*132 Sweet Appellant v Parsley Respondent

House of Lords

23 January 1969

[1969] 2 W.L.R. 470

[1970] A.C. 132

Lord Reid , Lord Morris of Borth-Y-Gest , Lord Pearce , Lord Wilberforce and Lord Diplock

1968 Nov. 27, 28; Dec. 2, 3, 4; 1969 Jan. 23

Crime—Mens rea—Statutory offence—Drugs—Person "concerned in management of" premises used for smoking cannabis—Landlord not living on premises but retaining room and visiting occasionally—Other rooms sublet to various tenants—Whether landlord "concerned in the management of" premises used for drug taking— Dangerous Drugs Act, 1965 (c. 15), s. 5 .

By section 5 of the Dangerous Drugs Act, 1965 :

> "If a person - (a) being the occupier of any premises, permits those premises to be used for the purpose of smoking ... cannabis resin ... or (b) is concerned in the management of any premises used for any such purpose as aforesaid; he shall be guilty of an offence against this Act."

The appellant, the sub-tenant of a farmhouse, let out several rooms to tenants who shared the use of the kitchen. She herself retained and occupied a bedroom. Later she gave up living there, though she came occasionally to collect letters and rent. On June 11, 1967, quantities of drugs, including cannabis resin, were found in the farmhouse and the appellant was charged with being concerned in the management of premises used for the purpose of smoking cannabis resin, contrary to section 5 (b) of this Act. The appellant conceded that the premises had been so used. The prosecutor conceded that she did not know this. She was convicted of the offence.

Held, that the offence created by section 5 (b) was not an absolute offence and the conviction should be quashed. The words "used for the purpose" in section 5 (b) refer to the purpose of the management and mens rea is an essential ingredient of the offence.

Mens rea is an essential ingredient of every offence unless some reason can be found for holding that it is not necessary, and the court ought not to hold that an offence is an absolute offence unless it appears that that must have been the intention of Parliament.

Per Lord Diplock: It is a general principle of construction of any enactment which creates a criminal offence that, even where the words used to describe the prohibited conduct would not in any other context connote the necessity for any particular mental element, they are nevertheless to be read as subject to the implication that a necessary element in the offence is the absence of a belief, held honestly and on reasonable grounds, in the existence of facts which, if true, would make the act innocent (post, p. 163A-B).

Reg. v. Tolson (1889) 23 Q.B.D. 168 approved.

Reg. v. Warner [1969] 2 A.C. 256; [1968] 2 W.L.R. 1303; [1968] 2 All E.R. 356 , H.L.(E.) considered.

*Decision of the Divisional Court of the Queen's Bench Division **133 Decision of the Divisional Court of the Queen's Bench Division [1968] 2 Q.B. 418; [1968] 2 W.L.R. 1360; [1968] 2 All E.R.*

337 , D.C. reversed.

The following cases are referred to in their Lordships' opinions:

Attorney-General v. Lockwood (1842) 9 M. &; W. 378 .

Bank of New South Wales v. Piper [1897] A.C. 383, P.C. .

Brend v. Wood (1946) 175 L.T. 306, D.C. .

Derbyshire v. Houliston [1897] 1 Q.B. 772, D.C. .

Dyke v. Elliott. The "Gauntlet" (1872) L.R. 4 P.C. 184, P.C. .

Lim Chin Aik v. The Queen [1963] A.C. 160; [1963] 2 W.L.R. 42; [1963] 1 All E.R. 223, P.C. .

M'Naghten's Case (1843) 10 Cl. &; F. 200 .

Maher v. Musson (1934) 52 C.L.R. 100 .

Pearks, Gunston & Tee Ltd. v. Ward [1902] 2 K.B. 1, D.C. .

Proudman v. Dayman (1941) 67 C.L.R. 536 .

Reg. v. Gould [1968] 2 Q.B. 65; [1968] 2 W.L.R. 643; [1968] 1 All E.R. 849, C.A. .

Reg. v. Tolson (1889) 23 Q.B.D. 168 .

Reg. v. Warner [1969] 2 A.C. 256; [1968] 2 W.L.R. 1303; [1968] 2 All E.R. 356 , H.L.(E.).

Rex v. Wheat; Rex v. Stocks *[1921] 2 K.B. 119, C.C.A.* .

Sherras v. De Rutzen [1895] 1 Q.B. 918, D.C. .

Thomas v. The King (1937) 59 C.L.R. 279 .

Woolmington v. Director of Public Prosecutions [1935] A.C. 462 , H.L.(E.).

Yeandel v. Fisher [1966] 1 Q.B. 440; [1965] 3 W.L.R. 1002; [1965] 3 All E.R. 158, D.C. .

The following additional cases were cited in argument:

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Abbott v. Smith [1965] 2 Q.B. 662n.; [1965] 3 W.L.R. 362; [1964] 3 All E.R. 762 .

Attorney-General v. Crayford Urban District Council [1962] Ch. 575; [1962] 2 W.L.R. 998;

[1962] 2 All E.R. 147, C.A. .

Barker v. Levinson [1951] 1 K.B. 342; [1950] 2 All E.R. 825, D.C. .

Beaver v. The Queen [1957] S.C.R. 531 .

Brentnall & Cleland Ltd. v. London County Council [1945] K.B. 115; [1944] 2 All E.R. 552, D.C. .

Burns v. Bidder [1967] 2 Q.B. 227; [1966] 3 W.L.R. 99; [1966] 3 All E.R. 29, D.C. .

Chajutin v. Whitehead [1938] 1 K.B. 506; [1938] 1 All E.R. 159, D.C. .

Clark v. Taylor (1948) 112 J.P. 439; [1948] W.N. 410, D.C. .

Core v. James (1871) L.R. 7 Q.B. 135, D.C. .

Cundy v. Le Cocq (1884) 13 Q.B.D. 207, D.C. .

Donovan v. Gavin [1965] 2 Q.B. 648; [1965] 3 W.L.R. 352; [1965] 2 All E.R. 611, D.C. .

Fletcher v. Birkenhead Corporation [1907] 1 K.B. 205, C.A. .

Fraser v. Beckett & Sterling Ltd. [1963] N.Z.L.R. 481 .

Gaumont British Distributors Ltd. v. Henry [1939] 2 K.B. 711; [1939] 2 All E.R. 808, D.C. .

Harding v. Price [1948] 1 K.B. 695; [1948] 1 All E.R. 283, D.C. .

Hart v. Bex [1957] Crim.L.R. 622, D.C. .

Hearne v. Garton (1859) 2 E. &; E. 66 .

Hill v. Baxter [1958] 1 Q.B. 277; [1958] 2 W.L.R. 76; [1958] 1 All E.R. 193, D.C. .

Hobbs v. Winchester Corporation [1910] 2 K.B. 471, C.A. . ***134**

Hughes v. Hall [1960] 1 W.L.R. 733; [1960] 2 All E.R. 504 .

James & Son Ltd. v. Smee; Green v. Burnett [1955] 1 Q.B. 78; [1954] 3 W.L.R. 631; [1954] 3 All E.R. 273, D.C. .

Korten v. West Sussex County Council (1903) 72 L.J.K.B. 514, D.C. .

Laird v. Dobell [1906] 1 K.B. 131, D.C. .

Leicester v. Pearson [1952] 2 Q.B. 668; [1952] 2 All E.R. 71, D.C. .

Lomas v. Peek (1947) 63 T.L.R. 593; [1947] 2 All E.R. 574, D.C. .

Morissette v. United States (1951) 342 U.S. 246 .

Mousell Brothers Ltd. v. London & North-Western Railway Co. [1917] 2 K.B. 836, D.C. .

Mullins v. Collins (1874) L.R. 9 Q.B. 292, D.C. .

Parker v. Alder [1899] 1 Q.B. 20, D.C. .

Patel v. Comptroller of Customs [1966] A.C. 356 ; [1965] 3 W.L.R. 1221; [1965] 3 All E.R. 543, P.C. .

Reg. v. Ball and Loughlin (1966) 50 Cr.App.R. 266 , C.C.A. .

Reg. v. Bishop (1880) 5 Q.B.D. 259 .

Reg. v. Cummerson [1968] 2 Q.B. 534; [1968] 2 W.L.R. 1486; [1968] 2 All E.R. 863, C.A. .

Reg. v. Prince (1875) L.R. 2 C.C.R. 154 .

Reg. v. St. Margaret's Trust Ltd. [1958] 1 W.L.R. 522; [1958] 2 All E.R. 289, C.C.A. .

Reg. v. Salter [1968] 2 Q.B. 793; [1968] 3 W.L.R. 39; [1968] 2 All E.R. 951, C.A. .

Reg. v. Woodrow (1846) 15 M. &; W. 404 .

Rex v. Lolley (1812) Russ. &; Ry. 237 .

Rex v. Marsh (1824) 4 Dow. &; Ry.K.B. 260.

Reynolds v. G. H. Austin & Sons Ltd. [1951] 2 K.B. 135; [1951] 1 All E.R. 606, D.C. .

Salomon v. Commissioners of Customs and Excise [1967] 2 Q.B. 116; [1966] 3 W.L.R. 1223 ; [1966] 2 All E.R. 340, C.A. .

Sambasivam v. Public Prosecutor, Federation of Malaya [1950] A.C. 458, P.C. .

Ware v. Fox [1967] 1 W.L.R. 379; [1967] 1 All E.R. 100, D.C. .

Watson v. Coupland (1945) 175 L.T. 92; [1945] 1 All E.R. 217, D.C. .

Young v. Buckles [1952] 1 K.B. 220; [1952] 1 All E.R. 354, C.A. .

APPEAL from the Queen's Bench Division (Lord Parker C.J., Ashworth and Blain JJ.).

On July 21, 1967, a charge was made by the respondent, Edmund Raymond Parsley, a sergeant of the Oxfordshire Constabulary, against the appellant, Stephanie Sweet, that she on June 11, 1967, was concerned in the management of certain premises which were used for the purpose of smoking cannabis or cannabis resin, contrary to section 5 (b) of the Dangerous Drugs Act, 1965 . The Woodstock justices convicted the appellant. The Divisional Court of the Queen's Bench Division, having upheld the conviction, she appealed to the House of Lords.

The facts, stated by Lord Reid, were as follows: The appellant was convicted at Woodstock Petty Sessions on September 14, 1967, on a charge that on June 16, 1967, she was concerned in the management of certain premises at Fries Farm, oxfordshire, which were used for the purpose of smoking cannabis contrary to section 5 (b) of the Dangerous Drugs Act, 1965 . She was fined £25 and ordered to pay £12 18s. 0d. costs. It appears from the case stated by the justices that the tenant of this farm had sublet ***135** the farmhouse to her at a rent of £28 per four weeks. She was a teacher at a school in oxford and she had intended to reside in this house and travel daily by car to oxford. This proved to be impracticable so she resided in oxford and let rooms in the house at low rents to tenants allowing them the common use of the kitchen. She retained one room for her own use and visited the farm occasionally to collect her letters, to collect rent from her tenants and generally to see that all was well. Sometimes she stayed overnight but generally she did not.

On June 16, while she was in oxford, the police went to the premises with a search warrant. They found receptacles hidden in the garden which contained cannabis resin and L.S.D. They also found in the kitchen cigarette ends containing cannabis, and an ornamental hookah pipe which belonged to the appellant and which had, admittedly without her knowledge, been used for smoking this substance.

The justices found that:

> "At the time of the search the appellant was not at the premises but there was a mixture of people there of the 'beatnik fraternity' between the approximate ages of 17 and 22 including three females."

