

All England Law Reports/1976/Volume 2 /Director of Public Prosecutions v Luft and another; Director of Public Prosecutions v Duffield - [1976] 2 All ER 569

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Director of Public Prosecutions v Luft and another; Director of Public Prosecutions v Duffield

HOUSE OF LORDS

LORD DIPLOCK, LORD SALMON, LORD EDMUND-DAVIES, LORD FRASER OF TULLYBELTON AND LORD RUSSELL OF KILLOWEN

12, 13 APRIL, 26 MAY 1976

Elections - Expenses - Expenses incurred with a view to promoting or procuring election of a candidate at an election - Prohibition on expenses unless incurred by candidate, election agent or authorised person - Three or more persons standing at election - Expenses incurred by unauthorised person with a view to preventing election of one of those candidates - Person not intending to promote or procure election of any particular candidate - Meaning of 'promote' - Whether intention to prevent election of a particular candidate or candidates promoting or procuring election of other candidate - Representation of the People Act 1949, s 63(1)(5).

Elections - Publications - Publication printed, published, posted or distributed for the purpose of promoting election of a candidate - Publication required to bear on face name and address of printer and publisher - Three or more candidates standing at election - Publication distributed for the purpose of preventing election of one of those candidates - Distributor not intending to promote or procure election of any particular candidate - Whether publication required to bear name and address of printer and publisher - Representation of the People Act 1949, s 95(1).

At the parliamentary general election held in October 1974 candidates representing a party known as the National Front stood for election in three constituencies. Candidates representing the Labour, Conservative and Liberal parties stood also for election in those three constituencies. The respondents were members of 'anti-fascist committees' and were strongly opposed to the policies advocated by the National Front. In the course of the election campaign the respondents distributed pamphlets in the three constituencies urging voters not to vote for the National Front candidates. The respondents were charged, under s 63(1)^a of the Representation of the People Act 1949, with having incurred without the written authorisation of an election agent the expense of issuing publications 'with a view to promoting or procuring the election of a candidate' in those constituencies and, under s 95(1)^b of the 1949 Act, with having distributed for the like purpose printed documents not bearing on their face the name and address of the printer and publisher. The charges against two of the respondents were dismissed, but the third respondent was convicted of the offences. Appeals were brought against the decisions in both cases and were heard together by the Divisional Court. The Divisional Court ([1976] 1 All ER 519) dismissed the appeal in respect of the two respondents' acquittal and allowed the third respondent's appeal against conviction on the ground that there had been no offence within s 63 or s 95 since the respondents' motive was not to promote or procure the election of a candidate but only to prevent the election of a particular candidate. On appeal by the Director of Public Prosecutions the respondents also contended that the publications were not 'disparaging another candidate', within s 63, since they did not criticise the personal character or conduct of any candidate but only his political views.

^a Section 63(1), so far as material, is set out at p 572 *b* and *c*, post

^b Section 95(1) is set out at p 572 *e* and *f*, post

Held - 'Promoting' a candidate within s 63(1) meant improving his chances of being elected. In a parliamentary constituency where there were more than two candidates standing, the promotion of candidates could be accomplished by persuading the electors not to vote for one of their rivals since an intention to prevent the election of one candidate improved the collective chances of success of the remaining candidates. Moreover, the offence was committed if the desire to promote or procure the election of a candidate was one of the reasons motivating the respondents; it did not have to be shown that it was their dominant intention. The pamphlets did disparage the candidates in question, for no distinction could be drawn between attacks on their political views and attacks on their personal conduct. Accordingly, an intention to prevent the election of a particular candidate or particular candidates was sufficient to establish an offence under s 63 and the appeals would therefore be allowed (see p 574 *b* and *d* to *h*, p 575 *a* to *d* and *h* and p 576 *b* to *d* and *f g*, post).

R v Hailwood and Ackroyd Ltd [1928] All ER Rep 529 applied.

Dictum of McNair J in *R v Tronoh Mines Ltd* [1952] 1 All ER at 699 disapproved.

