

Annexe 2. Extraits d'un arrêt

[1994] 4 All ER 411

Director of Public Prosecutions v Bull

QBD

Mann LJ and Laws J

28 March, 5 May 1994

The respondent, a male prostitute, was charged with an offence under s 1(1) of the *Street Offences Act* 1959 of being a 'common prostitute' and loitering or soliciting in a street or public place for the purpose of prostitution. The magistrates' court subsequently dismissed the information against him on the ground that there was no case to answer since s 1(1) of the 1959 Act only applied to female prostitutes. The Director of Public Prosecutions appealed by way of case stated, contending that s 1(1) was not gender specific in line with the use of 'a person' and 'anyone' in sub-ss (2) and (3) and therefore applied to both male and female prostitutes [...].

Mann LJ. [...] At the conclusion of the prosecution case, counsel for the respondent submitted that there was no case to answer on the basis that s 1(1) applies only to female prostitutes. This submission was upheld by the magistrate, who has now posed this question for the opinion of the court:

'Whether I was correct in construing s 1(1) of the *Street Offences Act* 1959, so as to limit it to the activities of female prostitutes and to exclude from its scope the activities of male prostitutes'.

[...] So far as is material, the long title to the 1959 Act is:

'An Act to make, as respects England and Wales, further provision against loitering or soliciting in public places for the purpose of prostitution ...'

[...] The submission for the appellant was that s 1(1) of the 1959 Act is unambiguous and is not gender specific. Our attention was drawn to the following six factors which were relied upon. (i) The phrase in s 1(1) 'a common prostitute' was linguistically capable of including a male person. The *Oxford English Dictionary* (2nd edn, 1989), vol XII, p 637 includes within the possibilities for 'prostitute', 'a man who undertakes male homosexual acts for payment'. (ii) Lord Taylor CJ has recently said in *R v McFarlane* [1994] 2 All ER 283 at 288, [1994] QB 419 at 424:

'... both the dictionary definitions and the cases show that the crucial feature in defining prostitution is the making of an offer of sexual services for reward'.

[...] Mr Adrian Fulford who appeared for the respondent submitted that the phrase 'common prostitute' was for many years before 1959 (and is now) regarded as a term of art which had the meaning formulated by Darling J when delivering the judgment of the Court of Criminal Appeal in *R v De Munck* [1918] 1 KB 635 at 637-638, [1918-19] All ER rep 499 at 500. He said:

The Court is of the opinion that the term 'common prostitute' in the statute is not limited so as to mean only one who permits such acts of lewdness with all and sundry, or with such as hire her, when such acts are in the nature of ordinary sexual connection. We are of opinion that prostitution is proved if it be shown that a woman offers her body commonly for lewdness for payment in return.

Note de l'auteur

Ceci n'est qu'un court extrait d'un arrêt de six pages, où référence est faite à la jurisprudence ainsi qu'au *Report of the Committee on Homosexual Offences and Prostitution (Cmd 247, the Wolfenden Committee)* présenté devant le Parlement en 1957 et qui a motivé la législation en cause. Ce sont les arguments de la défense qui l'ont emporté car, même si la définition du mot *prostitute* selon le dictionnaire (édition de 1989) n'est pas sexuée, le Rapport dit clairement que le mal (*mischief*) contre lequel il faut lutter est la prostitution féminine. La cour a donc suivi le raisonnement juridique qui consiste à essayer de comprendre ce que le Parlement voulait faire à l'époque. Nous ne sommes plus ici dans le domaine de

l'analyse des dictionnaires, mais le rôle de la culture et de l'idéologie reste on le voit, capital.