R v JOHN PALMER

NOTE

For ease of reference for those instructing I enclose the references upon which I relied in drafting the private prosecution indictment as requested. It will be seen that this is a matter that would have to be looked at closely before proceedings were actually commenced but it is to be hoped that the threat of the proceedings may have a certain laxative effect upon the Governor at Long Lartin, certainly enough to stir him into the action that he seems so unreasonably determined not to take.

ARCHBOLD:

25-381

XVII. Misconduct in Judicial or Public Office

Misfeasance

In R. v. Llewellyn-Jones (»»text) [1968] 1 Q.B. 429, 51 Cr.App.R. 204, CA (in which the defendant was a county court registrar), it was contended that fraud or dishonesty was an essential ingredient of this offence. Lord Parker C.J., giving the court's judgment, said that counsel for the appellant:

"would, I think, concede that if it were said that the misbehaviour amounted to oppression, using the powers of office to compel someone to act in a particular way, or to extortion, causing somebody to pay money, to corruption in the sense of bribery, to partiality, or indeed to acting fraudulently, the offence would be properly laid" (at pp. 435, 209).

The court in the result assumed in the appellant's favour that there had to be a dishonest or fraudulent motive, but held that on the particulars alleged in the indictment and having regard to the direction to the jury, it was plain that the jury were satisfied about such motive. It is apparent, however, that the court had substantial reservations about the argument that dishonesty is an essential ingredient of the offence. The trial judge (Widgery J.) had directed the jury (see 51 Cr.App.R. 4) that it was not enough to prove that the defendant knew, when making an order which was within his powers and which he could make for perfectly proper reasons, that by a side wind he was going to gain some personal benefit.

It must be proved that he was distorting the course of justice and that he made the order with intent to obtain benefit for himself and in circumstances in which there were no reasonable grounds for supposing that he would have made the order but for his personal interest and expectation.

In R. v. Dytham (»»text) [1979] 2 Q.B. 722, 69 Cr.App.R. 387, CA, Lord Widgery C.J., giving the court's judgment, said that it was the fact that in nearly all of the eighteenth and nineteenth century cases which had been cited "the misconduct asserted involved some corrupt taint; but this appears to have been an accident of circumstance and not a necessary incident of the offence" (at pp. 726, 393). See R. v. Bembridge (1783) 22 St.Tr. 1; R. v. Hedges (1803) 28 St.Tr. 1315; R. v. Jones (1806) 31 St.Tr. 251; R. v. Baxter (1851) 5 Cox 302; the charge of Lord Russell C.J. to the grand jury in R. v. Hodgkinson, The Times, June 26, 1900; and 1 Russ.Cr., 12th ed., 368.

In Dytham (»»text), the main point contended for was that the offence did not extend to neglect of duty as opposed to conduct involving malfeasance or at least misfeasance. The argument was rejected, the court holding that there was an offence of a public officer wilfully neglecting to perform a duty which he was bound to perform by common law or by statute: the neglect had to be wilful and not merely inadvertent and had to be culpable in the sense of being without reasonable excuse or justification. It was held that the element of culpability was not restricted to corruption or dishonesty but had to be of such a degree that the misconduct impugned was calculated to injure the public interest so as to call for condemnation and punishment and it was for the jury to decide whether the evidence revealed the necessary degree of culpability. See also R. v. Wyat (1705) 1 Salk. 380 (neglect by a constable to levy a penalty under a justice's warrant directed to him) and Stephen's Digest of the Criminal Law (9th ed.), pp. 114-115.

The offence may be committed by the employees of local authorities: R. v. Bowden (»»text) [1996] 1 Cr.App.R. 104, CA.

CASES:

(1967) 51 Cr.App.R. 204
»»References to this case
COURT OF APPEAL (CRIMINAL DIVISION)

before

THE LORD CHIEF JUSTICE, LORD JUSTICE WINN and Mr. JUSTICE WILLIS

HOPKIN ALFRED LLEWELLYN-JONES
1967 Jan. 26

Misbehaviour in a Public Office
-
Order Made by County Court Registrar
- Ingredients of Offence-Intention of Gaining Improper Personal Advantage-No Proper Regard to Interests of Beneficiary-Words "Dishonestly" or "Fraudulently" not Included in Indictment-Dishonesty Inherent in Description of Offence.

The appellant, a county court registrar, was convicted of misbehaviour in a public office on counts which alleged in the particulars of offence that the appellant "being and acting as registrar of the Cardiff County Court, with the intention of gaining improper personal advantage and without proper regard to the interests of [the beneficiary], (a) wrote a letter to solicitors acting for the father of the beneficiary "in terms in which he would not otherwise have written"; and (b) "made an order which he would not otherwise have made that GBP5,000 be paid to" a named person "out of funds in court."
Jump to [Next][Previous] paragraph
(1967) 51 Cr.App.R. 205
Held, that in each case the particulars supported the allegation of the common law offence of misbehaviour in a public office, although the words "fraudulently" or "dishonestly" did not appear in either count, dishonesty being inherent in the description of the offence. Decision of Widgery J. (ante, p. 4) affirmed. Hall [1891] 1 Q.B. 747; Bembridge (1783) 3 Doug. 327; 99 E.R. 579 and Borron (1820) 3 B. & Ald. 432 referred to.