Grieve v Douglas-Home 1965 SLT 186 distinguished.

Decision of the Divisional Court of the Queen's Bench Division [1976] 1 All ER 519 reversed.

Notes

For expenses incurred by persons other than an election agent, see 14 *Halsbury's Laws* (3rd Edn) 182, para 323, and for cases on the subject, see 20 *Digest* (Repl) 98, 795, 796.

For the Representation of the People Act 1949, ss 63, 95, see 11 *Halsbury's Statutes* (3rd Edn) 608, 636.

Cases referred to in opinions

Grieve v Douglas-Home 1965 SLT 186.

R v Hailwood and Ackroyd Ltd [1928] 2 KB 277, [1928] All ER Rep 529, 97 LJKB 394, 138 LT 495, 28 Cox CC 489, 20 Cr App Rep 177, CCA, 20 *Digest* (Repl) 98, 795.

R v Tronoh Mines Ltd [1952] 1 All ER 697, 35 Cr App Rep 196, 50 LGR 461, 116 JP 180, 20 *Digest* (Repl) 98, 796.

Sharp v Jackson [1899] AC 419, 68 LJQB 866, 80 LT 841, 6 Mans 264, HL; *affg* sub nom *New, Prance and Garrard's Trustee v Hunting* [1897] 2 QB 19, CA, 5 *Digest* (Repl) 948, 7733.

Appeals

These were appeals by the Director of Public Prosecutions, pursuant to leave granted on 15 December 1975 by the appellate committee of the House of Lords, and consolidated on 18 December 1975, against the decision of the Divisional Court of the Queen's Bench Division ([1976] 1 All ER 519) (Lord Widgery CJ, O'Connor and Lawson JJ) whereby, on appeals by cases stated, they dismissed the appeal of the Director of Public

Prosecutions against the decision on 9 April 1975 of the stipendiary magistrate for the city of Manchester (J Bamber Esq) dismissing informations preferred against the respondents Michael Avril Luft and Graeme Atkinson for offences contrary to ss 63(5) and 95(3) of the Representation of the People Act 1949, and allowed the appeal by the respondent Neil Duffield against his convictions on 17 March 1975 by justices for the county of Manchester acting in and for the petty sessional division of Bolton for offences contrary to ss 63(5) and 95(3) of the 1949 Act. The Divisional Court certified the following to be a point of law of general public importance: 'Whether on a prosecution under s 63 of the Representation of the People Act 1949 it is necessary
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to prove that the expense was incurred with a view to promoting or procuring the election of a particular candidate and insufficient to establish that the view or motive of the person incurring the expense was to prevent the election of a particular candidate.' The facts are set out in the opinion of Lord Diplock.

David McNeill QC and John Hugill for the Director of Public Prosecutions.

David Turner-Samuels QC and Stephen Sedley for the respondents.

Their Lordships took time for consideration.

26 May 1976. The following opinions were delivered.

LORD DIPLOCK.

My Lords, at the Parliamentary General Election held in October 1974 candidates representing a political party known as the National Front stood for election in three Lancashire constituencies, Blackley, Bolton East and Bolton West. In all three constituencies candidates representing the Labour, Conservative and Liberal parties were also standing for election, and in the Bolton West constituency there was a fifth candidate who described himself as a 'More Prosperous Britain' candidate.

The respondents Luft and Atkinson were members of an association calling itself the 'Greater Manchester Anti-Fascist Committee'. The respondent Duffield was a member of the 'Bolton Anti-Fascist Committee'. All three respondents were strongly opposed to the policies advocated by the National Front. In the course of the election campaign, Luft and Atkinson distributed in the Blackley constituency and Duffield distributed in the Bolton East and Bolton West constituencies pamphlets urging voters 'Don't Vote National Front' and accusing members of that political party of being liars and fascists.

