [1968] 1 WLR 1204, 132 JP 367, DC, Digest (Cont Vol C) 162, *322a*.

Cases and authority also cited

Harling v Eddy [1951] 2 All ER 212, [1951] 2 KB 739, CA.

McManus v Fortescue [1907] 2 KB 1, [1904-7] All ER Rep 707, CA.

Payne v Cave (1789) 3 Term Rep 148.

2 Halsbury's Statutes (3rd Edn) 503.

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a SI 1969 No 321

b Section 68 (1), so far as material and as amended, provides:

'Subject to the provisions of this section it shall not be lawful to sell, or to supply, or to offer to sell or supply, a motor vehicle or trailer for delivery in such a condition that the use thereof on a road in that condition would be unlawful by virtue of any provision made by regulations under section sixty-four of this Act as respects ... steering gear or tyres ...'

Case stated

a This was an appeal by way of case stated by Hampshire justices acting in and for the petty sessional division of Odiham in respect of their adjudication as a magistrates' court sitting at Aldershot on 14th January 1972.

On 10th December 1971 an information was preferred by the respondent, Peter John Wright, against the appellant company, British Car Auctions Ltd, charging that on 22nd September 1971 at Frimley Bridges near Farnborough the appellant company b did offer to sell a motor vehicle namely a Morris 1100 saloon motor car, index number 733 NBP, for delivery in such a condition that the use thereof on the road in that condition would be unlawful by virtue of regs 80 and 83 of the Motor Vehicles (Construction and Use) Regulations 1969[1], as respects to its steering, gear and tyre, contrary to s 68 of the Road Traffic Act 1960, as amended by s 51 of, and Sch 4, Part II to, the Road Traffic Act 1962.

c The justices found the following facts. The appellants were at all material times engaged, inter alia, in the business of auctioneers of secondhand motor vehicles at Frimley Bridges near Farnborough. On 21st September 1971 a firm, Norman & Watson, entered a motor vehicle for sale at the appellants' premises which sale was to take place the following day. The vehicle was a Morris 1100 registration no 733 NBP. The details of the car were set out by Norman & Watson on an entry form d provided by the appellants. There were certain conditions on the reverse of the entry form described as 'conditions of entry'. On the face of the entry form were the words, inter alia:

> 'I/We hereby authorise British Car Auctions Ltd., to offer the said vehicle for sale in accordance with the said conditions [thereby meaning 'the conditions of e entry'] . . . '

Condition 2 of the conditions of entry provided: 'The Auctioneers reserve the right to refuse to offer a vehicle for sale . . . ' On 22nd September 1971 an auction sale of secondhand cars took place at the appellants' premises and the motor vehicle was included in that sale. At the time of the sale the vehicle had a current MOT certificate f issued on 16th March 1971. The appellants acted as auctioneers. Auction sales at the premises were governed by certain conditions called 'Conditions of Sale'. Those conditions were displayed on large posters on the walls of the sales room and also on the auctioneer's rostrum. Printed sheets of the conditions were also available. An auction sale was commenced by the auctioneer drawing attention to the conditions of sale and he did that same thing at various stages throughout the sale. On 22nd September 1971 Bernard Edmund Batchelor, an aircraft engineer by occupation, g went to the appellants' premises in order to buy a car at the auction sale. Mr Batchelor saw a car which he wished to purchase, namely the Morris 1100 733 NBP, which he examined cursorily and then went into the sales room with the intention of bidding for that car. Mr Batchelor failed to see or read the condition of sale displayed in the sales room. He had heard the auctioneer draw attention to the fact that there were 'Conditions of Sale' but did not know where to obtain a copy of the conditions. The h auctioneer further drew the attention of the sales room to the fact that the Morris 1100 was to be sold 'without warranty' and Mr Batchelor heard that. Mr Batchelor did bid for the Morris and purchased it at the auction in the sum of £95. Thereafter on that day he received a further receipt for the balance of the purchase price together with the test certificate and the registration book for the vehicle. The conditions of j sale of the appellant company provided, inter alia:

> '2. The auctioneer may without giving any reason therefore refuse to accept the bidding of any person or persons . . . 6. On the fall of the hammer a contract of sale is completed between the person or persons signing the Entry Form in respect of the vehicle concerned and the purchaser. The auctioneers shall not be