Appeal against conviction and application for leave to appeal against the sentence. The appellant was convicted at Glamorgan Assizes on June 22, 1966, after a trial lasting ten days, on six counts alleging misbehaviour in a public office (on which counts alone he obtained leave to appeal), five counts alleging fraudulent conversion, one count alleging fraudulent disposal of property and one count alleging obtaining credit under false pretences. He was sentenced by Widgery J. on all counts except the last-named to concurrent terms of 4 years' imprisonment and on that count to

a concurrent term of one year's imprisonment. The appellant was at all material times the Registrar of the Cardiff and Barry County Court. In that capacity he was in a position to make orders for the release of money which had been paid into court in respect of damages to injured persons, and amongst other funds under his control there were "the Godfrey Jones Fund" and "the Bernard Sexton Fund." Count 2 concerned the Godfrey Jones Fund. In 1962, and indeed at all material times, the appellant was heavily in debt and was being pressed for payment of the moneys that he owed. In July 1962 he went to see a solicitor and asked if he had a client who would lend him GBP4,000 on the security of his, the appellant's, house. The solicitor said he thought he could get him a mortgage at 61/2 per cent., and the appellant raised no objection. It so happened that some time previously the infant Godfrey Jones had been completely paralysed as the result of an accident and had been awarded nearly GBP9,500 damages. That money had been paid into court, the judge saying that it ought to be invested in trust for the infant. In due course this was done, the
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infant's father and the appellant's solicitor having been made trustees of the fund. On September 14, 1962, an order was made by the appellant for the payment out of court of GBP9,000 of that fund, of which GBP4,000 was then lent to the appellant and secured by a mortgage on his house in favour of the two trustees. Later, the next year, a dispute arose between the infant's father and the solicitor, the father asserting that his son had then reached the age of twenty-one and accordingly that the trust should come to an end. The solicitor, on the other hand, maintained that, since the infant was completely paralysed, the proper view was that the trust set up was a permanent one. It was in those circumstances that solicitors for the father wrote to the appellant asking for his observations. On July 24, 1963 the appellant wrote to the solicitors in reply, saying that in making the order it was his intention that a permanent trust should be set up for the infant, and that he thought that had been the intention of the trial judge, and he thought that the trust should therefore be considered as a permanent trust. It was that letter which formed the basis of the second count. It was in this form: "Statement of Offence: Misbehaviour in a public office, contrary to common law. Particulars of Offence: On July 24, 1963 [the appellant] . . . being and acting as the Registrar of the Cardiff County Court, with the intention of gaining improper personal advantage and without proper regard to the interests of" the infant "wrote a letter to" the solicitors "in terms which he would not otherwise have written." It was the prosecution's case that the appellant must have known that the money was available to the infant if he wanted it, and that that

letter was written with the intention of misleading the solicitors, of discouraging them from realising the trust, and thus postponing the time when he, the appellant, would be called upon to pay the mortgage. Count 3 and its related fraudulent conversation count, count 5, concerned a man called Bernard Sexton. He was forty-one years of age, and had been badly injured in a motor accident. The injuries had affected his brain, making him incapable of
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looking after his affairs; a Mrs. O'Regan was doing so for him. In that capacity she had been coming to the county court office every month in accordance with an order which the appellant had previously made for the payment out to her of monthly sums for her brother's maintenance. On November 5, 1964, Mrs. O'Regan, at the appellant's request, went to the county court, and in the result the appellant made an order in favour of Mrs. O'Regan for the payment out of no less than GBP5,000 out of the Bernard Sexton's Fund. That cheque was handed by Mrs. O'Regan to the appellant, and it was taken to the appellant's solicitor, paid into a bank and credited to the appellant's account in the solicitor's books. It was the case for the prosecution that that money was obtained to redeem the mortgage given to the trustees of the infant Jones following upon the request by the father's solicitor. Apparently a fresh mortgage was prepared in favour of Mrs. O'Regan, but in fact that mortgage was not executed till several months later. GBP4,000 of the GBP5,000 obtained was used to pay off the existing mortgage, and the balance was applied to the appellant's account. The appellant continued to make orders in respect of the Bernard Sexton Fund, GBP1,500 in December 1964, GBP1,000 in February 1965, GBP1,000 in June 1965 and GBP1,000 on September 2, 1965. In each case the procedure was the same: a cheque was drawn in favour of Mrs. O'Regan, she handed the cheque to the appellant, as she said in order that he should re-invest the money in something to Bernard Sexton's benefit, and in each case the cheque was paid to the appellant into one of his bank accounts, and the proceeds used for his own purposes.
Kenneth Jones, Q.C. and Christopher Oddie for the appellant. The Solicitor-General, (Sir Dingle Foot, Q.C.), Emlyn Hooson, Q.C. and Brian Rees for the Crown.
The arguments appear fully from the judgment.
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The Lord Chief Justice: This appellant was convicted in June 1966 at Glamorgan Assizes, after a ten-day trial, on a number of counts. The indictment contained 14; on one, the first, he was acquitted, but on the

