

BRITISH CAR AUCTIONS LTD V WRIGHT

QUEEN'S BENCH DIVISION

[1972] 3 All ER 462, [1972] 1 WLR 1519, [1972] RTR 540, 224 EG 237

HEARING-DATES: 12 JULY 1972

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CATCHWORDS:

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.

HEADNOTE:

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,

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...'

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-REF-TO:

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-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.

INTRODUCTION:

Case stated. 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 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 n1, 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.

n1 SI 1969 No 321

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 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 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 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, 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 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 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 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'. © 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.

COUNSEL:

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

PANEL: LORD WIDGERY CJ, MELFORD STEVENSON AND MILMO JJ

JUDGMENTBY-1: LORD WIDGERY CJ.

JUDGMENT-1:

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 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 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 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 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 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 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 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 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* n2. 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 n3:

n2 [1960] 3 All ER 731, [1961] 1 QB 394

n3 [1960] 3 All ER at 732, 733, [1961] 1 QB at 399

'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 n4.'

n4 See s 20 (4) (a) of the Goods and Services (Price Control) Act 1941

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* n5. 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... Bramble-finch 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.

n5 [1968] 2 All ER 421, [1968] 1 WLR 1204

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 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.

JUDGMENTBY-2: MELFORD STEVENSON J.

JUDGMENT-2:

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.

JUDGMENTBY-3: MILMO J.

JUDGMENT-3:

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

DISPOSITION:

Appeal allowed. Conviction quashed.

SOLICITORS:

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