1 SI 1969 No 321

a party to or liable in any manner whatsoever on such contract. The vendor and the purchaser shall have no legal rights of action except against each other in respect of any matter arising out of the sale or the legal ownership of the vehicle . . . 10. Save only as aforesaid no warranty condition description or representation on the part of the auctioneers is given or implied by the offering of any vehicle for sale or is given or is to be implied from anything said or written in the course of the auction or negotiations and any statutory or other warranty condition description or representation express or implied as to the age condition qualities roadworthiness or mileage of any vehicle on the part of the auctioneers is expressly excluded . . . 12. (a) All vehicles offered "As Seen" and/or "Without Warranty" and vehicles realising £200 or less . . . are sold and bought for what they are and with all their faults especially without express or implied warranty whatsoever whether arising by custom Common Law or the Road Traffic or Sale of Goods Acts or otherwise . . . 16. (a) If any vehicle shall be sold without a valid Test Certificate if required by law for use on a road or which shall be in such condition as to make unlawful its use upon a road there shall be deemed to be incorporated in the contract between the seller and the purchaser an undertaking on the part of the purchaser that it will not be used on a road until a valid Test Certificate has been obtained and/or until it has been put in such a condition that both by reason of its construction and of the state of its brakes steering gear and tyres it may be lawfully be used upon a road and that accordingly it will be conveyed from the auctioneers' premises in a manner which does not involve its use on a road and further as respects lighting equipment and reflectors that it will not be so used in contravention of the requirements imposed by law as to obligatory lamps and reflectors . . .'

Mr Batchelor read on the receipt he received for the balance of the purchase price a specific reference to cl 16 (a) of the conditions of sale but did not think it referred to a vehicle sold with a M O T certificate. He drove the car on 22nd September 1971 from the appellants' premises to his home in Slough by road, and expected to have to do some work on the car to put it in good condition. After he arrived home he commenced working on the car and discovered extensive corrosion. On 27th September 1971 he returned to the appellants' premises at Frimley Bridges and complained about the condition of the car and was referred to the printed conditions of sale and in particular to cl 16 (a) thereof and his attention was drawn to the specific reference to cl 16 (a) of the conditions appearing on the receipt. The vehicle was subsequently inspected by a qualified police vehicle examiner and found to be defective in the way alleged in the information. The car was in an extremely dangerous condition due to rust and corrosion the sub-frame being free to move within the engine compartment area when the steering wheel was turned and the vehicle being in danger of breaking in two. One tyre was completely devoid of tread. Those defects were admitted by the appellants to have been present at the time of the auction. Before a sale of motor cars at the appellants' auction sale rooms all vehicles were displayed for inspection on the day of the sale and the previous day and the vehicle was so displayed in this case. Prospective purchasers were permitted to examine vehicles as thoroughly as possible. The total number of vehicles that had passed through the appellants' premises at Frimley Bridges in 26 years of trading was approximately 8,500,000 and the number for the year ending 31st May 1971 was 14,799.

It was contended by the appellants: (a) Where a criminal statute used words which were ordinarily to be found in the law of contract then, unless the statute in question gave an extended meaning to those words, those words should be given the meaning attributed to them in the law of contract. No extended meaning was given to the words 'offer to sell' in s 68 (1) of the Road Traffic Act 1960 and that therefore those words should be given the ordinary meaning attributed to them in the law

of contract. Accordingly to the law of contract an auctioneer did not 'offer to sell' but accepted offers made to him in the form of bids. The bid constituted the offer and the fall of the hammer constituted the acceptance. Therefore there was no offer to sell the car in question by the appellants. (b) In any event the appellants were entitled to rely on the statutory defence under s 68 (4) (*b*) of the Road Traffic Act 1960 by reason of their efforts in drawing to the attention of the purchasers the terms of cl 16 (a) of their conditions of sale and that in view of the volume of cars passing through the sales room it was not practicable to take further steps to ensure that an unroadworthy vehicle was not taken on the road. In the absence of a specific complaint putting them on notice of an intention to use the car on the road in an unroadworthy condition they could be said reasonably to believe that the car would not be used on a road in an unroadworthy condition. Auctioneers were not sellers stricto sensu for the purposes of a criminal statute and by virtue of their position could be distinguished from servants or other agents.