others he was convicted and sentenced to four years' imprisonment, on each one except the fourteenth, on which he was sentenced to one year's imprisonment, all concurrent. The charges on which he was convicted consisted of six charges of misbehaviour in a public office, five charges of fraudulent conversion, one charge of fraudulent disposal of property, and one of obtaining credit under false pretences. He obtained leave from the single judge to appeal against his conviction on the six counts alleging misbehaviour in a public office. Leave was refused in other cases, including an application for leave to appeal against sentence. Those applications have been renewed today, but it is convenient to say at this stage that, except for the application for leave to appeal against sentence, Mr. Kenneth Jones has frankly told the court that there are no grounds that he feels he can properly advance to support an application for leave to appeal against conviction on the other charges. Accordingly, whether or not the conviction on the six charges of misbehaviour stands, he still remains, or would remain unless the sentence were altered, under a sentence of four years' imprisonment. Count 2 and count 14 each stood on their own; the other counts were paired. Thus counts 3 and 5, for misbehaviour in a public office and fraudulent conversion, stood together; counts 6 and 7, 8 and 9, 10, 11, and 12 and 13 similarly. For the purposes of this report it is sufficient to refer to counts 2 and 3. [After stating the facts as set out above, His Lordship continued:] It is indeed a lamentable tale, and Mr. Kenneth Jones on the appellant's behalf has conceded that in regard to the fraudulent conversion count, and indeed the two remaining counts, one of fraudulent disposal of property and one of obtaining credit by false pretences, he cannot urge any grounds for setting aside the conviction. The summing-up in regard thereto is
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wholly impeccable, if not somewhat in the appellant's favour, and there was undoubtedly ample evidence to support the verdict. He has accordingly concentrated on the counts in respect of which leave to appeal was obtained, the six counts of misbehaviour in a public office. His ground is merely this, that those counts do not reveal any offences known to the law. It is convenient to read again count 3: "Misbehaviour in a public office, contrary to common law. . . . On November 11, 1964 [the appellant] . . . being and acting as the Registrar of the Cardiff County Court with the intention of gaining improper personal advantage and without proper regard to the interest of Bernard Sexton, made an order which he would not otherwise have made that GBP5,000 be paid to Mary Alice O'Regan out of funds in court." The argument has centred round what at common law was embraced by the offence which can be in general terms described as misbehaviour in a public office. Mr. Kenneth

Jones began his submission by saying that there cannot be a criminal offence whenever there is any misbehaviour in a public office. He would say that there must be many standards of conduct which can be said to be reprehensible, which would justify a man being removed from his office, but not all of which would constitute criminal offences at common law. From that he goes on to say that, for there to be a criminal offence at common law in such a case as this, there must be some further ingredient other than those set out in the counts. He would, I think, concede that if it were said that the misbehaviour amounted to oppression, using the powers of office to compel someone to act in a particular way, or to extortion, causing somebody to pay money, to corruption in the sense of bribery, to partiality, or indeed to acting fraudulently, the offence would be properly laid. In the course of argument he agreed that, if here in any of these counts this word "fraudulently" had appeared, he could not argue that the count did not describe a criminal offence known to the common law. In support of that argument Mr. Kenneth Jones has referred

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this court to a number of authorities in textbooks. There are undoubtedly authorities, of which Hall [1891] 1 Q.B. 747 is one, in which the indictment has specifically alleged such matters. It is unnecessary to go through Hall's case (supra) in any detail; it concerned an overseer who, it was said, had fraudulently omitted a certain man from the roll of electors. Mr. Kenneth Jones points out that the indictment there alleged that the name was omitted from the list unlawfully, wilfully, maliciously, knowingly and corruptly. Again he referred to Bembridge (1783) 3 Doug. 327; 99 Eng. Rep. 679, where again the first count in the indictment alleged that Bembridge, an accountant, had unjustly and fraudulently contrived to conceal certain matters and "to cheat and defraud our said Sovereign Lord the King and wickedly, wilfully, fraudulently, knowingly, and corruptly did refuse and neglect" to do certain things. In giving judgment in that case, Lord Mansfield C.J., having dealt with the facts, said that what was done in that case was not a mere omission or neglect, but a gross deceit, and that the object could only have been to defraud the public of the whole or part of the interest. Be that as it may, it seems quite clear, in the judgment of this court, that there are cases where the element of dishonesty is not dealt with, at any rate specifically. It is to be observed that in Bacon's Abridgment (1740) Edn. at p. 744, it is recognised that wilful breaches of the duties of an office may be punished by fines, etc. It is to be observed that in Marshall (1855) 4 E. & B. 475, Lord Campbell put the matter quite generally in this form (at p. 480): "No doubt a judge who maliciously obstructs the course of justice is guilty of a misdemeanour." Finally, Abbott C.J. in