They also found that the appellant

> "did not enter the rooms of tenants except by invitation and she had no reason to go into their rooms. Her own room was occasionally used in her absence by other persons who lived in the house. She had no knowledge whatever that the house was being used for the purpose of smoking cannabis or cannabis resin. Once or twice when staying overnight at the farmhouse the appellant shouted if there was excessive noise late at night but otherwise she did not exercise any control over the tenants except that she collected rent from them."

Rose Heilbron Q.C. and *Ian Brownlie* for the appellant. Absolute liability should be kept within clearly defined limits.

The questions for the decision of the House of Lords are set out in the order of the Queen's Bench Division dated May 13, 1968:

> "(1) Whether section 5 (b) of the Dangerous Drugs Act, 1965 , creates an absolute offence. (2) What, if any, mental element is involved in the offence; and (since leave to appeal is given in regard to (1) and (2) above) (3) Whether on the facts found a reasonable bench of magistrates, properly directing their minds to the law, could have convicted the appellant."

It is submitted: (1) The authorities establish that, when a statutory offence is created, there is a presumption that mens rea is implied and, with certain limited exceptions, no one should be convicted of an offence if he is morally blameless.

(2) By reason of the nature and consequences of a conviction of this type of offence, when a person

is blameless there should be limited categories of absolute liability.

(3) These should depend on clearly stated tests and conditions.

(4) These categories should not be extended without clear and express words in the section of the Act creating a new offence.

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(5) The conditions and the reasons for which the court decided that this was an offence of absolute liability are not the appropriate ones.

(6) In any event this section does not exclude the principle of mens rea; its words are so wide as to be clearly within the principle.

(7) By designating this offence as one of absolute liability the Divisional Court was extending the previously accepted categories.

(8) One of the chief objects or reasons for imposing absolute liability is to convict a person who is, or should be, in a position to prevent the mischief aimed at by the statute.

(9) The object is or may be achieved by prosecuting a person who can do this either by his own actions or by reason of his control over someone whom he can or may influence.

(10) There is no warrant for extending this principle of absolute liability to cover the case of a person whose actions are lawful but are said to become unlawful only by reason of the act of some person or persons over whom he has no effective control.

(11) Some of the authorities indicate that there may be a half-way house, a category of liability which could be termed strict rather than absolute and to which the defence of mens rea could or should be permitted.

(12) In such cases there is authority for the proposition that the burden of proof of mens rea may be placed on the defendant. So that unless he proves no knowledge he can be convicted, while, if he does he is acquitted.

(13) The words "concerned in the management of any premises" in section 5 of the Dangerous Drugs Act, 1965 , connote, as in similar previous Acts, an active or direct participation in the nature of a business or enterprise.

(14) So, even if this were held to be an offence of absolute liability, the appellant was not concerned in the management of the premises.

Sections 33 and 34 of the Sexual offences Act, 1956 , dealing with brothels, draw a great distinction between being a landlord and being a manager. For a landlord to be liable he would have to take an active part in managing the premises. "Management" means, not the acts which a landlord does in the ordinary running of the premises, but the taking part in some activity. The phrase used in the Act of 1965 is similar to that used in the Acts dealing with brothel keeping.

The Dangerous Drugs Acts go back to 1920: see also the Dangerous Drugs Act, 1925 . It was section 5 (d) of the Act of 1920 that made it an offence to be "concerned in the management of any premises" used for the purpose of the preparation of opium for smoking or for the sale or smoking of prepared opium. That is the origin of the expression. It was not until section 9 (1) of the Dangerous Drugs Act, 1964 , dealing with cannabis that the words were applied to that drug.

Wardens of university hostels in day-to-day management of them are far more intimately concerned with the management of those premises than the appellant was concerned in the management of the premises in the present case. If the decision of the Divisional Court is right, they would have no defence under this section. So, too, in the case of the headmaster of a school, a prison governor or the manager of an hotel, since all are concerned in management. Section 19 of the Act of 1965 provides an ***137** escape clause for company directors. But the housing manager of a local authority would be within section 5 (b) if it was narrowly construed. All this indicates that it was meant to be widely construed and that it was not intended to create an absolute offence.

If section 5 (b) does not create an absolute offence, it may be that section 20 (3) puts the burden on the defence. Section 8 deals with opium and follows the similar section in the Act of 1920, and if one

of the appellant's tenants had used opium she would, in the view of the Divisional Court, have been equally liable to conviction: see also section 14 .

The clear mischief at which this Act aims is the possession and sale of dangerous drugs by penalising the persons who use them and the persons who allow their premises to be used for purposes connected with the use of dangerous drugs.

As to the meaning of "concerned in the management," see *Yeandel v. Fisher [1966] 1 Q.B. 440* , where the facts were very different from those in the present case, when there was no evidence of "management." A person "concerned in the management of ... premises" is one who either alone or with others has active control of premises for reward or who is actively directing or participating in some business or enterprise or activity carried on in these premises.

In section 5 (b) of the Act of 1965 the word "knowingly" must be implied. To connive or shut one's eyes amounts to passively allowing the offence to take place. There is no reason why so rigorous a test as that suggested by the Crown should be applied to a manager of premises, who may be less intimately concerned with them than the occupier, since the occupier may have more control over them than the manager.

The origin of the expression "concerned in the management" is section 5 (d) of the Act of 1920, dealing with opium. The whole section presupposes a guilty mind. Otherwise "frequents any place" in section 5 (f) would catch the gardener employed at a house used for opium smoking. See also section 15 (1) of the Dangerous Drugs Act, 1951 , and section 9 (1) of the Act of 1964. Section 10 of that Act uses the expression "knowingly cultivates" any plant of the genus Cannabis. Compare section 5 and section 8 of the Act of 1965.

It is hard to find what crime the appellant committed unless "knowingly" is imported. Otherwise her crime is unlike most criminal acts and of far wider range. She is, for instance, not in the position of a man selling bad meat through his agents, even though he does not know it is bad. To assist in the management of a brothel has never been an absolute offence; absence of knowledge is a defence: see section 13 of the Criminal Law Amendment Act, 1885 , amended by section 7 of the Criminal Law Amendment Act, 1912 , which added the words "or person in charge." See also sections 33 et seq. of the Sexual offences Act, 1956 . In these Acts the word "management" is linked with the compendious word "brothel." In section 13 of the Act of 1885 "the tenant, lessee, or occupier of the premises" must "knowingly" permit the premises to be so used. The concept of "management" comes into the Betting Acts in connection with the management of betting offices and into the Income Tax Acts.

Authorities on management are *Donovan v. Gavin [1965] 2 Q.B. 648* , ***138** 661; *Abbott v. Smith [1965] 2 Q.B. 662n* .; *Attorney-General v. Crayford Urban District Council [1962] Ch. 575* , 585-586; *Ware v. Fox [1967] 1 W.L.R. 379* ; *Barker v. Levinson [1951] 1 K.B. 342* and *Sherras v. de Rutzen [1895] 1 Q.B. 918* .

The appellant was really in the position of a landlord and in effect was no different from any other landlord in charge of premises. There is no evidence that she made any profit. She had no right to enter the tenants' rooms or to refuse entrance to them or to their guests. If the offence were held to be absolute, the effect would be the opposite of deterrent in that it would not encourage people to look for cannabis in their premises because, if they found it they would be guilty in law.

As to absolute offences generally, a state of mind can be inferred from the circumstances of a given case, and there is no reason to impute to Parliament an intention to create an absolute offence on the ground that it may be hard to ascertain a state of mind.

As to this branch of the case, see *Lim Chin Aik v. The Queen [1963] A.C. 160* , 172; *Reg. v. Gould [1968] 2 Q.B. 65* , 73-74; *Hobbs v. Winchester Corporation [1910] 2 K.B. 471* ; *Reg. v. St. Margaret's Trust Ltd. [1958] 1 W.L.R. 522* ; *Reynolds v. G. H. Austin &: Sons Ltd. [1951] 2 K.B. 135* , 147-148, 149; *Leicester v. Pearson [1952] 2 Q.B. 668* and *Burns v. Bidder [1967] 2 Q.B. 227* .

In some Factory Act cases absolute liability is imposed where the words are clear, but this is not so in other categories. There are cases where the state of affairs on given premises is lawful and only becomes unlawful through the act of a third person even when the person in charge of the premises has no control. There, absolute liability is not appropriate because the person in charge of the premises could not so order his affairs and his organisation as to prevent what happened.

The tests of whether or not Parliament intended to impose an absolute duty are set out in *Mousell*

Brothers Ltd. v. London and North Western Railway Co. [1917] 2 K.B. 836 , 845-846 - the words used, the nature of the duty, the person on whom it is imposed, the person by whom it would be performed, the person on whom the penalty is imposed. Other tests are (1) whether the object of the Act would be rendered nugatory if the defendant were not convicted, and (2) whether the defendant is in a position to influence the conduct of others so as to prevent a breach of the Act. Every definition of a crime contains expressly or by implication a proposition as to state of mind: *Reg. v. Tolson (1889) 23 Q.B.D. 168* , 187, which was followed in Reg. v. Gould [1968] 2 Q.B. 65 , which resolved the conflict between that case and *Rex v. Wheat [1921] 2 K.B. 119* .

In some cases "knowingly" has not been required to be an ingredient of the offence: *Cundy v. Le Cocq (1884) 13 Q.B.D. 207* , 209; Chajutin v. Whitehead [1938] 1 K.B. 506 , 508-509; Reg. v. Cummerson [1968] 2 Q.B. 534 . In other cases guilty knowledge has been required: *Core v. James (1871) L.R. 7 Q.B. 135* , 137; Lim Chin Aik v. The Queen [1963] A.C. 160 , 176, and Harding v. Price [1948] 1 K.B. 695 , 703-704. In the latter case it was held that the enactment in question relieved the prosecution from the burden of proving knowledge on the part of the defendant but that it did not follow that he might not set up and prove lack of knowledge as a defence. The present case is stronger than that case. In Sambasivam ***139** v. Public Prosecutor, Federation of Malaya [1950] A.C. 458 the words "to his knowledge" were implied in the definition of the offence: see also Gaumont British Distributors Ltd. v. Henry [1939] 2 K.B. 711 ; Derbyshire v. Houliston [1897] 1 Q.B. 772 ; *Fraser v. Beckett & Sterling Ltd. [1963] N.Z.L.R. 481* , 486, 487 and *Maher v. Musson (1934) 52 C.L.R. 100* .

One must distinguish between the burden of establishing guilt, on the one hand, and the evidential burden of establishing a prima facie case, on the other.

The first submission for the appellant is that for a conviction under section 5 (b) of the Act there must be mens rea. The second submission is that unless a defendant exculpates himself by showing that he did not know and had no reason to suspect that the premises were being used in a prohibited way he must be convicted. This half-way house is that Parliament did not intend to take away the defence that the defendant did not know this, but put on him the onus of proving that he did not know. What magistrates and juries want shown is whether there is a defence and what has been established by the evidence.

The difficulty about *Warner's case [1969] 2 A.C. 256* , is that it has been treated as a decision that possession of drugs is an absolute offence and that the defendant must be convicted unless he proves himself innocent.

Before *Reg. v. Prince (1875) L.R. 2 C.C.R. 154* absolute liability was only imposed when there were very strong reasons. Now the reasons demanded are less strong. The magnitude of the social problem is not a satisfactory test. Murder also is a grave social problem and so is unlawful wounding, yet they are not absolute offences. The primary test is not the surrounding circumstances of the social evil: see Reg. v. St. Margaret's Trust Ltd. [1958] 1 W.L.R. 522 and James & Son Ltd. v. Smee [1955] 1 Q.B. 78 , 93. In Parker v. Alder [1899] 1 Q.B. 20 , 25 and Hart v. Bex [1957] Crim.L.R. 622 , 623 there was technical guilt but the court expressed regret at the prosecution.