It was contended for the respondent that the appellants 'offered to sell' the car according to the ordinary meaning of the words and that Parliament could never have intended to put a narrow interpretation on the words in its criminal context so as to exclude auctioneers. Furthermore the appellants described themselves as offering to sell both in the entry form and the conditions of entry as set out above. The respondent further contended that the appellant company in order to succeed in a defence under s 68 (4) (*b*) of the Road Traffic Act 1960 had to show on the balance of probabilities that all reasonable steps had been taken by the appellants to bring conditions of sale to the purchaser's attention and that the appellants reasonably believed the purchaser would read them and understand them and that having done so the appellants reasonably believed the purchaser would comply with the undertaking therein and that depended to an extent on whether the purchaser knew if the vehicle complied with the construction and use regulations. That, the respondent contended, the appellants had not done.

The justices were of the opinion that: (a) on 22nd September 1971 the vehicle was in such a condition that its use on a road was unlawful by virtue of the provisions of the regulations. (b) The appellants had offered to sell the vehicle at the auction on that day in the condition aforesaid. In reaching the conclusion that the appellants' auctioneer had 'offered to sell' the justices had regard to the documents in which the auctioneers described themselves as offering to sell and through their general knowledge that auctioneers' announcements for sale whether of realty or chattels habitually described the auctioneers as 'offering to sell by auction'. (c) Being sure that the vehicle was in an unroadworthy condition and was so offered for sale by the appellants they then considered whether the appellants had proved on balance of probabilities that they had reasonable cause to believe that the vehicle would not be used on a road until put in a condition in which it might lawfully be so used. Having regard to the fact that the vehicle was capable of being driven on a road and was offered for sale with a MOT certificate and registration book to a person or persons who were not or known to be motor traders and without any express prohibition at the time of the offer such as 'this vehicle cannot be used on a road until it complies with the Construction and Use Regulations' or any intent by the appellants at the time of the offer thereafter to prevent or discourage the driving of the vehicle on a road on that day in that condition but on the contrary the conditions of sale encouraged persons to remove vehicles purchased expeditiously, they were satisfied that the appellants despite the conditions of sale must reasonably have expected that the vehicle would be driven on a road in the state it was at the time of the auction. Accordingly the justices convicted the appellants on the information.

The questions for the opinion of the High Court were: (1) did the appellants as auctioneers 'offer to sell' the vehicle in question within the meaning of s 68 of the Road Traffic Act 1960; (2) whether the statutory defence under s 68 (4) (*b*) of the Road Traffic Act 1960 was satisfied by reason of the steps taken by the appellants;

and (3) whether an auctioneer could be a 'seller' for the purposes of s 68 of the 1960 Act. a

Gerald Owen QC, *Thayne Forbes* and *Nicholas Hall* for the appellants.
J A C Spokes for the respondent.

LORD WIDGERY CJ. This is an appeal by case stated by justices for the county of Hampshire acting in the petty sessional division of Odiham in respect of their adjudication as a magistrates' court at Aldershot on 14th January 1972. On that day b they convicted the appellant company of one charge laid in these terms:

> '... that on the 22nd September 1971 at Frimley Bridges near Farnborough the Company did offer to sell a motor vehicle namely a Morris 1100 saloon motor car, index number 733 NBP for delivery in such a condition that the use thereof on the road in that condition would be unlawful by virtue of Regulations c 80 and 83 of the Motor Vehicles (Construction and Use) Regulations 1969, as respects to its steering gear and tyre, contrary to Section 68 of the Road Traffic Act 1960 as amended by the Road Traffic Act 1962.'

What s 68 (1) of the Road Traffic Act 1960 enacts is that:

> 'Subject to the provisions of this section it shall not be lawful to sell, or to d supply, or offer to sell or supply, a motor vehicle or trailer for delivery in such a condition that the use thereof on a road in that condition would be unlawful [in respect of certain matters].'