Borron (1820) 3 B. & Ald. 432, a case that concerned the conduct of a magistrate, dealt with the matter in this way: He said (at p. 434): "The present case affords an unusual, if not a salutary instance, of address, in the language of demand and menace. They are, indeed, like every subject of this kingdom, answerable to the law for the faithful and upright discharge of
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their trust and duties. But, whenever they have been challenged upon this head, either by way of indictment, or application to this court for a criminal information, the question has always been, not whether the act done might, upon full and mature investigation, be found strictly right, but from what motive it had proceeded: whether from a dishonest, oppressive or corrupt motive, under which description fear and favour may generally be included, or from mistake and error. In the former case, alone, they have become the objects of punishment." Accordingly, the court proposes to take the same line as Widgery J. did when he came to rule on the argument presented before him. He said that he did not propose to attempt to give an exhaustive definition of what is covered by misbehaviour in a public office, it being sufficient to say that, in his opinion, what was alleged and what he proposed should be alleged in the count was sufficient. This court proposes to take the same line and to look at the words of the indictment, and, looking at those words, the court is satisfied that at any rate what is there alleged, if proved, would constitute the offence at common law of misbehaviour in a public office. Assuming in Mr. Kenneth Jones' favour that there must be some element of dishonesty involved, a dishonest motive, a fraudulent motive, it seems to this court that that is inherent in the words of the count. It is true the word "dishonestly" or "fraudulently" does not there appear, but it is inherent in the description of the offence. That the jury must have considered this a thoroughly dishonest and fraudulent transaction is clear, because they wholly rejected the appellant's story that what was done here was done with the full consent and knowledge of Mrs. O'Regan, that she intended him to have the money as a personal loan, and that the transaction was entirely above board. The jury must be taken wholly to have rejected his story, and in those circumstances, when one bears in mind that they found him guilty of the charge of fraudulent conversion, they must have been quite
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satisfied that this was a wholly fraudulent transaction. In those circumstances this court dismisses the appeal and refuses the application for leave to appeal against conviction on the other count. So far as

sentence is concerned, any prison sentence, as Mr. Kenneth Jones has pointed out, is clearly a drastic punishment in itself for the appellant. He has sought to urge that the only justification for four years' imprisonment was to make an example of the appellant, to impose a sentence which would deter others. He goes on to say that there must be little, if any, need for a deterrent sentence in regard to people in a similar position. This court is quite satisfied that this is not a deterrent sentence; it is a sentence which is fully merited, in the opinion of this court, as punishment for very grave offences and as expressing the revulsion of the public to the whole circumstances of the case. Accordingly, leave to appeal against sentence is likewise refused.
Appeal dismissed.

(1979) 69 Cr.App.R. 387
»»References to this case
COURT OF APPEAL

before
THE LORD CHIEF JUSTICE, LORD JUSTICE SHAW and Mr. JUSTICE McNEILL

PHILIP THOMAS DYTHAM
July 9, 18, 1979

Misconduct of Officer of Justice
-
Ingredients of Offence
- Culpability of Such Degree that Conduct Impugned Calculated to Injure Public Interest so as to Call for Condemnation and Punishment-Question of Fact for Jury.

For the offence of misconduct of an officer of justice to be established it must be proved that the conduct in question, though not restricted to corruption or dishonesty, must be of such a degree as to be calculated to injure the public interest so as to call for condemnation and punishment.
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(1979) 69 Cr.App.R. 388
Whether such a situation is revealed by the evidence is a matter for the jury to decide. Wyatt (1705) 1 Salk. 380 and ruling of Widgery J. in Llewellyn-Jones and Lougher (»»text) (1966) 51 Cr.App.R. 4, 6, 7. applied. The appellant, a police constable in uniform, witnessed one S

being ejected by a bouncer from a club early one morning. A fight ensued in which S was involved with three others and he was kicked to death. The appellant in no way intervened but went off. He was charged with misconduct of an officer of justice in that being present and a witness to a criminal offence, namely, a violent assault upon S by three others, he deliberately failed to carry out his duty as a police constable by wilfully omitting to take any steps to preserve the Queen's Peace or to protect S or to arrest or otherwise bring to justice his assailants. It was contended at his trial that the indictment as charged disclosed no offence known to the law. The trial judge overruled that submission and the jury were directed that the crucial question for their consideration was whether the appellant had seen the attack upon the victim, S. If he had, they, the jury, could find him guilty of the offence charged. The jury convicted. On appeal, it not being suggested that the appellant could not have summoned or sought assistance to help the victim or arrest his assailants. Held, dismissing the appeal, that the judge's ruling was correct for the allegation made against the appellant was not of mere non-feasance but of deliberate failure and wilful neglect to do his duty as an officer of justice, and on the facts the jury had come to the right decision. [For misconduct of an officer of justice, see Archbold (40th ed.), para. 3491.]