Each of the respondents was charged with offences under s 63 of the Representation of the People Act 1949 of incurring, without authorisation in writing of an election agent, the expense of issuing publications with a view to promoting or procuring the election of a candidate at the parliamentary election in the constituency in which that respondent had distributed pamphlets; and also with offences under s 95 of the 1949 Act of causing to be distributed for the like purpose a printed document which did not bear on its face the name and address of the printer and publisher.

The charges against Luft and Atkinson were heard in the Manchester city magistrates' court by the stipendiary magistrate. He dismissed them on the ground that to constitute an offence under either section it was necessary to prove an intention on the part of the accused to promote or procure the election of one particular candidate only; an intention to prevent the return of one out of three or more candidates did not suffice.

The charges against Duffield were heard by the justices at the Bolton magistrates' court. They took a different view of the law from the stipendiary magistrate. The respondent Duffield was convicted and fined £10 for each offence.

Appeals were brought by way of case stated against both decisions. They were heard together by the Divisional Court. The appeal against the acquittal of Luft and Atkinson was dismissed; that of Duffield against his conviction was allowed. The Divisional Court certified that a point of general public importance was involved in their decisions, namely:

'Whether on a prosecution under s 63 of the Representation of the People Act 1949 it is necessary to prove that expense was incurred with a view to promoting or procuring the election of a particular candidate and insufficient to establish that the view or motive of the person incurring the expense was to prevent the election of a particular candidate.'

Leave to appeal, which had been refused by the Divisional Court, was granted by their

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Lordships' House in both cases and the appeals were heard as consolidated appeals.

Section 63(1) of the Representation of the People Act 1949 is one of a number of sections designed to limit the amount of money which a candidate and his supporters may spend on soliciting the votes of the electors in the constituency in which he is standing for election. It reads as follows:

'No expenses shall, with a view to promoting or procuring the election of a candidate at an election, be incurred by any person other than the candidate, his election agent and persons authorised in writing by the election agent on account--(a) of holding public meetings or organising any public display; or (b) of issuing advertisements, circulars or publications; or (c) of otherwise presenting to the electors the candidate or his views or the extent or nature of his backing or disparaging another candidate:

'Provided that paragraph (c) of this subsection shall not--(i) restrict the publication of any matter relating to the election in a newspaper or other periodical ...'

Expenditure under s 63(1) which has been authorised by the election agent of a candidate is treated as part of the election expenses of the candidate and counts against the maximum amount which may be spent on his behalf.

By sub-s (5) a person who incurs any expenses in contravention of this section is guilty of a corrupt practice.

Section 95(1) reads as follows:

'A person shall not--(a) print or publish, or cause to be printed or published, any bill, placard or poster having reference to an election or any printed document distributed for the purpose of promoting or procuring the election of a candidate, or (b) post or cause to be posted any such bill, placard or poster as aforesaid, or (c) distribute or cause to be distributed any printed document for the said purpose, unless the bill, placard, poster or document bears upon the face thereof the name and address of the printer and publisher.'

By sub-s (3) a contravention of this section is made an illegal practice.

Before 1948, the predecessor of s 63(1) had been s 34(1) of the Representation of the People Act 1918. This was in the following terms:

'A person other than the election agent of a candidate shall not incur any expenses on account of holding public meetings or issuing advertisements, circulars or publications for the purpose of promoting or procuring the election of any candidate at a parliamentary election, unless he is authorised in writing to do so by such election agent.'

Its application to facts very similar to those in the instant appeals had been considered by the Court of Criminal Appeal in *R v Hailwood and Ackroyd Ltd*. In that case, during a parliamentary by-election in which there were three candidates, Conservative, Liberal and Labour, the accused had incurred expenses on account of issuing publications which were

antagonistic to the Conservative candidate and advised the constituents not to vote for him, but did not in express terms advise them to vote for either of the other candidates. It was held by the court that this constituted an offence under s 34(1). In delivering the judgment of the court, Avory J ([1928] 2 KB at 281, 282, [1928] All ER Rep at 530) said:

'It is now suggested that, in a case like the present, where there are three candidates representing three different political parties, Conservative, Liberal

