Litter Summit 2013

David Armstrong

13 November 2013
Mossley Mill
Newtownabbey

TIDY Northern Ireland

RECENT INTERPRETATIONS

SPEAKER:
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Newtownabbey BC v JSR Homes and Developments

- Article 28 – waste removal
- JSR Homes and Developments won an appeal against an Art 28 notice (Waste & Controlled Land (NI) Order 1997) issued by Newtownabbey BC to have controlled waste removed from their land.
- The turning point rested on their state of knowledge, or lack of it.

Article 28

- (3) On any appeal under paragraph (2) the court shall quash the requirement if it is satisfied that—
- **the appellant neither deposited nor knowingly caused nor knowingly permitted the deposit of the waste**; or
- there is a material defect in the notice;
- and in any other case shall either modify the requirement or dismiss the appeal.

The Appeal

- The Council quoted Alphcell v Woodward (1972) AC 824, to support the proposition of “knowingly permitted” but Counsel for the company quoted the definition by Lord Goddard CJ in Lomas v Peek (1947) All ER 574, and concluded that the company did not “knowingly permit”.

Alphacell

- The appellant factory owner was convicted of causing polluted matter to enter a river under the Rivers (Prevention of Pollution) Act 1951.

- Held:

  As a matter of public policy the offence was one of strict liability and therefore the appeal was dismissed and the conviction upheld.

Alphacell

- “The relevant words are 'if he causes or knowingly permits to enter a stream any poisonous, noxious or polluting matter'.

- The subsection evidently contemplates two things -- causing, which must involve some active operation or chain of operations involving as the result the pollution of the stream; knowingly permitting, which involves a failure to prevent the pollution, which failure, however, must be accompanied by knowledge. I see no reason either for reading back the word 'knowingly' into the first limb.”

Lomas v Peek

- In Lomas v. Peek, (1947) 2 All ER 574-57 Lord Goddard, C.J. observed:
- "If a man permits a thing to be done, it means that he gives permission for it to be done and if a man gives permission for a thing to be done, he knows what is to be done or is being done, and if the knows that, it follows that it is wilful."
- The decisions referred to above, construed the word in its primary sense as a things knowingly and consciously done of the free will of the doer.

Where does that leave us?

- "Knowledge" in law includes a person "shutting his eyes to the obvious" –
- *Roper v. Taylor's Central Garages (Exeter) Ltd.* [1951] 2 T.L.R. 284 - The context was the meaning of the word "permit" in a provision in the Road Traffic Act 1930. Devlin J. (later Lord Devlin) observed [at 288]:
- "There are, I think, three degrees of knowledge which it may be relevant to consider in cases of this kind. The first is actual knowledge, which the justices may find because they infer it from the nature of the act done… and they may find it even if the defendant gives evidence to the contrary. They may say, 'We do not believe him; we think that that was his state of mind.'

- consider what might be described as knowledge of the second degree; whether the defendant was, as it has been called, shutting his eyes to an obvious means of knowledge. Various expressions have been used to describe that state of mind. I do not think it necessary to look further, certainly not in cases of this type, than the phrase which Lord Hewart, C.J., used in a case under this section, *Evans v. Dell* (1937) 53 The Times L.R. 310), where he said (at p. 313): '. . . the respondent deliberately refrained from making inquiries the results of which he might not care to have.'

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Other options -

- **Article 12A Litter (Northern Ireland) Order 1994**

- The purpose of a litter clearing notice (LCN) is to enable local authorities to require the occupier (or if the land is unoccupied, the owner) of land which is defaced by litter or refuse to clear up, and, where appropriate, take steps to prevent it from becoming defaced again.

Article 20 – Information Requisition

- 20.—(1) Subject to paragraph (2), a district council may serve on any person a notice requiring him to furnish to the council, within a period or at times specified in the notice and in a form so specified, any information so specified which the council reasonably considers that it needs for the purposes of any function conferred on the council by this Order.

What about the right to silence?

- The notice is not a PACE interview and the caution should not have been included. The recipient has a legal obligation to answer and that obligation is not displaced by the right to silence now enshrined in Article 6 of the European Convention on Human Rights (ECHR) (right to a fair trial).

- The offence relates not to the content of the response but to the failure to respond: there would only be an issue relating to right to silence if the authority were then to seek to use the information obtained against that person at trial.

Do not include a Caution!

- Inclusion of the caution will cause you difficulty as the authority has both said you must answer and also “you do not have to answer”.

O'Halloran and Francis v. United Kingdom

- On 7 April 2000 Mr O'Halloran's vehicle was caught on a speed camera driving at 69 miles per hour (mph) on the M11, where the temporary speed limit was 40 mph. On 12 June 2001 Mr Francis' car was caught on speed camera driving at 47 mph, where the speed limit was 30 mph. In each case the applicant was subsequently informed that the police intended to prosecute the driver of the vehicle. He was asked for the full name and address of the driver of the vehicle on the relevant occasion or to supply other information that was in his power to give and which would lead to the driver's identification. Each applicant was further informed that failing to provide information was a criminal offence under section 172 of the Road Traffic Act 1988.

The European Court's view:

- **Article 6**
  The Court did not accept the applicants' argument that the right to remain silent and the right not to incriminate oneself were absolute rights and that to apply any form of direct compulsion to require an accused person to make incriminatory statements against her or his will of itself destroyed the very essence of that right. It was not the case that any direct compulsion would automatically result in a violation of the Convention.

- The identity of the driver was only one element in the offence of speeding, and **there was no question of a conviction arising in the underlying proceedings in respect solely of the information obtained as a result of section 172(2)(a).**

  As Mr Francis refused to make a statement, it could not be used in the underlying proceedings, and indeed the underlying proceedings were never pursued. The question of the use of the statements in criminal proceedings did not arise, **as his refusal to make a statement was not used as evidence: it constituted the offence itself.**

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