Appeal against conviction. On October 10, 1978, at Liverpool Crown Court (Cantley J.) the appellant on arraignment on an indictment charging misconduct of an officer of justice pleaded not guilty, and the trial was adjourned. On November 7, 1978, at Liverpool Crown Court (Neill J.), counsel for the appellant raised a demurrer to the indictment. After hearing legal argument the trial judge gave the following judgment: Neill J.: In this case the defendant, Philip Thomas Dytham, is charged in the indidctment which contains a statement of offence as follows, "Misconduct of an officer of justice contrary to common law." When the matter was called on for hearing before me this morning Mr. Wright, who appears for the defendant, entered a plea of demurrer. The demurrer is in proper form in writing and is in these terms. "Philip Thomas Dytham says that the Court ought not to take cognisance of the indictment against him because it does not charge an offence known to the law." When the matter was opened to me my attention was very properly drawn by Mr. Wright to the well-known dictum of Lord Parker C.J. in R. v. Inner London Quarter Sessions, Ex parte Metropolitan Police Comr. (»»text) (1969) 54 Cr.App.R. 49, 35; [1970] 2 Q.B. 80, 85 where he said: "I would add that I hope that now demurrer in criminal cases will be allowed to die naturally." Mr. Wright told me, however, that he thought that on the facts of this case demurrer was a more suitable form of procedure than a motion to quash the indictment.

(1979) 69 Cr.App.R. 389
As the matter developed Mr. Wright said he had no particular worry as to whether I dealt with it on demurrer or as a motion to quash the indictment, but it is formally before the Court as a demurrer. But I do not think as it comes before me in that way I can do anything else other than determine the demurrer, though I have not seen anything in the case that leads me to think that exactly the same arguments could not have been put before me on a motion to quash the indictment. Although I deal with it as a plea of demurrer, I do not want in any way to be seen to be encouraging the use of demurrer in circumstances of this kind. I come now to deal with the merits. Mr. Wright developed his argument under two main headings. He said that whatever the position may have been in the eighteenth century, at the present time the offence alleged in the indictment is not one of which the Court will take cognisance of and is not known to the law; any of the old authorities in these matters have been superseded by the provisions of the Police Act, and in particular the Police Act 1964. His second argument was that misconduct by a police constable, if it exists at all, is of a wider genus of misconduct by public officials. He said that in all the cases since the eighteenth century it has been an essential element that there should be some improper conduct or dishonest motive. I was referred, therefore, to the terms of the indictment. I have already recited the statement of the offence. The particulars of the offence allege that on March 18, 1977, the accused misconducted himself whilst acting as an officer of justice in that he, being present and witness to a criminal offence, apparently a violent assault upon one Peter Malcolm Stubbs by three others, deliberately failed to carry out his duty as a police constable by wilfully omitting to take any steps to preserve the Queen's Peace or to protect the person, Peter Malcolm Stubbs, or to arrest or otherwise bring to justice Peter Malcolm Stubbs's assailants. It is central to Mr. Wright's submissions and not I think in any way disputed by Mr. Russell on behalf of the Crown - that those particulars of the offence constituted a failure to do something and not the doing of something improperly. Mr. Wright developed his argument by referring me to the position in the thirteenth century and of the way in which the control of police duties in local communities was supervised by the justices in eyre, in the course of his submissions he referred me to passages in Pollock and Maitland. He turned to more recent history and referred me to the enactments of hue and cry which imposed obligations on the hundreds and also on constables with regard to the pursuit of criminals. He drew attention to the fact that Crouther's case (1599) Cro.Eliz. 654, was a case which involved a breach of one of these statutes of hue and cry and that the duty imposed on the constable was a duty

under statute. He then came to deal with the important decision of Wiat (1705) 11 Mod.Rep. 53, 88 E.R. 880, a case decided in 1705. That was a case where the allegation against the accused involved a police constable and the allegation was that he had failed to return a levy, which was a penalty. In the course of his address this afternoon, Mr. Wright referred me to another report of this case sub nom. Wyat (or Wyatt) other than the one I was referred to initially. The first reference being to the report in 1 Salkeld's Reports 380. The further report is a fuller report and is in Fortescue's Reports, at p. 127.
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In his submissions Mr. Wright pointed out that although in the course of the judgment reference was made to the duties of a police constable at common law and of the fact that the failure to return a warrant to levy a penalty was a failure at common law, the matter was governed by an Act of Parliament which related to deer-stealing and it was in connection with that offence that the justices had instructed him to return the warrant. But the main submission which Mr. Wright put forward was this: whatever the position may have been in the eighteenth century, the duties and the penalties which existed at that time have been superseded by the provisions of the Police Acts and in particular by the provisions of the Police Act 1964. He referred me to section 1 of the Police Act, to section 18 and in particular section 33. I was also referred to Schedule 2 to that Act. It seems to me that there is the clear authority of the decision of Wyat (supra) that a neglect by a police constable to carry out duties imposed on him at common law is an offence at common law. I am satisfied on the material that has been put before me and on the way the matter has been presented by Mr. Russell on behalf of the Crown, that there did exist, in the eighteenth century at any rate, an offence of failure to comply with or to carry out the duties of a constable and that was an indictable offence. I turn therefore, to what I have described as the main submission by Mr. Wright. I have considered the terms of the Police Act 1964, and in particular the terms of Schedule 2 to that Act, which are set out in the form of declaration which a police constable is required to make pursuant to section 18 of the Act. It is in these terms, "I do solemnly and sincerely declare and affirm that I will well and truly serve Our Sovereign Lady the Queen in the office of constable without favour or affection, malice or ill will; and that I will to the best of my power cause the peace to be kept and preserved, and prevent all offences against the persons and properties of Her Majesty's subjects; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law." It is true that in section 33 (2) (h) there is a provision whereby the Secretary