The justices have gone into this case with great care and have found a comprehensive catalogue of facts, but, having regard to the course which the argument has taken, it is unnecessary to go into those facts in any kind of detail. What happened e briefly was this, that the appellants are a company of auctioneers who for many years have been in business as sellers by auction of motor cars, if one may use those terms in the neutral sense. They have standard conditions of sale, standard conditions which are to be applied to auctions which they conduct, and amongst other conditions are those designed to ensure that no contractual relationship shall arise between auctioneer and buyer, but that any resultant contract from the auction f shall be a direct contract between the seller and the buyer.

On the day in question they acted as auctioneers at the sale of a Morris 1100 car which was unquestionably unroadworthy in the respects mentioned in s 68. They were, as I have said, charged with offering that car for sale, and the entire argument in this case hinges on whether an auctioneer performing his normal function at such an auction is someone who offers for sale the goods which he knocks down with g his hammer.

I confess that, free of authority, I should have thought that the colloquial acceptance of an auctioneer as a person who offers the goods for sale is so strong that the use of a phrase such as 'offer for sale' in a statute of this kind might readily be construed as including the function of the auctioneer when he carries out an auction in the ordinary way. But, of course, as a matter of strict law of contract, forgetting for the moment h the colloquial meaning of the phrase 'offer for sale', the auctioneer when he stands in his rostrum does not make an offer to sell the goods on behalf of the vendor; he stands there making an invitation to those present at the auction themselves to make offers to buy. In the strict law of contract there is no doubt whatever that has always been the law, that when an auction sale takes place, the offer comes from the bidder in the body of the hall and the acceptance is communicated by the fall of j the auctioneer's hammer. It is technically incorrect to describe an auctioneer as offering the goods for sale for that reason. In this case the question ultimately is whether in the context of s 68 'offer to sell' should be given its colloquial or its strict meaning.

There is authority of this court very close to this, first of all *Fisher v Bell*[2].

2 [1960] 3 All ER 731, [1961] 1 QB 394

That was a case in which a shopkeeper was prosecuted under the Restriction of Offensive Weapons Act 1959, s 1 (1) of which made it a criminal offence for a person to manufacture, sell or hire or offer for sale or hire certain weapons, so we have the phrase 'offer for sale'. What happened was that the shopkeeper put in his window a flick knife; he gave it a rather more dignified title of an ejector knife and priced it at 4s. It was a flick knife, and was one of those weapons within the Restriction of Offensive Weapons Act 1959. He was prosecuted for offering the flick knife for sale having put it in the window with the obvious intention of inviting the public to come in and buy, but it was held in this court that what he had done was not strictly an offer for sale, but was merely an invitation to the public to make offers, and his conviction was set aside on that ground. Lord Parker CJ said this[3]:

> 'The sole question is whether the exhibition of that knife in the window with the ticket constituted an offer for sale within the statute. I confess that I think most lay people would be inclined to the view (as, indeed, I was myself when I first read these papers), that if a knife were displayed in a window like that with a price attached to it, it was nonsense to say that that was not offering it for sale. The knife is there inviting people to buy it, and in ordinary language it is for sale; but any statute must of course be looked at in the light of the general law of the country, for Parliament must be taken to know the general law. It is clear that, according to the ordinary law of contract, the display of an article with a price on it in a shop window is merely an invitation to treat. It is in no sense an offer for sale the acceptance of which constitutes a contract. That is clearly the general law of the country. Not only is that so, but it is to be observed that, in many statutes and orders which prohibit selling and offering for sale of goods it is very common, when it is so desired, to insert the words "offering or exposing for sale", "exposing for sale" being clearly words which would cover the display of goods in a shop window. Not only that, but it appears that under several statutes—we have been referred in particular to the Prices of Goods Act, 1939, and the Goods and Services (Price Control) Act, 1941—Parliament, when it desires to enlarge the ordinary meaning of those words, includes a definition section enlarging the ordinary meaning of "offer for sale" to cover other matters including, be it observed, exposure of goods for sale with the price attached[4].'

That seems to me to be a clear authority on the problem with which we are faced. Lord Parker CJ, accepting, as, with respect, I accept, that on the face of it, it would seem that the shopkeeper in that case was offering the goods for sale, felt constrained to hold that he was not because as a matter of the strict law of contract he was merely inviting people to come and make offers. The other members of the court agreed with him, and a few years later when the same point arose that authority was followed.