In Leicester v. Pearson [1952] 2 Q.B. 668 the court qualified what on the face of the wording of a regulation appeared to be an absolute offence, but in Hughes v. Hall [1960] 1 W.L.R. 733 on a similar regulation the court reached a different result. But in Burns v. Bidder [1967] 2 Q.B. 227 , 231, 241 it was held that Leicester v. Pearson [1952] 2 Q.B. 668 had not been overruled: see also James & Son Ltd. v. Smee [1955] 1 Q.B. 78 , 89 which turned on control, whereas control is entirely absent in the present case. *Hearne v. Garton (1859) 2 E. & E. 66* indicated that a person should not be held liable for the act of one over whom he has no control.

Parker v. Alder [1899] 1 Q.B. 20 does not stand with the other authorities: see also *Watson v. Coupland (1945) 175 L.T. 92* ; Brentnall & Cleland Ltd. v. London County Council [1945] K.B. 115 is distinguishable because the court held that the defendants were delegating their responsibility of delivering coal to their agents.

Laird v. Dobell [1906] 1 K.B. 131 which followed *Korten v. West Sussex County Council (1903) 72 L.J.K.B. 514* is no longer good law. These are the only cases which could be said to be against the contention that the defendant is not liable if the primary offender is a person over whom he has no control.

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If one imported the concept of negligence into the statute (the first time such a thing had been done) adopting the standard of a reasonably careful landlord, that would apply to the case of the master of a college or the warden of a hostel, or the governor of a prison. Being "concerned in the management" of premises brings in, not only the landlord, but also all his servants or agents and on the respondent's contentions would import into the Act a liability so wide that no one would know where he was. But this is a penal statute and liability under it must be clear, which it would not be if the concept of negligence were imported into the Act. Anyone who took a drug addict as tenant would be put on inquiry.

The concept of management may be narrowed to a club or a public house, where the manager has full control of the place. That would cover very few people: see *Yeandel's case [1966] 1 Q.B. 440* and would not cover an hotel manager. That case was referred to in *Warner'scase, [1969] 2 A.C. 256* , 296. Even on the criterion that a public house keeper must take due care, he might still defend himself on the ground that he did take due care but could not detect someone smoking in a corner something which looked like a cigarette but was really cannabis. One should interpret a statute in such a way that it does not lead to absurdity. As to construction of statutes, see *Fletcher v. Birkenhead Corporation [1907] 1 K.B. 205* , 213. For a conviction knowledge is necessary (see Warner's case *[1969] 2 A.C. 256* , 306) or at least wilful blindness, shutting one's eyes to the obvious. Negligence is not enough.

As to mens rea, which may mean several different things, the principles laid down in *Reg. v. Tolson (1889) 23 Q.B.D. 168* , 185, 188, 191 apply: see also *Thomas v. The King (1937) 59 C.L.R. 279* , 309, 311, 311-312.

It is hard to say why one should take (a) the reasonable construction of this Act and (b) the natural meaning of the words, without allowing any presumption that it should be construed in favour of the accused. If one were looking for the intention of Parliament, one would look to see, not whether it was intended to create an absolute offence but what it was that Parliament was trying to stop. When words are doubtful, as the words are here, it is necessary to look at the intention of Parliament, which was to penalise the possession of drugs. To achieve this end it is not necessary that section 5 (b) should create an absolute offence.

In *Reg. v. Tolson 23 Q.B.D. 116* the Crown established a prima facie case against the accused that she had infringed the terms of the statute relating to bigamy unless she had reasonable grounds to believe that her husband was dead. The terms of the Act were closer to being absolute than those of the Act in the present case. It was there said that if the defendant produced no explanation, she must be held to have infringed the Act, but she showed that she had no guilty intent because she believed on reasonable grounds that her husband was dead. The case established that what the defendant did was in fact innocent and would only have become guilty if she had a guilty mind: see also *Proudman v. Dayman (1941) 67 C.L.R. 536* , 540. In this context the word "burden" is not very apt nor is "onus," which has acquired a special meaning from *Woolmington v. Director of Public Prosecutions [1935] A.C. 462* . What Dixon J. was saying in *Proudman v. Dayman 67 C.L.R. 536* was that, although the burden is on the prosecution, it lies on the accused to raise ***141*** a defence, if it is a defence, so that in such a case the defendant must prove lack of guilty knowledge or guilty intent. The defendant must then introduce it, because often it could not be within the knowledge of the prosecution. There is a category of absolute offences in which the lack of guilty knowledge does not entitle to an acquittal. In other cases the offences are not absolute but the liability is strict. There the prosecution can establish a prima facie case but the defendant can exculpate himself by proving lack of guilty knowledge.

As to the meaning of "used for the purposes," see *Young v. Buckles [1952] 1 K.B. 220* , section 36 of the Sexual Offences Act, 1956, and *Donovan v. Gavin [1965] 2 Q.B. 648* . The phrase can connote a course of events. One would have thought it meant a general or substantial purpose, although in section 5 (b) of the Act of 1965 there is nothing explicit to exclude the smoking of one cannabis cigarette. The "purpose" must be the smoker's purpose and that the manager must be "concerned" in it. As to the management of premises, see *Yeandel v. Fisher [1966] 1 Q.B. 440* .

Ian Brownlie following. When the language of a statute is ambiguous, one may resolve the ambiguity and find a guide to Parliament's intentions by reference to its terms and to the history of the legislation and to any treaties with which the Act is connected: *Salomon v. Commissioners of Customs and Excise [1967] 2 Q.B. 116* .

The background of the Dangerous Drugs Acts, 1964 and 1965, was the Single Convention on Narcotic Drugs signed at New York on March 30, 1961 (Cmnd. 1580) . It is to be presumed that

Parliament did not intend the provisions of the Acts to conflict with the obligations of the Crown. From the Dangerous Drugs Act, 1920 , the legislation has always been connected with treaties by which the Crown was bound: see the Convention between Great Britain, China, etc., regulating the trade in, and controlling the use of opium, morphia and cocaine, signed at The Hague on January 23, 1912. (British and Foreign State Papers, 1912, Vol. 105.)

In section 11 (1) of the Act of 1964 the Convention of 1961 is referred to: see articles 7, 28, 29 and 30 of the Convention. Particular reliance is placed on the words "committed intentionally" in article 30 (1) . Though not conclusive, they are a significant factor in the interpretation of the Acts. It would be reasonable to infer a limitation to cases of mens rea: see *Reynolds' case [1951] 2 K.B. 135* , 150-151.

Douglas Draycott Q.C. and *R. A. M. C. Talbot* for the respondent. A person "concerned in the management of any premises" is one who is immediately responsible for their conduct and who has the power to say who may come into the premises and how long that person shall stay and what shall or shall not be done on the premises.

The following propositions are submitted: (1) Section 5 (b) of the Dangerous Drugs Act, 1965 , is meant not only to punish, but also to bring pressure to bear on persons concerned in the management of premises to ensure in the interests of public welfare that the provisions of the statute are observed.

(2) In the case of statutory offences, unless the statute expressly or by implication excludes mens rea, it is a necessary ingredient of the offence.

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(3) On the true construction of section 5 (b) of the Act, the presumption of mens rea has been displaced.

(4) (a) If mens rea is an ingredient of the offence created by section 5 (b), then in order to give effect to the presumption section 5 (b) must be read as follows:

> "... is concerned in the management of any premises which he knows or ought to know or has reason to suspect are being used for any such purpose as aforesaid ..."

(b) In order to give effect to the half-way house theory, the subsection must be read as follows:

> "... is concerned in the management of any premises used for any such purpose as aforesaid shall be guilty of an offence against this Act unless he proves that the act constituting the offence took place without his knowledge or consent."

(5) On the facts found the magistrates were entitled to find that the appellant was concerned in the management of the premises.

As to proposition (1), see Dean Roscoe Pound on The Spirit of the Common Law, p. 52, quoted by Lord Reid in *Warner'scase [1969] 2 A.C. 256* , 276-277 and by Devlin J. in *Reynolds' case [1951] 2 K.B. 135* , 149. It has always been quoted with approval in connection with this type of legislation. What was said in *Lim Chin Aik v. The Queen [1963] A.C. 160* , 174 is also an accurate statement in relation to this proposition: see also *Pearks, Gunston & Tee Ltd. v. Ward [1902] 2 K.B. 1* , 11.

Maher v. Musson (1934) 52 C.L.R. 108 was decided before *Woolmington's case [1935] A.C. 462* and so Dixon J. did not have the advantage of it. As to the Australian cases, see the article on "Strict Responsibility in the High Court of Australia" by Colin Howard (1960) 76 Law Quarterly Review 547. It refers to the half-way house of incorporating into the criminal law the concept of responsibility for negligence. It indicates the approach of which one must be aware in reading the Australian cases.

If there was a presumption of mens rea in this class of case, it has been whittled down in recent years. Over many years food, drugs and liquor has been a field in which Parliament has been apt to create absolute offences, although mens rea has not disappeared. Absolute offences and mens rea sometimes occur in the same Act. Legislation of this kind affects public health and considerable difficulties face prosecutors in this field, so that from time to time the legislature takes the view that certain acts are so odious and undesirable that they must be absolutely forbidden. For example, in

Reg. v. Ball and Loughlin (1966) 50 Cr.App.R. 266 no blame attached to the driver. *Hill v. Baxter [1958] 1 Q.B. 277* seems to be at the root of the recent cases where there have been convictions without there being a guilty mind. Mechanical defects, epileptic fits, bees and wasps have been recognised as providing defences to charges of dangerous driving because in the circumstances the defendant could not be said to be driving at all, but apart from that no defence to the statutory charge has been allowed. But the appellant in this case does not fall within the category of a "luckless victim" and was properly convicted.

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However carefully Acts are drafted there may be luckless victims. One could be a luckless victim within the decision in *Warner's case [1969] 2 A.C. 256* . Suppose A asks B to go to the chemist with a prescription for a sleeping draught. B goes innocently without knowing that A and the chemist are in league, so that on seeing the prescription the chemist puts liquid LSD into the bottle. B, carrying the bottle, is stopped by the police and is found in possession of the prohibited substance. He knows it is a drug, but is mistaken as to its nature. Under *Warner's* case he would have no defence, although the Act was not drafted to catch that sort of person. Yet, because there may be a chance in a million of such a case occurring that is no argument for not saying that Parliament intended to create an absolute offence.

As to proposition (2), despite the language used in many cases, the courts have not departed from this fundamental principle. The real question which a court must consider is: Has the necessity for mens rea been displaced? *Reg. v. Tolson 23 Q.B.D. 168* is the recognised highlight of the principle. When it was decided *Reg v. Woodrow (1846) 15 M. & W. 404* had already begun to make inroads into the principle: see also *Bank of New South Wales v. Piper [1897] A.C. 383* , 389; *Patel v. Comptroller of Customs [1966] A.C. 356* , 361 is a recent authority of very great weight on the construction of such a statute as this.

Any other view than the prosecution's would render the Act ineffective from a practical standpoint. The only practical way for Parliament to avoid absolute offences is to transfer the onus. That is for Parliament to do and it has not chosen to do so here. Here there is a broad prohibition. In the end one must look at the words of the Act and, applying the rules of construction, find what Parliament meant. If one looked at anything else, the whole matter would be one of conjecture. It is not open to any court to legislate rather than interpret. It is all a question of what Parliament meant in the particular Act. In *James & Son Ltd. v. Smee [1955] 1 Q.B. 78* the regulations contained both absolute and non-absolute offences.

If "knowingly" is omitted from the enactment one may ask oneself why Parliament has omitted a word which it could well have included. In some cases it may be that it was unnecessary, but in other cases the omission may be significant and the court may come to the conclusion that it was deliberate: *Lomas v. Peek (1947) 63 T.L.R. 593* , 594; *Yeandel v. Fisher [1966] 1 Q.B. 440* , 447 and *Reg. v. Bishop (1880) 5 Q.B.D. 259* , 261. This last is a strong case. None of the judges had any doubt on the question of knowledge.

