

BROOKS, APPELLANT ; MASON, RESPONDENT.

1902
Oct. 28.

Criminal Law—Sale of Intoxicating Liquors to Children—Vessels not properly Corked and Sealed—Mens rea—Intoxicating Liquors (Sale to Children) Act, 1901 (1 Edw. 7, c. 27), s. 2.

By s. 2 of the Intoxicating Liquors (Sale to Children) Act, 1901, every holder of a licence who knowingly sells or delivers, save at the residence or working place of the purchaser, any intoxicating liquor to any child under fourteen for consumption by any person on or off the premises, excepting such intoxicating liquors as are sold or delivered in corked and sealed vessels in the prescribed manner, shall be liable to penalties :—

Held, that the holder of a licence, who had delivered intoxicating liquor to a child under fourteen in a vessel not corked and sealed as the Act required, was guilty of an offence under s. 2, although he honestly believed when he delivered the liquor that the vessel was so corked and sealed.

CASE stated by a metropolitan police magistrate.

The appellant appeared before the magistrate, sitting at the Clerkenwell Police Court, to answer an information preferred by the respondent, an inspector of police, alleging that the appellant, being the holder of a licence within the meaning of the Licensing Acts, 1872, 1874, and of the Intoxicating Liquors (Sale to Children) Act, 1901 (1), did unlawfully and knowingly deliver otherwise than at the residence or working place of the

(1) 1 Edw. 7, c. 27, s. 2 : "Every holder of a licence who knowingly sells or delivers or allows any person to sell or deliver, save at the residence or working place of the purchaser, any description of intoxicating liquor to any person under the age of fourteen years for consumption by any person on or off the premises, excepting such intoxicating liquors as are sold or delivered in corked and sealed vessels in quantities not less than one reputed pint for consumption off the premises only, shall be liable to a penalty not exceeding forty shillings for the first offence and not exceeding five pounds for any subsequent offence; and every person who knowingly sends any

person under the age of fourteen years to any place where intoxicating liquors are sold or delivered or distributed, for the purpose of obtaining any description of intoxicating liquor, excepting as aforesaid, for consumption by any person on or off the premises, shall be liable to like penalties."

Sect. 5 : "The term 'corked' means closed with a plug or stopper, whether it is made of cork or wood or glass or some other material.

"The expression 'sealed' means secured with any substance without the destruction of which the cork, plug or stopper cannot be withdrawn."

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purchaser a certain description of intoxicating liquor to one James Cousins, a person under the age of fourteen years, for consumption off the premises, such intoxicating liquor not being sold or delivered in a corked or sealed vessel in a quantity less than one reputed pint for consumption off the premises only.

The following facts were proved or admitted at the hearing of the information :—

The appellant holds a licence to sell beer by retail for consumption off the premises in respect of a house in Essex Road, Islington. James Cousins, a boy about eleven years of age, had been sent to the appellant's premises to obtain some beer to be drunk off the premises, and there was delivered to him by the appellant one pint of beer in a bottle supplied by the appellant. The bottle was fitted with a glass stopper having round it a ring of cork. Over the top of the glass stopper from one side of the neck of the bottle to the other side the appellant, before delivery, stuck a gummed paper label previously moistened by him. The label was about three inches in length, and bore the words, "Caution. This label must not be tampered with." After affixing the label, a portion of sealing-wax was placed by the appellant on one side of the neck of the bottle, partly on the glass and partly over one end of the label. In that condition the bottle containing beer was delivered by the appellant to the boy, James Cousins. A police officer stopped the boy and took from him the bottle. The gum on the label was then wet. The police officer took hold of the label by the end opposite that on which the sealing-wax was, and turning it back detached the label, which came off the bottle intact, the sealing-wax also coming whole off the bottle with the label.

The magistrate found as facts that the bottle was corked and closed with the stopper, but that the paper label had not been secured with a substance without the destruction of which the stopper could not be withdrawn; also that the appellant knew that James Cousins was under the age of fourteen years, but that the appellant, at the time he delivered the bottle to James Cousins, honestly believed that he (the

appellant) had in manner before mentioned by the gummed label and the sealing-wax secured the stopper in conformity with s. 5 of the Intoxicating Liquors (Sale to Children) Act, 1901.

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It was contended for the appellant that the word "knowingly" in s. 2 of that Act referred to the knowledge of the seller as to the condition of the corking and sealing of the vessel in which the intoxicating liquor was sold or delivered as well as to the age of the person to whom it was sold or delivered, and that a person commits no offence against that section who honestly believes at the time of sale or delivery that the stopper of the vessel has been secured in accordance with the provisions of the Act.