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and Labour, if a person who is not authorized by the election agent of a candidate incurs expenses of the kind in question he cannot be convicted under the section, which prohibits the incurring of the expenses for the purpose of promoting or procuring the election of "any candidate," unless it be shown definitely that he had the intention of promoting or procuring the election of one of these three candidates in particular. The answer to that suggestion is that the expression "any candidate" in the section is not limited to one candidate only, since it is provided by the Interpretation Act, 1889 (52 & 53 Vict. c 63), s 1, sub-s. (1)(b), that words in the singular shall include the plural. It is further said that the appellant is not liable, inasmuch as while he endeavoured to prevent the election of one of the candidates, he did not directly promote or procure the election of any of them. If, however, a person has done what is forbidden by the section for a purpose which must have the effect of promoting or procuring the election of a candidate or candidates then there can be no question that he has committed an offence under the section.'

In the view of the Divisional Court ([1976] 1 All ER 519, [1976] 2 WLR 406) in the instant case, the difference in language between s 34(1) of the 1918 Act and s 63(1) of the 1949 Act and, in particular, the substitution of the words '*with a view* to promoting or procuring the election of *a* candidate' for the corresponding words '*for the purpose of* promoting or procuring, the election of *any* candidate' gave to the new section a meaning which had the effect of overruling the decision in *R v Hailwood and Ackroyd Ltd*.

In their Lordships' view, so far as the meaning of the subsection is concerned, no significance can be attached to these substitutions (which I have italicised). The substantive alteration to s 34(1) of the 1918 Act which was effected by s 63(1) of the 1949 Act was to add to the matters on which expenses could not be incurred without the written authority of an election agent. In order to make this addition, the draftsman found it necessary to re-arrange the order of words which his predecessor had adopted in s 34(1). In this re-arrangement the retention of the phrase 'for the purpose of' would have been inelegant as a matter of draftsmanship as compared with the use of the equivalent phrase 'with a view to' to convey the same meaning. Similarly the substitution of 'a' for 'any' was called for as a matter of draftsmanship by the subsequent references to 'the candidate' and 'another candidate'. In my view these substitutions are stylistic only. The substituted words mean the same as those which fell to be construed in *R v Hailwood and Ackroyd Ltd*.

The construction placed by the Court of Criminal Appeal on s 34(1) of the 1918 Act had stood unchallenged for 20 years by the time what is now s 63(1) of the 1949 Act was first enacted by s 42(1) of the Representation of the People Act 1948. Had Parliament intended to overrule it, it would have done so explicitly and not inferentially by the substitution of one phrase for another which is apparently synonymous. *R v Hailwood and Ackroyd Ltd* remains strong persuasive authority; but it is still for your Lordships to decide for yourselves whether it is right and governs the instant appeals.

In the argument before this House, counsel for the respondents did not seek to rely on any difference in meaning between 'with a view to' and 'for the purpose of'. Both phrases, he said, referred to the dominant intention of the accused in doing the act complained of. The expression dominant intention is borrowed from cases which turned on the meaning of the words 'with a view of giving such creditor a preference over the other creditors' in s 48(1) of the Bankruptcy Act 1883. The law as to fraudulent preference in bankruptcy had been the subject of judicial consideration long before the passing of the Bankruptcy Act 1883 and, as appears from the

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speeches in *Sharp v Jackson*, the courts, including this House, were much influenced by the previous law as to fraudulent preference in the construction they gave to the section. For that reason, I do not regard these cases as a reliable guide to the construction of s 63(1) of the 1949 Act. To speak of a dominant intention suggests that a desire to achieve one particular purpose can alone be causative of human actions, whereas so many human actions are prompted by a desire to kill two birds with one stone. For my part, I prefer to omit the adjective 'dominant'. In my view, the offence

under s 63(1) to (5) is committed by the accused if his desire to promote or procure the election of a candidate was one of the reasons which played a part in inducing him to incur the expense.