One should look carefully at an Act to see whether or not the normal presumption has been displaced. But in a matter of construction the mere fact that there is a penal section which provides for imprisonment does not in itself decide anything.

Acts such as this provide for the control of premises managed. Managers have always been treated in the interests of public safety as a special class, not part of the general public. In contrast with the public, they take on a special occupation and must be treated as having special responsibilities beyond those of the general public. The question of control arises in this way. It may be asked what was the use of prosecuting ***144** this appellant if she did not know what was going on at the premises. But if the house continued to be used to smoke cannabis and she continued to allow people of the beatnik fraternity to smoke there, the courts would take a different view of the next prosecution. In cases of gaming houses the manager is brought before the court. If he has made an honest mistake the first time, the court is on inquiry the next.

The danger of cannabis smoking is that, unlike the use of other drugs, it is a casual offence which can be committed just as an ordinary cigarette is smoked. The legislation dealing with cannabis resin must be taken to have taken into account the nature of the offence, the type of person who uses the substance and the circumstances in which it is normally used. In construing any section one must have reference to the particular offence at which it is aimed. In the case of opium smoking one needs some paraphernalia. It is the casualness with which cannabis can be absorbed that makes it

dangerous.

This appellant let a remote farmhouse to people of both sexes of the beatnik fraternity. There are two things which such people could get up to in such a place and one of them is taking drugs. Beatniks adopt a way of life which rejects all convention. Their long hair and neglect of washing is a way of exhibiting that rejection, a mark of their not regarding themselves as bound by the ordinary morals of the community. One would not be surprised if in a remote farmhouse they indulged in sex and drugs.

This Act is aimed at the thoughtless and is meant to make people observe their duties to society. This appellant let the premises and collected the rent and her attitude was that what the tenants got up to when she was not there was no business of hers. But if one lets premises to people who are known as a matter of common sense to be likely to behave as these people did, one doés so at one's peril. The Act is putting pressure on people who let premises to ensure that its provisions are observed.

It has been said that, do what one will as the manager of a lodging house, someone may smoke cannabis on the premises. But the merit of this enactment is that it puts those who manage premises under pressure not to act without responsibility as the appellant did. The Act is meant, not merely to punish the vicious, but to put pressure on the thoughtless and the inefficient to do their duty.

With this type of legislation there is a margin of risk that an innocent person may be convicted. But if the Dangerous Drugs Act is to be effective, it must contain severe penal provisions, so as to make managers of premises mindful of their duties under the Act. That is not achieved by exhortation. If a person manages premises he should not let them to persons whom he ought to suspect are addicts. This appellant never applied her mind to the problem at all as she should have done. To let persons of the type here described into a house where there is no supervision is in effect to say that what they do there is their own affair. It is in the interests of society that such managers as the appellant should be put on risk. That is the position of the managers of gaming establishments, who are deliberately put on risk in the interests of proper control. Often one of them, when he is prosecuted for the first time, may say that, if he had known what was going on, he would have put a stop to it, and ***145** then a small fine is usually imposed. But it does bring him to the attention of the courts.

As to the question whether or not a house is being managed, that is a question of fact. The ordinary domestic dwelling-house is not being managed. But if one makes a business of taking in lodgers and letting flats or rooms, one is managing the premises. The appellant sublet the premises or had lodgers. That is the sort of evidence on which the court can say that the premises were being managed. Various kinds of premises are "managed," for example, brothels.

It is impossible to devise a bold prohibition so that someone will not be made a luckless victim. The courts must recognise that sort of case when it comes along. If the majority of managers are not brought in, a great gap will be left in the Act. It is designed to bring managers to heel in the first instance and to take a more severe view of any later offence. It seeks to make managers aware of their duties, so that they will try to prevent the smoking of cannabis. Without such a prohibition as that in section 5 (b) there could be no enforcement in the case of this type of offence.

As to mens rea, see *Reg. v. Cummerson [1968] 2 Q.B. 534* , 541-542, and *Reg. v. Salter [1968] 2 Q.B. 793* , 801. The court can take a wide look round to see the context in which Parliament was enacting the prohibition, so as to see whether it is repugnant to deduce that an absolute offence was intended to be enacted. Parliament's intention can only be deduced from what Parliament said. It must be taken to have meant what it said and a court cannot look at the words of the Act in greater depth. If Parliament did not say what it meant, the remedy is in its own hands and not those of the court. Parliament here has expressly and impliedly displaced the usual requirement of "knowingly." In reaching that conclusion there are several factors, no one of which is individually decisive: see *Mullins v. Collins (1874) L.R. 9 Q.B. 292* , 295.

As to proposition (3), from section 19 of the Act of 1965 it is clear that Parliament had in mind that "person" in section 5 should include a limited company. A company is "concerned" through its servants or agents: see *James & Son Ltd. v. Smee [1955] 1 Q.B. 78* . By section 19 the chairman and every director of a company may exonerate themselves by proving that they had no knowledge. When there is in an Act a section which, while creating an offence, provides an escape clause which shifts the onus of proof, it becomes more difficult to infer such a half-way house in other sections, because the possibility was evidently present to the mind of the draftsman, who expressed it when he meant to do so. Thus, finding section 5 (b) expressed in the widest possible terms, one has good reason to think that it displaces the normal presumption of mens rea. That is how one approaches

section 5 (a) , the terms of which embrace a wide class of the community. Neither part of this section presupposes the presence of the occupier or the manager for a substantial period of time. The section is in wide terms and the permission with which it is concerned is the permission to smoke cannabis on the premises.

As to the possibility of a conviction without proof of mens rea under a penal statute, see *Dyke v. Elliott. "The Gauntlet" (1872) L.R. 4 P.C. 184* , 191, adopted in *Russell on Crime,* 12th ed. (1864), Vol. I, p. 66. Acts must ***146** be construed according to their plain, literal and grammatical meaning: *Attorney-General v. Lockwood (1842) 9 M. & W. 378* , 398. In considering whether the presumption of mens rea has been displaced one must have regard to the plain meaning: see *Beaver v. The Queen [1957] S.C.R. 531* , 538-539, 549.

In section 5 (b) "concerned in the management" relates to the premises and not to their use. If it related to "premises ... used for the purpose," then to obtain a conviction it would have to be proved that the premises B were "used" in the sense that an opium den is used. If section 5 (b) were confined to premises where people habitually smoked cannabis, its scope would be reduced to a pinhead. A course of conduct is not necessary. In section 5 (b), in contrast to section 5 (a), one is dealing with a comparatively small managerial class, who engage in the activity to get money. The person is managing the enterprise which is on the premises. The person aimed at is the person who terminates the tenancy. In the case of a block of flats the person "concerned in the management" is not the porter but the person to whom he reports. Such a person is one above menial duties. Similarly the rent collectors in council flats report back to the council. The test for the purposes of the Act is the question who is responsible, who has the power to say what shall go on in the premises. Such a definition would exclude persons in subordinate capacities. The Act is practical and is meant to deal with a practical situation. If the accused is a company which is convicted, section 19 comes into play and everyone concerned in its management is guilty. In the case of licensed premises the licensee, and not the brewers, who are the landlords, is the usual target of the legislation because it is he who is actually conducting the business on the premises. If one makes a habit of letting properties, one is concerned in their management, but not if one lets one's house during the holidays while one is away.

If cannabis were smoked in a flatlet in a house so divided the landlord would not be within section 5 (b) because each tenant is in his own little castle. But it would be otherwise in the case of a landlady letting lodgings. It depends on whether the tenant is responsible for his own interior.

The reason for section 5 (b) is that unless people observe their duties under the Act the smoking of cannabis would be a daily occurrence. The appellant was at least thoughtless and did not apply her mind to the Act.

Section 27 (2) of the Dangerous Drugs Act, 1965 , keeps alive the Dangerous Drugs (No. 2) Regulations 1964 (S.I. 1964 No. 1811) . In regulation 20 "possession" is defined. Section 8 of the Act of 1965 includes offences with an element of knowledge and (d) must be construed as an absolute offence.

As to the liability of limited companies, see *Brentnall & Cleland Ltd. v. London County Council [1945] K.B. 115* , 119-120,. Under section 19 of the Act of 1965 a company may be convicted but by a transfer of onus the individual directors can escape. If the same effect was intended in section 5 (b), it is strange that similar words were not used.

As to "frequenting," see *Clark v. Taylor (1948) 112 J.P. 439* .

As to proposition (4) (a), this carries the appellants' argument to its logical conclusion. Looking at the wording of section 5 (b) and comparing it with that of section 5 (a), one asks whether the absence or the presence ***147** of knowledge is of significance. To read a dozen words into section 5 (b) comes close to redrafting it. As it stands, there is a bold prohibition and if effect is to be given to the presumption of mens rea a lot must be read into it. The respondent relies strongly on *Patel's case [1966] A.C. 356* , 364-365.

The reason why licensed premises are so well conducted is that the courts have direct control over them.

The proper approach to section 5 (b) is to say that where it is proved that a person is concerned in the management of premises, the next step for the prosecution is to show that they were used for the smoking of cannabis. It is right that the appellant should fall within section 5 (b) so that, if she is brought to court again she should not be able to avail herself of the circumstances which enabled her

to plead ignorance before.

When an absolute offence is created there is always a danger that an innocent person may be convicted. If the Act creating it has a large mesh, many will get away who should have been convicted, and one will fail to cope with the evil. It is better that there should be a fine mesh, since the court can give the innocent an absolute discharge. The Australian courts have got themselves out of the difficulty of saving the innocent fish in the net by turning their back on *Woolmington's case [1935] A.C. 462* and incorporating into their criminal law the concept of negligence, so that a defendant is acquitted if he can show that he was not negligent: see "Strict Responsibility in the High Court of Australia" by Colin Howard (1960) 76 Law Quarterly Review 547, 548, 566. It is dangerous to take at their face value judgments in Australian courts when part of their basis may be this concept of negligence.

It is not for the courts to get Parliament out of a difficulty of its own creation, nor for Parliament to pass an imperfect Act and leave the rest to the court. The court should declare the law and, if necessary, deplore it but it should not mangle or twist the grammatical construction of an Act to save an innocent victim, while frustrating the purpose for which the Act was passed.

As to the history of absolute offences, see *Reg. v. Bishop (1880) 5 Q.B.D. 259* ; *Reg. v. Prince (1875) L.R. 2 C.C.R. 154* ; *Rex v. Lolley (1812) Russ. & Ry. 237* ; *Reg. v. Woodrow (1846) 15 M. & W. 404* ; *Attorney-General v. Lockwood (1842) 9 M. & W. 378* and *Rex v. Marsh* (1824) 4 Dow. & Ry. K.B. 260. After *Reg. v. Woodrow (1846) 15 M. & W.* , 404 there were many cases of absolute offences: see also *Morissette v. United States (1951) 342 U.S. 246* , 249-260.

As to proposition 4 (b) regarding the half-way house: see *Warner's case [1969] 2 A.C. 256* , 303. That is the correct approach to *Woolmington's case [1935] A.C. 462* which represents the law as it stands today and stated the law as it has always been. On the law as it stands the onus cannot be transferred. *Reg. v. Salter [1968] 2 Q.B. 793* , 801-802 provides an example of how the courts interpreted an Act containing some such words as those in italics in the proposition. It is the recognised practice of Parliament to include a transfer of onus clause expressly when it so intends. Such a clause should not be inferred. It is easy for Parliament to deal with this situation and hard for the courts, because such a clause can only be inferred by reading into the section words which are not there.