The case which followed it was *Partridge v Crittenden*[5]. In this case the appellant had inserted under the classified advertisements column in a publication dealing with caged birds the following advertisement: 'Quality British A.B.C.R. . . . Bramblefinch cocks, Bramblefinch hens . . . 25s. each', and under the Protection of Birds Act 1954 it was an offence for any person to offer to sell a bird of that kind. He was accordingly prosecuted for having offered to sell the bird and this court, again with Lord Parker CJ and Ashworth J sitting, who had been parties to the earlier case, held that the strict legal meaning of 'offer for sale' must be used, and that since strictly you do not offer goods for sale by inserting an advertisement in the newspaper, that the accused had not committed the offence charged. On the face of that it seems to me impossible for us today to apply a different line.

Counsel for the respondent, who if I may say so has said everything possible in this case, has stressed the fact that at the present day, and indeed for many years, an

3 [1960] 3 All ER at 732, 733, [1961] 1 QB at 399

4 See s 20 (4) (*a*) of the Goods and Services (Price Control) Act 1941

5 [1968] 2 All ER 421, [1968] 1 WLR 1204

auctioneer's function has been colloquially described as offering goods for sale, but the difficulty in following that argument is, of course, that the authorities to which I have referred require us I think to apply the strict technical meaning and not the colloquial one. He has referred us helpfully to two other statutes in which, as he points out, the colloquial meaning of 'offer for sale' must assuredly apply to the conduct of an auctioneer. I need only refer to one; it is the Markets and Fairs (Weighing of Cattle) Act 1926, s 1 (1) of which opens with these words: 'Subject to the provisions of this Act an auctioneer shall not offer for sale in any market . . .' certain beasts. It is said with conviction that there the auctioneer's conduct must be regarded as an offer for sale, and I agree it is so. The reason, of course, is that the language of that section makes it clear in its own internal form that in that statute the colloquial meaning of the phrase 'offer for sale' is being used.

With regret, however, I have come to the conclusion that we cannot apply the colloquial meaning of s 68 of the Road Traffic Act 1960, and I would allow the appeal and quash the conviction.

MELFORD STEVENSON J. I agree with equal regret. I would eagerly embrace any opportunity of escaping from the strict legal meaning of 'offer for sale' in this context in this Act, but if we did I am satisfied that we should be in effect adding a definition in the statute which is not there, and that we cannot do. We are bound by the fetters of the earlier authority, and we must so decide.

MILMO J. I agree with both the judgments delivered by Lord Widgery CJ and Melford Stevenson J.

Appeal allowed. Conviction quashed.

Solicitors: *Clive Fisher & Co* (for the appellants); *P D K Danks*, Winchester (for the respondent).

N P Metcalfe Esq Barrister.

R v West Sussex Quarter Sessions, ex parte Albert and Maud Johnson Trust Ltd and others

QUEEN'S BENCH DIVISION
LORD WIDGERY CJ, MELFORD STEVENSON AND MILMO JJ
19th, 20th JULY 1972

Certiorari – Fresh evidence – Quarter sessions – Right of way – Application to quarter sessions for declaration that footpath not a public right of way – Refusal of quarter sessions to make declaration – Fresh evidence discovered after hearing – Whether remedy of certiorari available.

In accordance with s 27 of the National Parks and Access to the Countryside Act 1949 the West Sussex County Council carried out a survey of the public paths in the county. They prepared and published a provisional map marking the public footpaths which they had found. Included on the map was a path running across the applicants' land. The applicants objected to the inclusion of the path on the map and applied, under s 31 of the Act, to quarter sessions for a declaration that the path was not a public one. The applicants received from the council a list of documents which they intended to produce. At the hearing additional documents were produced by the council but the applicants did not apply for an adjournment. Quarter sessions refused to make the declaration sought by the applicants. Thereafter the applicants continued with their investigations and obtained a considerable quantity of further documentary evidence which they considered had an important bearing on the question whether the path was a public one or not. They applied for an order of certiorari to quash the decision of quarter sessions and for a rehearing. They contended that the additional evidence