The magistrate held upon the facts stated that the appellant had been guilty of an offence against the statute, and thereupon convicted him, and imposed a penalty upon him.

The question for the opinion of the Court was whether the magistrate came to a correct determination and decision in point of law.

Danckwerts, K.C. (*Bruce Williamson* with him), for the appellant. On the facts found by the magistrate no offence under the statute was committed by the appellant. The words in s. 2, "excepting such intoxicating liquors as are sold or delivered in corked and sealed vessels," &c., are part of the statement of the offence, and the word "knowingly" in the earlier part of the section applies to them. That word governs the whole statement of the offence, as it clearly does in the second part of the section, which deals with the offence of knowingly sending a child under fourteen for the purpose of obtaining intoxicating liquors except in corked or sealed vessels. *Mens rea* is a necessary ingredient in every criminal offence unless the statute creating the offence clearly provides that it shall not be: see *Sherras v. De Rutzen* (1), judgments of Day and Wright JJ.

Craies (H. Ivory, K.C., with him), for the respondent. The magistrate's decision was right. The word "knowingly" in s. 2 does not apply to the words which are in question here.

(1) [1895] 1 Q. B. 918.

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It applies to the sale or delivery, to the liquor supplied, and to the age of the person to whom the liquor is supplied. The gist of the offence is knowingly selling or delivering intoxicating liquors to a child under fourteen. The definition of the offence is complete when you come to the words "excepting such intoxicating liquors," &c., and those words are introduced by way of an exception which it lies upon the defendant to prove as a defence. The same applies to the second part of the section. Whether it is necessary to prove mens rea is a question of the construction of the statute in each case; the necessity may be negatived by express words or by necessary implication: *Reg. v. Tolson*. (1) *Sherras v. De Rutzen* (2) is only an instance in which the necessity to prove mens rea was affirmed with respect to the offence created by one section of the particular statute there in question. In *Cundy v. Le Cocq* (3), which is analogous to the present case, the necessity was negatived. On the true construction of s. 2 of the Intoxicating Liquors (Sale to Children) Act, 1901, it is not necessary to prove mens rea where a person is proved to have in fact sold or delivered intoxicating liquor to a child under fourteen in a vessel not corked and sealed as required by the Act.

Danckwerts, K.C., in reply, referred to *Miller v. Justices of Dudley*. (4)

LORD ALVERSTONE C.J. This case raises a question of some difficulty. There can be no doubt that with respect to the great majority of criminal offences it is necessary to prove mens rea. But I doubt whether the particular difficulty here can be answered by simply applying that general principle. One must look at the statute creating the offence, and see what that offence is, and whether the words giving rise to the difficulty are intended to make an exception which, if proved, constitutes a defence, or are intended to be part of the description of the offence. [His Lordship read s. 2 of the Intoxicating Liquors (Sale to Children) Act, 1901.] In my opinion, what the statute intended to stop was the sale or delivery of intoxi-

(1) (1889) 23 Q. B. D. 168.

(3) (1884) 13 Q. B. D. 207.

(2) [1895] 1 Q. B. 918.

(4) (1898) 46 W. R. 606.

cating liquors to children under fourteen. Then the framers of the statute seem to have considered that there might be cases in which the sale or delivery was not a sale to the child for its own consumption, but a giving to the child intoxicating liquors for consumption by some other person. They therefore excepted intoxicating liquors sold or delivered in corked and sealed vessels as required by ss. 2 and 5. It was argued for the appellant that the words "excepting such intoxicating liquors as are sold or delivered in corked and sealed vessels," &c., form part of the description of the offence; that the word "knowingly" applies to the whole offence; and that the holder of a licence has committed no offence under the Act if he gives to a child under fourteen a bottle which he honestly believes to be properly secured as the Act directs. The other view is that the word "knowingly" does not apply to the exception, which is an exception from the offence, and constitutes a defence which must be proved in fact. I am of opinion, although not without doubt, that it would be altering the language of the statute, and departing from its intention, to read the word "knowingly" into the exception. The effect would be to say that a defendant need only prove by way of defence that he believed the vessel to be secured as the Act directs, although in fact it was not so secured. I think the Act only intended to except intoxicating liquors sold or delivered in vessels which were in fact properly sealed and secured. The exception specifies matters of defence which, if proved in fact, would negative the allegation that an offence had been committed. For these reasons I am of opinion that the learned magistrate's decision was right, and the appeal fails.

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WILLS J. I am of the same opinion.

CHANNELL J. I am of the same opinion. I agree, too, that the point is doubtful.

Judgment for the respondent.

Solicitors for appellant: *Maitlands, Peckham & Co.*

Solicitors for respondent: *Wontner & Sons.*

W. A.