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As to proposition (5), here one must find what the facts were: (a) The tenancy was in the appellant's name and she was the tenant. (b) She let rooms at a rent determined by the number of tenants. (c) She retained and occupied the bedroom in which the pipe was found. In her absence she allowed people to occupy that room or, anyhow, did not lock it. (d) There was a common use of the kitchen in which the cigarette ends were found. (e) She visited the premises about once a week and sometimes stayed overnight, which shows that she was in touch. (f) When a room was vacant she usually arranged for someone else to move in. (g) She accepted tenants and would have been the person to give notice to unsuitable tenants. (h) Once or twice she exercised control and shouted to people when there was too much noise at night. (i) She collected the rents under the tenancy agreements. (j) She was responsible to the ground landlord for maintaining the interior of the premises in clean and good condition. (k) She said that she more or less "kept tabs" on the tenants. (1) She controlled and directed the house and administered its affairs.

Their Lordships took time for consideration.

Jan. 23, 1969.

LORD REID

stated the facts and continued: My Lords, a Divisional Court dismissed her appeal, holding that she had been concerned in the management of those premises. The reasons given for holding that she was managing the property were that she was in a position to choose her tenants: that she could put them under as long or as short a tenancy as she desired: and that she could make it a term of any letting that smoking of cannabis was not to take place. All these reasons would apply to every occupier who lets out parts of his house or takes in lodgers or paying guests. But this was held to be an absolute offence, following the earlier decision in *Yeandel v. Fisher [1966] 1 Q.B. 440* .

How has it come about that the Divisional Court has felt bound to reach such an obviously unjust

result? It has in effect held that it was carrying out the will of Parliament because Parliament has chosen to make this an absolute offence. And, of course, if Parliament has so chosen the courts must carry out its will, and they cannot be blamed for any unjust consequences. But has Parliament so chosen?

I dealt with this matter at some length in *Warner's case [1969] 2 A.C. 256* . On reconsideration I see no reason to alter anything which I there said. But I think that some amplification is necessary. our first duty is to consider the words of the Act: if they show a clear intention to create an absolute offence that is an end of the matter. But such cases are very rare. Sometimes the words of the section which creates a particular offence make it clear that mens rea is required in one form or another. Such cases are quite frequent. But in a very large number of cases there is no clear indication either way. In such cases there has for centuries been a presumption that Parliament did not intend to make criminals of persons who were in no way blameworthy in what they did. That means that whenever a section is silent as to mens rea there is a presumption that, in order to give effect to the will of Parliament, we must read in words appropriate to require mens rea.

Where it is contended that an absolute offence has been created, the ***149*** words of Alderson B. in *Attorney-General v. Lockwood (1842) 9 M. & W. 378* , 398 have often been quoted:

> "The rule of law, I take it, upon the construction of all statutes, and therefore applicable to the construction of this, is, whether they be penal or remedial, to construe them according to the plain, literal, and grammatical meaning of the words in which they are expressed, unless that construction leads to a plain and clear contradiction of the apparent purpose of the Act, or to some palpable and evident absurdity."

That is perfectly right as a general rule and where there is no legal presumption. But what about the multitude of criminal enactments where the words of the Act simply make it an offence to do certain things but where everyone agrees that there cannot be a conviction without proof of mens rea in some form? This passage, if applied to the present problem, would mean that there is no need to prove mens rea unless it would be "a plain and clear contradiction of the apparent purpose of the Act" to convict without proof of mens rea. But that would be putting the presumption the wrong way round: for it is firmly established by a host of authorities that mens rea is an essential ingredient of every offence unless some reason can be found for holding that that is not necessary.

It is also firmly established that the fact that other sections of the Act expressly require mens rea, for example because they contain the word "knowingly," is not in itself sufficient to justify a decision that a section which is silent as to mens rea creates an absolute offence. In the absence of a clear indication in the Act that an offence is intended to be an absolute offence, it is necessary to go outside the Act and examine all relevant circumstances in order to establish that this must have been the intention of Parliament. I say "must have been" because it is a universal principle that if a penal provision is reasonably capable of two interpretations, that interpretation which is most favourable to the accused must be adopted.

What, then, are the circumstances which it is proper to take into account? In the well known case of *Sherras v. De Rutzen [1895] 1 Q.B. 918* Wright J. only mentioned the subject matter with which the Act deals. But he was there dealing with something which was one of a class of acts which "are not criminal in any real sense, but are acts which in the public interest are prohibited under a penalty" (p. 922). It does not in the least follow that when one is dealing with a truly criminal act it is sufficient merely to have regard to the subject matter of the enactment. One must put oneself in the position of a legislator. It has long been the practice to recognise absolute offences in this class of quasi-criminal acts, and one can safely assume that, when Parliament is passing new legislation dealing with this class of offences, its silence as to mens rea means that the old practice is to apply. But when one comes to acts of a truly criminal character, it appears to me that there are at least two other factors which any reasonable legislator would have in mind. In the first place a stigma still attaches to any person convicted of a truly criminal offence, and the more serious or more disgraceful the offence the greater the stigma. So he would have to consider whether, in a case of this gravity, the public interest really requires that an innocent person should be prevented from proving his innocence in order that fewer guilty men may escape. and equally ***150*** important is the fact that fortunately the Press in this country are vigilant to expose injustice and every manifestly unjust conviction made known to the public tends to injure the body politic by undermining public confidence in the justice of the law and of its administration. But I regret to observe that, in some recent cases where serious offences have

been held to be absolute offences, the court has taken into account no more than the wording of the Act and the character and seriousness of the mischief which constitutes the offence.

The choice would be much more difficult if there were no other way open than either mens rea in the full sense or an absolute offence; for there are many kinds of case where putting on the prosecutor the full burden of proving mens rea creates great difficulties and may lead to many unjust acquittals. But there are at least two other possibilities. Parliament has not infrequently transferred the onus as regards mens rea to the accused, so that, once the necessary facts are proved, he must convince the jury that on balance of probabilities he is innocent of any criminal intention. I find it a little surprising that more use has not been made of this method: but one of the bad effects of the decision of this House in *Woolmington v. Director of Public Prosecutions [1935] A.C. 462* may have been to discourage its use. The other method would be in effect to substitute in appropriate classes of cases gross negligence for mens rea in the full sense as the mental element necessary to constitute the crime. It would often be much easier to infer that Parliament must have meant that gross negligence should be the necessary mental element than to infer that Parliament intended to create an absolute offence. A variant of this would be to accept the view of Cave J. in *Reg. v. Tolson (1889) 23 Q.B.D. 168* , 181. This appears to have been done in Australia where authority appears to support what Dixon J. said in *Proudman v. Dayman (1941) 67 C.L.R. 536* , 540:

> "As a general rule an honest and reasonable belief in a state of facts which, if they existed, would make the defendant's act innocent affords an excuse for doing what would otherwise be an offence."

It may be that none of these methods is wholly satisfactory but at least the public scandal of convicting on a serious charge persons who are in no way blameworthy would be avoided.

If this section means what the Divisional Court have held that it means, then hundreds of thousands of people who sublet part of their premises or take in lodgers or are concerned in the management of residential premises or institutions are daily incurring a risk of being convicted of a serious offence in circumstances where they are in no way to blame. For the greatest vigilance cannot prevent tenants, lodgers or inmates or guests whom they bring in from smoking cannabis cigarettes in their own rooms. It was suggested in argument that this appellant brought this conviction on herself because it is found as a fact that when the police searched the premises there were people there of the "beatnik fraternity." But surely it would be going a very long way to say that persons managing premises of any kind ought to safeguard themselves by refusing accommodation to all who are of slovenly or exotic appearance, or who bring in guests of that kind. and unfortunately drug taking is by no means confined to those of unusual appearance.

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Speaking from a rather long experience of membership of both Houses, I assert with confidence that no Parliament within my recollection would have agreed to make on offence of this kind an absolute offence if the matter had been fully explained to it. So, if the court ought only to hold an offence to be an absolute offence where it appears that that must have been the intention of Parliament, offences of this kind are very far removed from those which it is proper to hold to be absolute offences.

I must now turn to the question what is the true meaning of section 5 of the 1965 Act. It provides:

> "If a person - (a) being the occupier of any premises, permits those premises to be used for the purpose of smoking cannabis or cannabis resin or of dealing in cannabis or cannabis resin (whether by sale or otherwise); or (b) is concerned in the management of any premises used for any such purpose as aforesaid; he shall be guilty of an offence against this Act."

We are particularly concerned with paragraph (b), and the first question is what is meant by "used for any such purpose." Is the "purpose" the purpose of the smoker or the purpose of the management? When in *Warner's case [1969] 2 A.C. 256* , 277 I dealt briefly with *Yeandel's case [1966] 1 Q.B. 440* , I thought it was the purpose of the smoker, but fuller argument in the present case brought out that an identical provision occurs in section 8 (d) which deals with opium. This latter provision has been carried on from the Dangerous Drugs Act, 1920 , and has obviously been copied into the later legislation relating to cannabis. It would require strong reasons - and there are none - to justify giving this provision a new meaning in section 5 different from that which it had in the 1920 Act and now has

in section 8 of the 1965 Act. I think that in section 8 it is clear that the purpose is the purpose of the management. The first purpose mentioned is the purpose of the preparation of opium for smoking which can only be a purpose of the management. I believe that opium cannot be smoked casually anywhere at any time as can a cannabis cigarette. The section is dealing with "opium dens" and the like when the use of opium is the main purpose for which the premises are used. But it is a somewhat strained use of language to say that an ordinary room in a house is "used for the purpose" of smoking cannabis when all that happens is that some visitor lights a cannabis cigarette there. Looking to the origin and context of this provision, I have come to the conclusion that it cannot be given this wide meaning. No doubt this greatly reduces the scope of this provision when applied to the use of cannabis. But that is apt to happen when a draftsman simply copies an existing provision without regard to the different circumstances in which it is to operate. So, if the purpose is the purpose of the management, the question whether the offence with regard to opium in 1920, and now with regard to cannabis, is absolute can hardly arise. It could only arise if, although the manager not only knew about cannabis smoking and conducted the premises for that purpose, some person concerned in the management had no knowledge of that. One would first have to decide whether a person who is not actually assisting in the management can be regarded as being "concerned in the management," although ignorant of the purpose for which the manager was using the ***152** premises. Even if such a person could be regarded as "concerned in the management," I am of opinion that, for the reasons which I have given, he could not be convicted without proof of mens rea.

I would allow the appeal and quash the appellant's conviction.

LORD MORRIS OF BORTH-Y-GEST.

My Lords, it has frequently been affirmed and should unhesitatingly be recognised that it is a cardinal principle of our law that mens rea, an evil intention or a knowledge of the wrongfulness of the act, is in all ordinary cases an essential ingredient of guilt of a criminal offence. It follows from this that there will not be guilt of an offence created by statute unless there is mens rea or unless Parliament has by the statute enacted that guilt may be established in cases where there is no mens rea.

To this effect were the words of Wright J. in *Sherras v. De Rutzen [1895] 1 Q.B. 918* and in *Derbyshire v. Houliston* in *[1897] 1 Q.B. 772* . In the judgment of the Privy Council in *Lim Chin Aik v. The Queen [1963] A.C. 160* the principle was amply expressed. It was said, at p. 172: "That proof of the existence of a guilty intent is an essential ingredient of a crime at common law is not at all in doubt."

But as Parliament is supreme it is open to Parliament to legislate in such a way that an offence may be created of which someone may be found guilty though mens rea is lacking. There may be cases in which, as Channell J. said in *Pearks, Gunston & Tee Ltd. v. Ward [1902] 2 K.B. 1* , 11:

> "... the Legislature has thought it so important to prevent the particular act from being committed that it absolutely forbids it to be done; and if it is done the offender is liable to a penalty whether he had any mens rea or not, and whether or not he intended to commit a breach of the law."