of State is empowered to make provision with respect to the duties which are or are not to be enforced by members of the police force, but I have not been referred to any regulations which in any way can be taken to supplant the duties which are enshrined or, as Mr. Wright described it, encapsulated in the formal declaration in Schedule 2. I am satisfied that the wording in Schedule 2 is in fact a statement of the duties of a police constable at common law, and I can see nothing in the Police Act which supplants those common law duties, nor anything in it which provides that the common law duties of a police constable have been affected or abrogated by anything laid down by statute. Mr. Wright urged upon me, in an attractive argument, if I may say so, that a police officer when he is enlisted into the police force is encouraged to join, or may be encouraged to join, by the fact that he would be amenable to a discipline code. Mr. Wright referred to the advantages and privileges which a police officer can enjoy by virtue of the protections in regard to discipline matters which he has under the 1965 Regulations. However, notwithstanding this argument, and the attractive way in which it was presented, I can see nothing which would entitle me to say that merely because a discipline code is provided by regulations made under statute that the common law duties of a police constable are in any way taken

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away, nor can I see that the power of the courts to deal with a breach of that common law duty by way of indictment is affected or excluded. Mr. Russell on behalf of the Crown, referred me to the case of Hall [1891] 1 Q.B. 747; 17 Cox C.C. 278. It seems clear from that decision of Charles J. that an indictment will only be excluded where a statute defines the duties imposed on the individual, and makes it an offence to be in breach of any of these duties and, in express terms, provides a penalty for breach of each or any of those duties. In other words one has to find in the statute a complete code dealing both with the duty and the breach, and the penalties prescribed. There is nothing in the Police Act, as I see it, which brings the matter within that principle, and therefore on the first argument put forward by Mr. Wright, I am not satisfied that the old law has been changed by the Police Act 1964, in the way he suggested. Mr. Wright's second argument was to the effect that if one examines the cases dealing with the misconduct of public officials since the early part of the eighteenth century, they all have one common element, namely the requirement that the person charged with the offence should have been guilty of some improper or corrupt or dishonest motive. He referred me in the course of his careful argument to cases decided at various periods beginning with the case of Williams and Davis (1762) 3 Burr. 1317. I mean no disrespect to his argument if I do not go through the cases in

detail. It is perfectly true that these cases do in fact have this common theme, that there was some corrupt motive on the part of the accused. The cases involved not only a justice of the peace, but also accountants in the case of Bembridge (1783) 3 Doug. K.B. 327, and in the most recent case in which this matter came to be decided, in the case of Llewellyn-Jones (»»text) (1966) 51 Cr.App.R. 4; [1968] 1 Q.B. 429, a county court registrar. In my judgment, however, the fallacy in Mr. Wright's argument on this second point is this, that these cases to which he referred me are only part of a larger class. In my judgment a public officer, and an officer of justice occupying a position of a police constable can be amenable to the criminal law in circumstances where there is no element of corruption or dishonesty. In the course of the argument before Widgery J., as he then was, in Llewellyn-Jones (»»text) (1966) 51 Cr.App.R. 4, 6, reference was made by Mr. Sebag Shaw to article 145, in Stephen's Digest of Criminal Law (9th ed.), p. 112. I see nothing either in the observations made in the course of the argument or in the judgment of Widgery J. that throws any doubt on the existence of that separate category of neglect of an official duty by a police constable. It is true that in the other cases which were referred to there was this element of corruption and dishonesty, but I see nothing in that decision or anything that was said in the Court of Appeal in that case which throws doubt in general on the statement which was referred to and was cited from article 145. In addition to that there is the authority of two leading textbooks in this branch of law: see Archbold (40th ed.), paragraph 3491, and Russell on Crime (12th ed.), p. 366. I have come to the conclusion that notwithstanding the arguments put forward by Mr. Wright, this indictment does disclose an offence known to the Law, and I so rule. The trial then proceeded and on November 9 the appellant was convicted. He was fined GBP150, payable in four months, or three months' imprisonment in default, and he was ordered to pay GBP50 towards the legal aid costs of his defence. The following facts are taken from the judgment. The appellant was a police constable in Lancashire. On March 17, 1977, at
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about 1 o'clock in the morning he was on duty in uniform and was standing by a hot dog stall in Duke Street, St. Helens. A Mr. Wincke was within the stall and a Mr. Sothern was by it. Some 30 yards away was the entrance to Cindy's Club. A man named Stubbs was ejected from the club by a bouncer. A fight ensued in which a number of men joined. There arose cries and screams and other indications of great violence. Mr. Stubbs became the object of a murderous assault. He was beaten and kicked to death in the gutter outside the club. All this was audible and