It was next argued for the respondents that the rule of construction in s 2(1)(b) of the Interpretation Act 1889 that 'words in the singular shall include the plural' has no application to the words 'a candidate' in the context of promoting or procuring his election since a contrary intention does appear from that context. When the 1949 Act was passed and at all times thereafter all parliamentary constituencies have been single member constituencies, though at the passing of the Act this was not the case with all local government elections, to which s 63 also applies. So the context required the plural in the case of local government elections. As respects parliamentary elections, while it is true to say that it is not possible to 'procure the election' in any constituency of 'candidates' in the plural, the subsection deals with promoting the election of a candidate as well as procuring his election, and it does so disjunctively. In my view, promoting as distinct from procuring the election of a candidate means improving his chances of being elected; and in a parliamentary constituency for which there are more than two candidates this can be accomplished for 'candidates' (in the plural) by persuading electors in the constituency not to vote for one of their rivals.

My Lords, where there are more than two candidates for a constituency, to persuade electors not to vote for one of those candidates in order to prevent his being elected must have the effect of improving the collective prospect of success of the other candidates though it may be uncertain which one of them will benefit most. So, in anyone sophisticated enough politically to want to intermeddle in a parliamentary election at all, an intention to prevent the election of one candidate will involve also an intention to improve the chances of success of the remaining candidate if there is only one, or of one or other of the remaining candidates if there are more than one, although the persons so intending may be indifferent which of them will be successful.

So I would answer the certified question: 'On a prosecution under s 63 of the Representation of the People Act 1949 it is not necessary to prove that the expense was incurred with the intention of promoting or procuring the election of one particular candidate, but it is sufficient to establish an intention on the part of the person incurring the expense to prevent the election of a particular candidate or particular candidates.'

In the instant case it was found as a fact by the Bolton justices that the pamphlets were distributed by the respondent Duffield for the purpose of procuring or promoting the election of a candidate other than the National Front candidate even though those documents did not support a particular candidate. The respondents Luft and Atkinson did not go into the witness box to give direct evidence of their intentions but left these to be inferred from the prosecution's evidence as to what they had done. Although the stipendiary magistrate has not been so explicit as the justices, a similar finding of fact as to the intentions of Luft and Atkinson is in my view implicit in the way in which the case has been stated by him; and counsel for the respondents has not sought to distinguish their cases from that of Duffield.

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For the reasons I have given, these findings as to the intentions of the respondents are sufficient in my opinion to support their convictions for offences under ss 63 and 95 of the 1949 Act. For the sake of completeness, however, it is necessary to deal briefly with an alternative contention for the respondents under s 63 that was raised for the first time in your Lordships' House and does not figure in the judgment of the Divisional Court.

This contention is that since the pamphlets do not positively recommend support for any of the candidates representing political parties other than the National Front, the only way in which they can be brought within the ambit of s 63 is as publications 'disparaging another candidate'. The argument proceeds that in the immediately preceding phrase, 'presenting to the electors the candidate or his views or the extent or nature of his backing', a distinction is drawn between the candidate on the one hand and his views or backing on the other; that a similar distinction was intended to be drawn when the word 'candidate' alone was used in reference to disparagement; and that criticism of the personal character or conduct of the candidate divorced from any criticism of the political views that he held was all that was covered by the paragraph. 'Disparaging' is not the antonym of 'presenting'. In my view it is to be understood in its ordinary and natural meaning. A person may be disparaged by attacks on the political views he holds as well as by attacks on his personal conduct. The pamphlets in the instant case are obvious specimens of disparagement.