Thus in diverse situations and circumstances and for any one of a variety of reasons Parliament may see fit to create offences and make people responsible before criminal courts although there is an absence of mens rea. But I would again quote with appreciation (as I did in *Warner'scase, [1969] 2 A.C. 256*) the words of Lord Goddard C.J., in *Brend v. Wood (1946) 175 L.T. 306* , 307, when he said:

> "It is of the utmost importance for the protection of the liberty of the subject that a court should always bear in mind that, unless a statute, either clearly or by necessary implication, rules out mens rea as a constituent part of a crime, the court should not find a man guilty of an offence against the criminal law unless he has a guilty mind."

The intention of Parliament is expressed in the words of an enactment. The words must be looked at in order to see whether either expressly or by necessary implication they displace the general rule or presumption that mens rea is a necessary prerequisite before guilt of an offence can be found. Particular words in a statute must be considered in their setting in the statute and having regard to all the provisions of the statute and to its declared or obvious purpose. In 1842 in *Attorney-General v.*

Lockwood (1842) 9 M. & W. 378 , 398 Alderson B. said: ***153**

> "The rule of law, I take it, upon the construction of all statutes ... is, whether they be penal or remedial, to construe them according to the plain, literal, and grammatical meaning of the words in which they are expressed, unless that construction leads to a plain and clear contradiction of the apparent purpose of the Act, or to some palpable and evident absurdity."

It must be considered, therefore, whether by the words of a penal statute it is either express or implied that there may be a conviction without mens rea or, in other words, whether what is called an absolute offence is created.

In *Dyke v. Elliott. The "Gauntlet" (1872) L.R. 4 P.C. 184* , 191 it was said:

> "No doubt all penal statutes are to be construed strictly, that is to say, the court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words on any notion that there has been a slip, that there has been a casus omissus, that the thing is so clearly within the mischief that it must have been intended to be included and would have been included if thought of. On the other hand, the person charged has a right to say that the thing charged, although within the words, is not within the spirit of the enactment. But where the thing is brought within the words and within the spirit, there a penal enactment is to be construed, like any other instrument, according to the fair common-sense meaning of the language used, and the court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument."

The inquiry must be made, therefore, whether Parliament has used words which expressly enact or impliedly involve that an absolute offence is created. Though sometimes help in construction is derived from noting the presence or the absence of the word "knowingly," no conclusive test can be laid down as a guide in finding the fair, reasonable and common-sense meaning of language But in considering whether Parliament has decided to displace what is a general and somewhat fundamental rule it would not be reasonable lightly to impute to Parliament an intention to create an offence in such a way that someone could be convicted of it who by all reasonable and sensible standards is without fault.

There have been many cases in recent periods in which in reference to a variety of different statutory enactments questions have been raised whether absolute offences have been created. Some of these cases illustrate the difficulties that are created if Parliament uses language or phrases as to the meaning of which legitimate differences of opinion can arise. I do not propose to recite or survey these cases because, in my view, the principles which should guide construction are clear and, save to the extent that principles are laid down, the cases merely possess the interest which is yielded by seeing how different questions have, whether correctly or incorrectly, been decided in reference to varying sets of words in various different statutes.

The question must always be - what has Parliament enacted? That is the ***154** question in the present case and to that I now turn. The wording of section 5 of the Dangerous Drugs Act, 1965 , is as follows:

> "If a person - (a) being the occupier of any premises, permits those premises to be used for the purpose of smoking cannabis or cannabis resin or of dealing in cannabis or cannabis resin (whether by sale or otherwise); or (b) is concerned in the management of any premises used for any such purpose as aforesaid; he shall be guilty of an offence against this Act."

The words are nearly the same as and presumably were derived from words in section 5 of the Dangerous Drugs Act, 1920 , concerning opium.

In the present case the appellant was charged with being concerned in the management of certain premises situate at Fries Farm which were used for the purpose of smoking cannabis or cannabis

resin. I need not recite the facts which are set out in the case stated.

It was for the prosecution to prove the guilt of the appellant. It was found by the magistrates that the appellant had no knowledge whatsoever that cannabis had been smoked in the house. The prosecution contended that guilt can be established of the offence created by section 5 (b) if a person is concerned in the management of premises in which cannabis is in fact smoked. The consequence was acknowledged and indeed asserted that if some persons managed a hostel containing, say, 50 to 100 rooms, and if on one day in one room an occupant smoked one cannabis cigarette without the knowledge of the persons managing, they would have no defence to a charge under section 5 (b). If Parliament has so enacted, then the law must be enforced. But I am sure that that is not what Parliament has decreed.

If someone is concerned in management there must at least be knowledge of what it is that is being managed: otherwise there could be no concern in it. If someone is concerned in the management of a building containing a number of separately let residential flats the concern in such case would be in the arrangements for the lettings and in the arrangements relating to lifts or staircases or the structure of the building as a whole. The concern would be in the management of premises used for residential purposes. In the ordinary course of things the landlord or the manager would have no right of entry into a flat and would have no concern with any normal, reasonable and lawful activity within a flat. If a tenant, who was a nonsmoker, had a guest one day who smoked a pipe of tobacco in the flat, it would be a strained and unnatural use of language to describe the flat which the tenant rented as being premises used for the purpose of smoking. It would be equally strained and unnatural to describe the landlord or his agent as being concerned in the management of premises used for the purpose of smoking. If on an isolated occasion a tenant gave a showing of some cinematograph films to his friends, it would be unreasonable to describe the manager of the flats (who had no occasion to know of the film showing) as being one who was concerned in the management of premises used for the purpose of exhibiting films.

If a tenant took sugar with his tea it would be fanciful to describe the flat as premises used for the purpose of putting sugar into tea.

It seems to me, therefore, that the words "premises ... used for the purpose of smoking cannabis" are not happily chosen if they were intended ***155*** to denote premises in which at any time cannabis is smoked. In my opinion, the words "premises ... used for the purpose of ..." denote a purpose which is other than quite incidental or casual or fortuitous: they denote a purpose which is or has become either a significant one or a recognised one though certainly not necessarily an only one. There is no difficulty in appreciating what is meant if it is said that premises are used for the purposes of a dance hall or a billiard hall or a bowling alley or a hairdressing saloon or a café. A new or additional use might, however, arise. It might happen that a house let as a private dwelling might come to be used as a brothel or for the purposes of prostitution. A room let for private occupation might come to be the resort of a number of people who wished to smoke opium so that the time would come when the room could rationally be described as a room used for the purpose of smoking opium.

The words "concerned in the management of any premises used for the purpose of" are, in my view, to be considered together and as one phrase. Even so the phrase may be capable of two meanings. It could denote the management of premises used for a certain purpose in the sense that the management is limited to management in respect of the premises themselves. It could denote the management of premises used for a certain purpose in the sense that the management was concerned either additionally or perhaps separately with the purpose for which the premises were used. Thus, if someone is said so to be concerned in the management of premises used for the purpose of dancing, he could be someone concerned only in the management of the premises themselves, or he could be someone who additionally or possibly separately was concerned with the dancing. On either approach and with an ordinary use of words, it would seem to me that the person would be one who would have and would need to have knowledge of the use of the premises for the particular purpose.

It is said that the intention of Parliament was to impose a duty on all persons concerned in the management of any premises to exercise vigilance to prevent the smoking of cannabis. If that had been the intention of Parliament different words would have been used. It would be possible for Parliament to enact, though it would be surprising if it did, that if anyone should at any time smoke cannabis on any premises, then all those concerned in the management of those premises, whether they knew of the smoking or not, should automatically be guilty of a criminal offence. Yet this is in effect what it is now said that Parliament has enacted. The implications are astonishing. Parliament

would not only be indirectly imposing a duty upon persons concerned in the management of any premises requiring them to exercise complete supervision over all persons who enter the premises to ensure that no one of them should smoke cannabis, but Parliament would be enacting that the persons concerned in the management would become guilty of an offence if, unknown to them, someone by surreptitiously smoking cannabis eluded the most elaborately devised measures of supervision. There would not be guilt by reason of anything done nor even by reasons of any carelessness, but by reason of the unknown act of some unknown person whom it had not been found possible to control. When the range of possible punishments is remembered the unlikelihood that Parliament intended to legislate in such way becomes additionally apparent.

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For the reasons that I have indicated I consider that on a fair reading of the phrase "concerned in the management of premises used for the purpose of" a link is denoted between management and user for a purpose. To say that someone is concerned in the management of premises used for the purpose of smoking cannabis involves, in my view, that his management is with knowledge that the premises are so used. The wording of section 5 (b) contains positive indications that mens rea is an essential ingredient of an offence. Even if, contrary to my view, it is not affirmatively enacted that there must be mens rea I cannot read the wording as enacting that there need not be mens rea. I find it wholly impossible to say that the statute has either clearly, or by necessary implication, ruled out mens rea as a constituent part of guilt.

On the findings of the magistrates it follows that the appellant was not guilty. I would, therefore, allow the appeal. Accordingly, in my view, the case should be remitted to the Divisional Court with a direction to quash the conviction.

LORD PEARCE.

My Lords, the prosecution contend that any person who is concerned in the management of premises where cannabis is in fact smoked even once, is liable, though he had no knowledge and no guilty mind. This is, they argue, a practical act intended to prevent a practical evil. Only by convicting some innocents along with the guilty can sufficient pressure be put upon those who make their living by being concerned in the management of premises. Only thus can they be made alert to prevent cannabis being smoked there. and if the prosecution have to prove knowledge or mens rea, many prosecutions will fail and many of the guilty will escape. I find that argument wholly unacceptable.

The notion that some guilty mind is a constituent part of crime and punishment goes back far beyond our common law. and at common law mens rea is a necessary element in a crime. Since the Industrial Revolution the increasing complexity of life called into being new duties and crimes which took no account of intent. Those who undertake various industrial and other activities, especially where these affect the life and health of the citizen, may find themselves liable to statutory punishment regardless of knowledge or intent, both in respect of their own acts or neglect and those of their servants. But one must remember that normally mens rea is still an ingredient of any offence. Before the court will dispense with the necessity for mens rea it has to be satisfied that Parliament so intended. The mere absence of the word "knowingly" is not enough. But the nature of the crime, the punishment, the absence of social obloquy, the particular mischief and the field of activity in which it occurs, and the wording of the particular section and its context, may show that Parliament intended that the act should be prevented by punishment regardless of intent or knowledge.

Viewing the matter on these principles, it is not possible to accept the prosecution's contention. Even granted that this were in the public health class of case, such as, for instance, are offences created to ensure that food shall be clean, it would be quite unreasonable. It is one thing to make a man absolutely responsible for all his own acts and even vicariously liable for his servants if he engages in a certain type of activity. But it is quite another matter to make him liable for persons over whom he has no control. ***157** The innocent hotel-keeper, the lady who keeps lodgings or takes paying guests, the manager of a cinema, the warden of a hostel, the matron of a hospital, the house-master and matron of a boarding school, all these, it is conceded, are, on the prosecution's argument, liable to conviction the moment that irresponsible occupants smoke cannabis cigarettes. and for what purpose is this harsh imposition laid on their backs? No vigilance by night or day can make them safe. The most that vigilance can attain is advance knowledge of their own guilt. If a smell of cannabis comes from a sitting-room, they know that they have committed the offence. Should they then go at once to the police and confess their guilt in the hope that they will not be prosecuted? They may think it easier to conceal the matter in the hope that it may never be found out. For if, though morally innocent, they

are prosecuted they may lose their livelihood, since thereafter, even though not punished, they are objects of suspicion. I see no real, useful object achieved by such hardship to the innocent. and so wide a possibility of injustice to the innocent could not be justified by any benefit achieved in the determent and punishment of the guilty. If, therefore, the words creating the offence are as wide in their application as the prosecution contend, Parliament cannot have intended an offence to which absence of knowledge or mens rea is no defence.