visible to the three men at the hot dog stall. At no stage did the appellant make any move to intervene or any attempt to quell the disturbance or to stop the attack on the victim. When the hubbub had died down he adjusted his helmet and drove away. According to the other two at the hot dog stall, he said that he was due off and was going off. His ground of appeal was that the indictment disclosed no offence known to the law.
The appeal was argued on July 9, 1979, when the following cases were cited in argument in addition to those referred to in the judgment: Burron (1820) 3 B. & Ald. 432; Davie (1781) 2 Burr. 371; Ex parte Fentiman (1834) 3 A. & E. 127; Hall [1891] 1 Q.B. 747 and Williams and Davis (1767) 3 Burr. 1317 and Crouther's case (1599) Cro.Eliz. 654.
G. H. Wright, Q.C. and D. G. Maddison (see note 1) for the appellant. T. P. Russell, Q.C. and H. H. Andrew (see note 2) for the Crown.
Cur. adv. vult.
July 18. The Lord Chief Justice: The judgment I am about to read is the judgment of the Court prepared by Shaw L.J. [The learned Lord Chief Justice stated the facts and continued:] The appellant's conduct was brought to the notice of the police authority. As a result he appeared on October 10, 1978, at the Crown Court at Liverpool to answer an indictment which was in these terms: "The charge against you is one of misconduct of an officer of justice in that you . . . misconducted yourself whilst acting as an officer of justice in that you being present and a witness to a criminal offence namely a violent assault upon one . . . Stubbs by three others deliberately failed to carry out your duty as a police constable by wilfully omitting to take any steps to preserve the Queen's Peace or to protect the person of the said . . . Stubbs or to arrest or otherwise bring to justice (his) assailants." On arraignment the appellant pleaded not guilty and the trial was adjourned to November 7. On that day before the jury was empanelled counsel for the appellant, or defendant, of course, as he was then, took an objection to the indictment by way of demurrer. The burden of that objection was that the indictment as laid disclosed no offence known to the law. Neill J. ruled against the objection and the trial proceeded. The defence on the facts was that the appellant had observed nothing more than that a man was turned out of the club. It was common ground that in that situation his duty would not have required him to take any action. The jury were directed that the crucial question for their consideration was whether the defendant had seen the attack on the victim. If he had they could find him guilty of the offence charged in the indictment. The jury did return a verdict of guilty. Hence this appeal which is confined to the matters of law raised by the demurrer pleaded at the court of trial. At the outset of his submissions in this Court counsel for the appellant conceded

Note 1 (Counsel did not appear below). (Back to main text)

Note 2 ibid.(Back to main text)

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two matters. The first was that a police constable is a public officer. The second was that there does exist at common law an offence of misconduct in a public office. From that point the argument was within narrow limits though it ran deep into constitutional and jurisprudential history. The effect of it was that not every failure to discharge a duty which devolved on a person as the holder of a public office gave rise to the common law offence of misconduct in that office. As counsel for the appellant put it, non-feasance was not enough. There must be a malfeasance or at least a misfeasance involving an element of corruption. In support of this contention a number of cases were cited from eighteenth and nineteenth century reports. It is the fact that in nearly all of them the misconduct asserted involved some corrupt taint; but this appears to have been an accident of circumstance and not a necessary incident of the offence. Misconduct in a public office is more vividly exhibited where dishonesty is revealed as part of the dereliction of duty. Indeed in some cases the conduct impugned cannot be shown to have been misconduct unless it was done with a corrupt or oblique motive. This was the position for example in Bembridge (1783) 3 Doug. 327; and also in the modern case of Llewellyn-Jones and Lougher (»»text) (1966) 51 Cr.App.R. 4. There the registrar of a county court was charged in a count which alleged that he had made an order in relation to funds under his control "in the expectation that he would gain personal advantage from the making of such order." On a motion to quash the count as disclosing no offence known to the law I, as trial judge in the course of my ruling, made the following pronouncement. It is to be found in (1967) 51 Cr.App.R. at p. 6 and reads as follows: "The authorities to which I have been referred (see note 1) show that there is a variety of ways in which the holder of a public office may be indicted under this principle for misconduct or misbehaviour. It is clear that a culpable failure to exercise a public duty may, because the duty is a public one, lay the defaulter open to indictment for criminal offences, whereas, had he been working for a private employer, his default would have been no more than a civil liability. Even so, it is not easy to lay down with precision the exact limits of the kind of misconduct or misbehaviour which can result in an indictment under this rule. I have formed a clear view, but stated in hypothetical terms, that if the registrar of a county court when exercising his power to order payment out of court of money held on behalf of a

beneficiary were to make an order in expectation of some personal benefit which he hoped to obtain and in circumstances where, had it not been for the personal benefit, he would not have made the order, that would be an example of misconduct in a public duty sufficient to come within this rule. The reason why I feel that that would come within the rule is because in that hypothetical case a public officer would be distorting the course of justice to meet his own personal needs and, in my opinion, it would be sufficient to justify a conviction if it could be shown that he had made such an order with intent to obtain personal benefit for himself and in circumstances in which there were