Before leaving the matter, it is desirable to refer to two cases relied on by the Divisional Court in support of their view that in s 63 the words 'a candidate' in the context of promoting or procuring his election meant only one particular candidate and that consequently the certified question ought to be answered Yes. These were *R v Tronoh Mines Ltd* and *Grieve v Douglas-Home*. In the former case the defendant, while a general election was pending, published in a national newspaper an advertisement attacking the financial policy of the outgoing Labour government. McNair J ([1952] 1 All ER at 699) held that s 63 was not intended to prohibit expenditure incurred on advertisements designed to support the interest of a particular party generally in all constituencies, at any rate at the time of a general election, and not supporting a particular candidate in a particular constituency. He founded his judgment exclusively on the wording of paras (a), (b) and (c) of s 63(1). *R v Hailwood* was not referred to in the judgment or the argument and the Divisional Court in the instant case are mistaken in supposing that McNair J made any reference to the change from 'any candidate' in the 1918 Act to 'a candidate' in the 1949 Act. He did however accept ([1952] 1 All ER at 699) as a reasonable and possible construction of s 63 that 'candidate' was intended to mean one candidate only. In this, for the reasons that I have given, I think that he was wrong, although I cast no doubt on the correctness of the actual decision in the case.

Grieve v Douglas-Home was a case in which the complaint against the defendant was of a wholly different character and is not, in my view, of any assistance. It was relied on by the Divisional Court for the statement by Lord Migdale (1965 SLT at 190) that the test of intention is subjective and that what has to be considered is the intention or motive in the mind of the person 'who incurred the expense'. But this has never been disputed by the Crown in the instant case.

I would therefore allow both of the appeals from the orders of the Divisional Court so far as those orders dealt with charges under s 63 or s 95(1)(c).

The order made in the appeal by the respondent Duffield, included also the quashing of his conviction on a charge under s 95(1)(b) causing to be posted a poster having reference to the election, not bearing on its face the name and address of the printer.

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No argument had been addressed to the Divisional Court directed to this charge, the legal characteristics of which are different from those of the other charges. There is no reference to it in their reasons for judgment. In these circumstances, counsel for the appellant is content not to invite this House to restore the conviction on this charge, but without conceding that it could not have been sustained if argument had been heard on it.

LORD SALMON.

My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Diplock, and for the reasons given by him I would allow these appeals.

LORD EDMUND DAVIES.

My Lords, I am in respectful and unqualified agreement with the reasons developed in the speech of my noble and learned friend, Lord Diplock, for holding that these consolidated appeals should be allowed.

LORD FRASER OF TULLYBELTON.

My Lords, I have had the advantage of reading in print the speech of my noble and learned friend, Lord Diplock, and I agree with it.

I should add that I do not exclude the possibility that there may be circumstances in which an intention to prevent the election of a particular candidate might form but an insignificant part of a person's motives in persuading electors not to vote for that candidate. If a person believes that, even in the absence of any persuasion of electors by him, the number of votes cast in the election for that candidate would be so small as to give him no chance at all of being elected, the attempt to persuade electors not to vote for that candidate may be undertaken for some other purpose such as personal dislike or a desire to demonstrate a paucity of popular support for the policies of the candidate but without any intention to promote the election of the other candidates or any of them. The possibility that anyone would incur expense for so limited a purpose is probably remote, but in a case where the court was left with a reasonable doubt whether that was the accused's purpose, it would in my opinion be bound to find him not guilty of an offence under s 63(1) or s 95(1) of the 1949 Act.

I would allow both the appeals so far as they relate to charges under ss 63 and 95(1)(c).

LORD RUSSELL OF KILLOWEN.

My Lords, I too have had the advantage of reading in draft the speech to be delivered by my noble and learned friend, Lord Diplock. I agree with it, and I would therefore allow these appeals.

Appeals allowed. Ordered that the appeal of the Director of Public Prosecutions v Luft be remitted to the Divisional Court with a direction to that court to direct the Manchester City magistrates' court to convict the respondents of the charges under ss 63(5) and 95(3) of the Representation of the People Act 1949; that on the appeal of the Director of Public Prosecutions v Duffield, the respondent's convictions be restored with the exception of those relating to the respondent having caused to be posted a poster, contrary to s 95(1)(b) of the 1949 Act.

Solicitors: Director of Public Prosecutions; W H Thompson agents for Cassan & Co, Salford (for the respondents Luft and Atkinson) and for Brian Thompson, Manchester (for the respondent Duffield).

Gordon H Scott Barrister.