Parliament might, of course, have taken what was conceded in argument to be a fair and sensible course. It could have said, in appropriate words, that a person is to be liable unless he proves that he had no knowledge or guilty mind. Admittedly, if the prosecution have to prove a defendant's knowledge beyond reasonable doubt, it may be easy for the guilty to escape. But it would be very much harder for the guilty to escape if the burden of disproving mens rea or knowledge is thrown on the defendant. and if that were done, innocent people could satisfy a jury of their innocence on a balance of probabilities. It has been said that a jury might be confused by the different nature of the onus of satisfying "beyond reasonable doubt" which the prosecution have to discharge and the onus "on a balance of probabilities" which lies on a defendant in proving that he had no knowledge or guilt. I do not believe that this would be so in this kind of case. Most people can easily understand rules that express in greater detail that which their own hearts and minds already feel to be fair and sensible. What they find hard to understand is rules that go "against the grain" of their own common sense. If a judge on a drug case, feeling disheartened, perhaps, after a close study of *Warner's case [1969] 2 A.C. 256* , had given the jury no direction as to the law, and had simply said that they must consider the facts and do their best with the charge, I believe that they would evolve their duty in some such form as this; "First, I suppose, we must make *sure* that there really was drug smoking on the premises" (or "that he really *had* drugs on him" or whatever the charge may be) "and then it is up to the defendant to persuade us that he did not know, or was not guilty for some other good reason." If I am right in this surmise, any judicial elaboration of their own instinctive reactions would be quite easy for them to understand.

If it were possible in some so-called absolute offences to take this sensible half-way house, I think that the courts should do so. This has been referred to in *Warner's case [1969] 2 A.C. 256* . I see no difficulty in it apart from ***158** the opinion of Viscount Sankey L.C. in *Woolmington v. Director of Public Prosecutions [1935] A.C. 462* . But so long as the full width of that opinion is maintained, I see difficulty. There are many cases where the width of that opinion has caused awkward problems. But before reducing that width your Lordships would obviously have to consider all the aspects of so far-reaching a problem. In the present case Miss Heilbron was wisely loth to involve herself in this when she had easier and surer paths to pursue.

The Australian High Court, founding on Cave J. *(1889) 23 Q.B.D. 168* , 181, and Wills J. (at p. 175) in *Reg. v. Tolson* have evolved a defence of reasonable mistake of fact, and the burden of proving this on a balance of probabilities rests upon the defendant. The whole matter is discussed in an interesting article, "Strict Responsibility in the High Court of Australia," by Professor Colin Howard in the Law Quarterly Review (1960) vol. 76 p. 547. He concludes at p. 566:

> "Where a statutory prohibition is cast in terms which at first sight appear to impose strict responsibility, they should be understood merely as imposing responsibility for negligence but emphasising that the burden of rebutting negligence by affirmative proof of reasonable mistake rests upon the defendant." He cites *Maher v. Musson (1934) 52 C.L.R. 100 per* Dixon J., at p. 105, and *per* Evatt and McTiernan JJ. at p. 108; cf. *Sherras v. De Rutzen [1895] 1 Q.B. 918* , 921 *per* Day J.

That decision was before *Woolmington's case [1935] A.C. 462* . In *Thomas v. The King (1937) 59 C.L.R. 279* the matter was further discussed, but I see no reference to *Woolmington's case [1935] A.C. 462* . I should be happy to be persuaded either that it does not prevent us from adopting such a satisfactory concept as the Australian courts have evolved or that its wide effect should be limited. But it has not been necessary for the purposes of the present case to go fully into that aspect of the matter.

Although the subsection cannot constitute an absolute offence in the wide application for which the prosecution contend, it does not follow that on a narrower construction it may not constitute an absolute offence. By the term "absolute" I mean an offence to which the normal assumption of mens rea does not apply, but in which the actual words of the offence (without any additional implication of mens rea) may well import some degree of knowledge, as, for example, the word "possession" as in

Warner's case [1969] 2 A.C. 256 . In saying that the section relating to possession (which was there under discussion) was absolute, I was using it (as the context was intended to show) in that loose and convenient sense which had been used in the argument.

The history of the subsection and the words themselves lend strong support to the view that a narrow meaning was intended. In the Dangerous Drugs Act, 1920, section 4 (c) and (d) , identical words are used save that the "purpose" there was "the preparation of opium for smoking or the sale or smoking of prepared opium" instead of "the purpose of smoking cannabis or cannabis resin or of dealing in cannabis or cannabis resin whether by sale or otherwise." Section 4 of the 1920 Act was in fact re-enacted in section 8 of the 1965 Act now under consideration. The ***159*** words thus taken from the 1920 Act cannot have a different sense when used in the 1965 Act, especially when they are re-enacted in another part of the 1965 Act itself. Any guide provided by their context in 1920 can, therefore, be useful in deciding their meaning in 1965, when applied to cannabis smoking. The prosecution point out that opium smoking needs more paraphernalia and preparation (in what are sometimes called "opium dens") and that considerations applicable to them are out of place in dealing with cannabis, which may be smoked casually and without preparation. Anyone may carry a cannabis cigarette and light it in the normal places and in normal circumstances of life. But that very fact makes it the more unlikely that responsibility for such casual acts of invitees or licensees should fall on those who manage premises unless they are managing them for just such a purpose.

The whole context and content of the original section 5 of the 1920 Act show that it was considering premises one of whose "purposes" was opium smoking. The "purpose" there referred to is thus the purpose of the management or a purpose known to or acquiesced in by them. I think that the words which were lifted from that section and enacted in relation to cannabis in section 5 of the Dangerous Drugs Act, 1965 , must be given a similar narrow construction. There was no need to insert the word "purpose," if all that was intended was premises where cannabis is in fact smoked. Being concerned in the management of premises used for the purpose of smoking cannabis necessarily imports some knowledge of the use of the premises for the purpose. Admittedly Miss Sweet had no knowledge.

I appreciate that this limitation will, as the prosecution contend, rob the section of much of its force. If a wider application or efficiency were desired it could be achieved by a change of onus and a consideration of what exactly is being required of landladies and the like. They cannot reasonably be branded with guilt whenever there happens to be on their premises someone who without their knowledge or assent smokes cannabis.

I would allow the appeal.

LORD WILBERFORCE.

My Lords, in my opinion Miss Stephanie Sweet, who was found to have "no knowledge whatever that [her] house was being used for the purpose of smoking cannabis," ought not to have been convicted.

Her conviction was based upon section 5 (b) of the Dangerous Drugs Act, 1965 , and upon an interpretation of the words "concerned in the management of any premises used [for the purpose of smoking cannabis or cannabis resin or of dealing in cannabis or cannabis resin]" which makes a person liable to prosecution who lets, or licenses the occupation of premises, upon which cannabis or cannabis resin is smoked or dealt in. It requires no amplification to show how wide a category of persons would thus be brought into the category of potential offenders. So, for this appeal, the essential question is to determine whether this interpretation is correct.

The words "concerned in the management" are not, on the face of them, very clear, but at least they suggest some technical or acquired meaning, some meaning other than one which refers merely to such common transactions as letting or licensing the occupation of premises. For if it had ***160*** been intended to penalise anyone who lets or licenses premises on which cannabis comes to be smoked, it would have been easy to do so in simple language. This impression is strengthened when the following words of the subsection are read. They reflect what I would think to be logically correct - namely, that one does not "manage" premises, the inert subject of a conveyance or a lease, but rather some human activity on the premises which the manager has an interest in directing. and so, when the subsection speaks of management of premises, and for a purpose, I would expect the purpose for which the premises are used to be that of the manager: otherwise, what would be the nature and object of the management?

A consideration of previous and analogous legislation removes any doubt that these words are intended to refer to such a special and limited class as I have described, one which quite clearly

excludes such persons as Miss Sweet. This legislation deals with other "anti-social" activities such as the keeping of brothels, opium "dens" and gaming houses.

1. The Criminal Law Amendment Act, 1885, section 13 , dealt with the keeping of brothels. It penalised a person who "keeps or manages or acts or assists in the management of a brothel." It dealt also with persons, other than managers, tenants, occupiers, lessors and (by an amendment in 1912) persons in charge, but in relation to them it stated explicity the requirement of knowledge - "knowingly permits," "lets with knowledge," "is wilfully party to the continued use." These fit in with and emphasise the conception of purposeful management. Substantially similar language is taken into the modern Sexual offences Act, 1956, which refers to managing or acting or assisting in management. It is perhaps worth observation that this Act refers both to "used as a brothel" and "used for the purposes of habitual prostitution," showing that when a convenient noun exists which includes the concept of a prohibited purpose, it is adopted, and that "used for the purposes" is employed to denote a similar type of situation as to which no convenient noun can be found or coined.

2. The Dangerous Drugs Act, 1921 , dealt with opium. The relevant sections are reproduced in the Act of 1965 (section 8), and it is obvious that the provisions regarding cannabis are based upon them. In dealing with management of premises it seems clear enough that what is in mind is not the lessor of premises on which opium may come to be smoked, but a manager of what, if a noun is required, might be called "opium dens." No doubt opium smoking is a more elaborate and prolonged process than smoking of cannabis, so that the transference of legislation from one activity to the other is not completely appropriate, but the difference (perhaps not understood by the draftsman) is not sufficient to impel us to a fresh conception of management.

3. The use of the word "management" in relation to gaming houses goes back at least to the Gaming Act, 1845 (section 4) . The expression "concerned in the management" is used in section 5. The Betting Act, 1853 (section 3) , combines prohibition of "permitting" by occupiers with prohibition of management of a house or place used for the purposes of betting, a comparable structure to that of section 5 of the Dangerous Drugs Act, 1965 . I need not trace this wording through the mountains of later enactments.

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I am left with no doubt after examination of this legislation that when the Dangerous Drugs Act, 1964 (the predecessor of that of 1965), adopted in relation to cannabis language which penalised, on the one hand, "permitting to be used" and, on the other hand, being "concerned in the management of premises used for the purposes ..." it must, in the latter provision, have had in mind the same kind of purposeful management activity as was referred to, in analogous connections, in previous legislation. One can describe what is penalised as being concerned in the management of a cannabis shop, or a cannabis smoking den or parlour, a type of activity which no doubt includes not only one where this was the direct or main purpose of the manager, or person concerned in the management, but also cases where, by extension or infiltration and acquiescence this purpose had come to be included in the purposes for which the premises are being managed or, one might say, run.

If this is the correct meaning to extract from the language, when one considers that there is also a wide area of penalisation elsewhere of possession and of permitting by occupiers, there is a rational statutory scheme of considerable scope. I see no reason to strain the language of section 5 (b) so as to convert it into, in effect, an instrument of amateur law enforcement which may catch many innocent persons: whether the section, as so interpreted, is too severe or not severe enough, is something for Parliament to consider.

On this admittedly prosaic interpretation of the subsection, I do not embark upon a wider examination of the problem of absolute offences, or of guilty intention. As in *Warner's case [1969] 2 A.C. 256* , the word "possession" carried its own content of mental intention so, perhaps a fortiori, do the words "concerned in the management of premises used for the purpose ..." and there is no occasion to look beyond them for some separate ingredient which might, in fact, be difficult to define.

I would allow the appeal.

LORD DIPLOCK.

My Lords, on premises of which Miss Sweet was the occupier but from which she was frequently absent cannabis was smoked without her permission or knowledge. She was charged before the Woodstock magistrates with an offence under section 5 of the Dangerous Drugs Act, 1965 . She was

not charged under paragraph (a) as an occupier of premises who "permits those premises to be used for the purpose of smoking cannabis" but under paragraph (b) as a person "concerned in the management of ... premises used for that purpose." She was convicted and fined £25.

