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[1961] 1 Q.B. 394 [1960] 3 W.L.R. 919 [1960] 3 All E.R. 731 (1961) 125 J.P. 101 (1960) 104 S.J. 981 [1961] 1 Q.B. 394 [1960] 3 W.L.R. 919 [1960] 3 All E.R. 731 (1961) 125 J.P. 101 (1960) 104 S.J. 981 **(Cite as: [1961] 1 Q.B. 394)**

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Fisher v Bell

[1960] 3 W.L.R. 919

Divisional Court

Lord Parker, Ashworth, and Elwes C.J.

1960 Nov. 10.

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, but the justices concluded that no offence had been committed under the section and dismissed the information. On appeal by the prosecutor:-

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***395** 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,

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 defend-

ant replied "Fair enough."***396**

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, where, in a prosecution under the Sale of Food Order, 1921, which prohibited the offering or exposing for sale of underweight bread, Lord Hewart C.J. held 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, where there was a prosecution under the Meat (Maximum Retail Prices) Order, 1940. Reliance is placed on the words of Viscount Caldecote C.J. 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***397** 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 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, which is cited in Pharmaceutical Society of Great Britain v. Boots Cash Chemists (Southern) Ltd. 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, 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. 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, 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 Once the legislature embarks on a definition the expression unius rule applies. Where there is no definition Wiles v. Maddison 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 mar-

keting 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 ***398** v. Simpson. 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.

[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.]

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, 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, 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. 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***399** 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 coun-

try. 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***400** 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. In that case one of the Lords Justices in the Court of Appeal 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: "It appears to me to be a naked usurpation 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, 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: "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: "I agree and have nothing to add." Shearman J., however, said: "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. ***401** 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. 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: "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 dis-

missed.ASHWORTH J.

I agree.ELWES J.

I also agree.Appeal dismissed with costs. (E. M. W.)
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Fisher v Bell, , , , , , (DC,Nov 10, 1960) (NO. 18663)

Direct History and Negative Indirect Judicial Treatments from U.K. & E.U. cases are not included in KeyCite coverage. For History and Citing References from the U.K., run a search in the UK-CASELOC database.

History

Direct History

=> 1 **Fisher v Bell,** 1960 WL 18689, 125 J.P. 101, [1961] 1 Q.B. 394, [1960] 3 All E.R. 731, [1960] 3 W.L.R. 919, (1960) 104 S.J. 981 (DC Nov 10, 1960) (NO. 18663)

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