

Cotham SoC Appendix 8

Crim.L.R.

NUISANCE

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Commentary. The trial judge appears to have been misled by the dicta in *Gibson and Gibson* (1984) 80 Cr.App.R. 24 at 30. The commentary at [1984] Crim.L.R. 616 warned that these remarks should be treated with caution and, it is thought, stated the true position (as applied by the court in the present case) which need not, therefore be repeated here. Unfortunately, the commentary probably did not appear in time for any effect it might possibly have had on the present case.

The prosecution is clearly in great difficulty where there is evidence that injuries have been inflicted on a child by one or other of the parents but there is no evidence that the injuries were inflicted by one rather than the other or by both, or by one with the encouragement of the other.

When the Police and Criminal Evidence Act 1984 comes into force the spouse of a person charged with an assault or sexual offence against a person under the age of sixteen will be compellable to give evidence for the prosecution: section 80(3). This does not apply, of course, where the spouses are jointly charged, when neither is competent or compellable for the prosecution: section 80(4). It will assist the prosecution, therefore, only where they have evidence that one rather than the other is to blame and they prosecute only the party they believe to be guilty. [J. C. S.]

NUISANCE

Glue-sniffing—causing a nuisance and disturbance—Local Government (Miscellaneous Provisions) Act 1982, s.40.

Sykes v. Holmes and Maw

High Court of Justice: Queen's Bench Divisional Court: Stephen Brown L.J. and Mann J.: July 11, 1985.⁴

The respondents were charged with an offence contrary to section 40 of the Local Government (Miscellaneous Provisions) Act 1982—being unlawfully on premises, causing a nuisance and disturbance to the annoyance of persons who lawfully used the premises. They were found in a school playground, after school hours, sniffing glue. The playground had been used for such purposes before and had required clearing up to avoid danger to the children using the school. The justices found that the mere act of inhaling solvents unobserved, outside school hours when the staff and pupils were not present could not of itself be said to cause a nuisance etc. to persons who lawfully used the premises. They dismissed the informations. The prosecutor appealed by way of case stated.

Held, allowing the appeal and remitting the case to the justices to continue the hearing, section 40 provided that the lawful users of the premises concerned need not be present at the time of the accused's act(s). The activities of the respondents could constitute a nuisance—see *Thompson-Schwab v. Costaki* [1956] 1 All E.R. 652—as unduly interfering with the comfortable and convenient enjoyment of land. Having regard to the annoyance and distress caused, as indicated by the evidence of the School's headmistress, there was a case to answer.

[Reported by Lynne Knapman, Barrister.]

⁴ For the appellant: *P. Robertshaw* (instructed by Messrs. Warren Murton, London, W.1, agents for Mr. A. R. Sykes, City Solicitor, Bradford Metropolitan Council). For the respondent: *G. E. Shelton* (instructed by Messrs. Irvine & Co., Bradford).

Commentary. In *Thompson-Schwab v. Costaki* the Court of Appeal decided that there was sufficient prima facie evidence for an interlocutory injunction restraining the defendants from using premises for prostitution because the perambulations of the prostitutes and their customers constituted a sensible interference with the comfortable and convenient enjoyment by the plaintiffs of neighbouring residences, having regard to the usages of civilised society and to the character of the neighbourhood. That was a civil proceeding for private nuisance and certainly did not decide that the offence of public nuisance was committed. It is, however, relevant to the question whether there was "nuisance . . . to the annoyance of persons who lawfully use those premises . . ." within the meaning of the section. "Disturbance" is an alternative to nuisance.

"Nuisance" is a vague concept and so wide-ranging as, arguably, to be unsuited to the definition of an offence in modern criminal law; but the effect of the present decision is limited, as the section applies only to playgrounds, playing fields and other premises for outdoor recreation, and schools or further education establishments provided or maintained by a local education authority. [J. C. S.]

PRECEDENT

Overruling previous decision of Divisional Court.

Hornigold v. Chief Constable of Lancashire

High Court of Justice: Queen's Bench Divisional Court: Robert Goff L.J. and Beldam J.: June 27, 1985.⁵

The appellant appealed unsuccessfully to the Crown Court against a conviction for driving with excess alcohol contrary to section 6 of the Road Traffic Act 1972 (as substituted by the Transport Act 1981). The Crown Court set aside a witness summons to Dr. Jones of Lion Laboratories and ruled that cross-examination and evidence directed to the alleged unreliability of the Lion Intoximeter generally was inadmissible. The appellant challenged those decisions. Counsel for the appellant sought to re-argue the matters despite the decision of the Divisional Court in *ex p. Cardy* [1985] R.T.R. 49 which was given after the decision of the Crown Court in the present case.

Held, dismissing the appeal, although it was right that, having regard to the principles stated in *R. v. Greater Manchester Coroner, ex p. Tal* [1984] 3 W.L.R. 643, the Divisional Court was not absolutely bound by a previous decision of another Divisional Court, it is perfectly plain from what was said therein that there will be departure from a previous decision only where the Court is convinced that that decision was wrong. *Ex p. Tal* was not intended to provide freedom to parties to re-argue points simply on the ground that they might persuade the Court to reach a different conclusion. Before a point may be re-argued, the party must be able to indicate, at the outset of the argument, specific material on the basis of which it may properly be submitted that the Court may be convinced that the previous decision was plainly wrong.

[Reported by Lynne Knapman, Barrister.]

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