That conviction was upheld by the Divisional Court who gave leave to appeal to your Lordships' house and certified that the following points of law of general public importance are involved in their decision, namely:

> "(1) Whether section 5 (b) of the Dangerous Drugs Act, 1965 , creates an absolute offence. (2) What, if any, mental element is involved in the offence; and (since leave to appeal is given in regard to (1) and (2) above) (3) Whether on the facts found a reasonable bench of magistrates, properly directing their minds as to the law, could have convicted the appellant."

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The expression "absolute offence" used in the first question is an imprecise phrase currently used to describe an act for which the doer is subject to criminal sanctions even though when he did it he had no mens rea, but mens rea itself also lacks precision and calls for closer analysis than is involved in its mere translation into English by Wright J. in *Sherras v. de Rutzen [1895] 1 Q.B. 918* , 921 as "evil intention or a knowledge of the wrongfulness of the act" - a definition which suggests a single mental element common to all criminal offences and appears to omit thoughtlessness which, at any rate if it amounted to a reckless disregard of the nature or consequences of an act, was a sufficient mental element in some offences at common law.

A more helpful exposition of the nature of mens rea in both common law and statutory offences is to be found in the judgment of Stephen J. in *Reg. v. Tolson (1889) 23 Q.B.D. 168* , 187. He said:

> "The full definition of every crime contains expressly or by implication a proposition as to a state of mind. Therefore, if the mental element of any conduct alleged to be a crime is proved to have been absent in any given case, the crime so defined is not committed; or, again, if a crime if fully defined, nothing amounts to that crime which does not satisfy that definition."

Where the crime consists of doing an act which is prohibited by statute the proposition as to the state of mind of the doer which is contained in the full definition of the crime must be ascertained from the words and subject-matter of the statute. The proposition, as Stephen J. pointed out, may be stated explicitly by the use of such qualifying adverbs as "maliciously," "fraudulently," "negligently" or "knowingly" - expressions which in relation to different kinds of conduct may call for judicial exegesis. and even without such adverbs the words descriptive of the prohibited act may themselves connote the presence of a particular mental element. Thus, where the prohibited conduct consists in permitting a particular thing to be done the word "permit" connotes at least knowledge or reasonable grounds for suspicion on the part of the permittor that the thing will be done and an unwillingness to use means available to him to prevent it and, to take a recent example, to have in one's "possession" a prohibited substance connotes some degree of awareness of that which was within the possessor's physical control: *Reg. v. Warner [1969] 2 A.C. 256* .

But only too frequently the actual words used by Parliament to define the prohibited conduct are in themselves descriptive only of a physical act and bear no connotation as to any particular state of mind on the part of the person who does the act. Nevertheless, the mere fact that Parliament has made the conduct a criminal offence gives rise to some implication about the mental element of the conduct proscribed. It has, for instance, never been doubted since *M'Naghten'sCase (1843) 10 Cl. & F. 200* , that one implication as to the mental element in any statutory offence is that the doer of the prohibited act should be sane within the M'Naghten rules; yet this part of the full definition of the offence is invariably left unexpressed by Parliament. Stephen J. in *Reg. v. Tolson (1889) 23 Q.B.D. 168* suggested other circumstances never expressly dealt with in the statute where a mental element to be implied from the mere fact that the doing of an act ***163** was made a criminal offence would be absent, such as where it was done in a state of somnambulism or under duress, to which one might add inevitable accident. But the importance of the actual decision of the nine judges who constituted the majority in *Reg. v. Tolson,* which concerned a charge of bigamy under section 57 of the Offences Against the Person Act, 1861, was that it laid down as a general principle of construction of any

enactment, which creates a criminal offence, that, even where the words used to describe the prohibited conduct would not in any other context connote the necessity for any particular mental element, they are nevertheless to be read as subject to the implication that a necessary element in the offence is the absence of a belief, held honestly and upon reasonable grounds, in the existence of facts which, if true, would make the act innocent. As was said by the Privy Council in *Bank of New South Wales v. Piper [1897] A.C. 383* , 389, 390, the absence of mens rea really consists in such a belief by the accused.

This implication stems from the principle that it is contrary to a rational and civilised criminal code, such as Parliament must be presumed to have intended, to penalise one who has performed his duty as a citizen to ascertain what acts are prohibited by law (ignorantia juris non excusat) and has taken all proper care to inform himself of any facts which would make his conduct lawful.

Where penal provisions are of general application to the conduct of ordinary citizens in the course of their every day life the presumption is that the standard of care required of them in informing themselves of facts which would make their conduct unlawful, is that of the familiar common law duty of care. But where the subject-matter of a statute is the regulation of a particular activity involving potential danger to public health, safety or morals in which citizens have a choice as to whether they participate or not, the court may feel driven to infer an intention of Parliament to impose by penal sanctions a higher duty of care on those who choose to participate and to place upon them an obligation to take whatever measures may be necessary to prevent the prohibited act, without regard to those considerations of cost or business practicability which play a part in the determination of what would be required of them in order to fulfil the ordinary common law duty of care. But such an inference is not lightly to be drawn, nor is there any room for it unless there is something that the person on whom the obligation is imposed can do directly or indirectly, by supervision or inspection, by improvement of his business methods or by exhorting those whom he may be expected to influence or control, which will promote the observance of the obligation (see *Lim Chin Aik v. The Queen [1963] A.C. 160* , 174).

The numerous decisions in the English courts since *Reg. v. Tolson (1889) 23 Q.B.D. 168* in which this later inference has been drawn rightly or, as I think, often wrongly are not easy to reconcile with others where the court has failed to draw the inference, nor are they always limited to penal provisions designed to regulate the conduct of persons who choose to participate in a particular activity as distinct from those of general application to the conduct of ordinary citizens in the course of their every day life. It may well be that had the significance of *Reg. v. Tolson* been appreciated here, as it was in the High Court of Australia, our courts, ***164** too, would have been less ready to infer an intention of Parliament to create offences for which honest and reasonable mistake was no excuse.

Its importance as a guide to the construction of penal provisions in statutes of general application was recognised by Dixon J. in *Maher v. Musson (1934) 52 C.L.R. 100* , 104, and by the majority of the High Court of Australia in *Thomas v. The King (1937) 59 C.L.R. 279* . It is now regularly adopted in Australia as a general principle of construction of statutory provisions of this kind.

By contrast, in England the principle laid down in *Reg. v. Tolson (1889) 23 Q.B.D. 168* has been overlooked until recently (see *Reg. v. Gould [1968] 2 Q.B. 65*) partly because the ratio decidendi was misunderstood by the Court of Criminal Appeal in *Rex v. Wheat,Rex v. Stocks [1921] 2 K.B. 119* and partly, I suspect, because the reference in *Reg. v. Tolson (1889) 23 Q.B.D. 168* to the mistaken belief as being a "defence" to the charge of bigamy was thought to run counter to the decision of your Lordships' House in *Woolmington v. Director of Public Prosecutions [1935] A.C. 462* . That expression might have to be expanded in the light of what was said in *Woolmington's* case, though I doubt whether a jury would find the expansion much more informative than describing the existence of the mistaken belief as a defence to which they should give effect unless they felt sure either that the accused did not honestly hold it or, if he did, that he had no reasonable grounds for doing so.

Woolmington's case affirmed the principle that the onus lies upon the prosecution in a criminal trial to prove all the elements of the offence with which the accused is charged. It does not purport to lay down how that onus can be discharged as respects any particular elements of the offence. This, under our system of criminal procedure, is left to the common sense of the jury. *Woolmington's* case did not decide anything so irrational as that the prosecution must call evidence to prove the absence of any mistaken belief by the accused in the existence of facts which, if true, would make the act innocent, any more than it decided that the prosecution must call evidence to prove the absence of any claim of right in a charge of larceny. The jury is entitled to presume that the accused acted with knowledge of the facts, unless there is some evidence to the contrary originating from the accused

who alone can know on what belief he acted and on what ground the belief, if mistaken, was held. What *Woolmington's* case did decide is that where there is any such evidence the jury after considering it and also any relevant evidence called by the prosecution on the issue of the existence of the alleged mistaken belief should acquit the accused unless they feel sure that he did not hold the belief or that there were no reasonable grounds upon which he could have done so.

This, as I understand it, is the approach of Dixon J. to the onus of proof of honest and reasonable mistaken belief as he expressed it in *Proudman v. Dayman (1941) 67 C.L.R. 536* , 541. Unlike the position where a statute expressly places the onus of proving lack of guilty knowledge on the accused, the accused does not have to prove the existence of mistaken belief on the balance of probabilities; he has to raise a reasonable doubt as to its non-existence.

It has been objected that the requirement laid down in *Reg. v. Tolson (1889) 23 Q.B.D. 168* and the *Bank of New South Wales v. Piper [1897] A.C. 383* that the mistaken belief should be based on reasonable grounds introduces an objective mental element into mens rea. This may be so, but there is nothing novel in this. The test of the mental element of provocation which distinguishes manslaughter from murder has always been at common law and now is by statute the objective one of the way in which a reasonable man would react to provocation. There is nothing unreasonable in requiring a citizen to take reasonable care to ascertain the facts relevant to his avoiding doing a prohibited act.

It is, then, with these principles in mind that I approach the construction of section 5 of the Dangerous Drugs Act, 1965 , under which Miss Sweet was charged. It contains separate prohibitions in paragraphs (a) and (b) respectively. The offence under (a), with which Miss Sweet was not charged, can only be committed by the occupier of premises. The act of the occupier which is prohibited is to "permit" those premises to be used for the purpose of smoking cannabis or cannabis resin or of dealing in cannabis or cannabis resin. Here the word "permits," used to define the prohibited act, in itself connotes as a mental element of the prohibited conduct knowledge or grounds for reasonable suspicion on the part of the occupier that the premises will be used by someone for that purpose and an unwillingness on his part to take means available to him to prevent it. As regards this offence there is no need to have recourse to the more general implication as to the need for mens rea where the words are in themselves descriptive only of a physical act.

In paragraph (b) the phrase "concerned with the management of any premises," unlike the phrase "being the occupier of any premises" in paragraph (a), is not descriptive of a class of person to whom a particular kind of conduct subsequently defined is prohibited. It is part of the definition of the offence itself. The conduct prohibited is to be "concerned in the management of premises used for the purpose of smoking cannabis," etc. What, if any, mental element does this compound phrase connote? The premises of which it is an offence to be concerned in the management are defined not by reference merely to what happens on them (e.g. "premises on which cannabis is smoked") but by the purpose for which they are used. "Purpose" connotes an intention by some person to achieve a result desired by him. Whose purpose must it be that the premises should be used for smoking cannabis? The answer is, in my opinion, to be found in the words "is concerned in the management." To manage or to be concerned in the management itself connotes control or direction of an activity to achieve a result desired by those who control or direct the activity. In my opinion, in the compound phrase "is concerned in the management of premises used for the purpose of smoking cannabis" etc., the purpose described must be the purpose of the person concerned in the management of the premises.

But at its highest against Miss Sweet the words of the paragraph are ambiguous as to whose is the relevant purpose. That ambiguity in a penal statute which, on the alternative construction that it would be sufficient if the purpose to use the premises for smoking cannabis were that of anyone who in fact smoked cannabis, would render her liable, despite lack of any knowledge or acquiescence on her part, should be unhesitatingly resolved in her favour.

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In view of the finding that Miss Sweet "had no knowledge whatever that the house was being used for the purpose of smoking cannabis or cannabis resin" she could not properly be convicted of the offence charged. I, too, would allow this appeal.

Representation

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Appeal allowed. (F. C.)