Note 1 1 i.e. Bembridge (1783) 3 Doug. 327; Hudson (1956) 40 Cr.App.R. 55; [1956] 2 Q.B. 252; Marshall (1855) 4 E. & B. 475; Shaw v. D.P.P. (1961) 45 Cr.App.R. 113; [1962] A.C. 220; Russell on Crime (12th ed.), Chap. 24, pp. 361 et seq.; Archbold's Criminal Pleading, Evidence and Practice (35th ed.), para. 3334; Stephen's Digest of the Criminal Law (9th ed.), p. 112, arts. 142-145. (Back to main text)

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no grounds for supposing that he would not have made the order but for his personal interest and expectation. On the other hand, I have reached an equally clear view that it is not enough to bring a county court registrar within the principle merely to show that, when making an order which was within his powers and which he could make for perfectly proper motives, he knew that by a side wind, as it were, he was going to gain some personal benefit. The mere fact that he knows of his personal interest is, in my view, a very good ground for his declining to exercise jurisdiction and for his arranging for someone else, such as the judge, to make an order for him. Everyone in judicial office knows how unwise it is to deal with a case in which personal interests are raised, but I would not be prepared to say that it would be misconduct for this purpose for a registrar to make a decision which did affect his personal interests, merely because he knew that his interests were so involved, if the decision was made honestly and in a genuine belief that it was a proper exercise of his jurisdiction so far as the beneficiaries and other persons concerned came into it. "When one looks at the terms of count 1 as it now stands, it seems to me that it alleges no more than knowledge on the part of the defendant that his personal interest was involved. For the reasons I have given, it is not enough to disclose an offence known to the law and, if the matter rested there, that count and others to which similar considerations apply would have to be quashed. On the other hand, it is not difficult to amend count 1 so as to introduce the vital element to

which I have already referred and I am satisfied that such an amendment can be made without injustice in the circumstances of this case." So also in Wyatt a case tried in 1705 and reported in (inter alia) (1705) 1 Salk. 380, it was held that "where an officer" (in that case a constable) "neglects a duty incumbent on him either by common law or statute, he is for his fault indictable." Counsel for the appellant contended that this was too wide a statement of principle since it omitted any reference to corruption or fraud; but in Stephens Digest of the Criminal Law (9th ed.), art. 145 are to be found these words: "Every public officer commits a misdemeanour who wilfully neglects to perform any duty which he is bound either by common law or by statute to perform provided that the discharge of such duty is not attended with greater danger than a man of ordinary firmness and activity may be expected to encounter." In support of this proposition Wyatt (supra) is cited as well as Bembridge (1783) 3 Doug. 327 a judgment of Lord Mansfield. The neglect must be wilful and not merely inadvertent; and it must be culpable in the sense that it is without reasonable excuse or justification. In the present case it was not suggested that the appellant could not have summoned or sought assistance to help the victim or to arrest his assailants. The charge as framed left this answer open to him. Not surprisingly he did not seek to avail himself of it, for the facts spoke strongly against any such answer. The allegation made was not of mere non-feasance but of deliberate failure and wilful neglect. This involves an element of culpability which is not restricted to corruption or dishonesty but which must be of such a degree that the misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment. Whether such a situation is revealed by the evidence is a matter that a jury has to decide. It puts no heavier burden upon them than when in more familiar contexts they are called upon to consider whether driving is dangerous or a publication is obscene or a place of public resort is a disorderly
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house. See Quinn and Bloom (1961) 45 Cr.App.R. 279, 286; [1962] 2 Q.B. 245. The learned judge's ruling was correct. The appeal is dismissed. Application for leave to appeal to House of Lords adjourned.
July 24. The Court of Appeal refused leave to appeal to the House of Lords.

Appeal dismissed.

Solicitors: Mace & Jones, Huyton, for the appellant. Director of Public Prosecutions for the Crown.

[1996] 1 Cr.App.R. 104

»»References to this case

TERENCE BOWDEN

COURT OF APPEAL (Lord Justice Hirst, Mr Justice Hidden and Mr Justice Mitchell): February 13, 24, 1995

Public Office

Misconduct

Misconduct in public office-Scope of offence.

The common law offence of misconduct in a public office applies to everyone appointed to discharge a public duty, whether or not remunerated by the Crown. Accordingly the offence applies generally to officers in local authorities. The appellant, who was employed by a local authority as a maintenance manager of the City Works Department, a direct labour organisation set up under Part III of the Local Government, Planning and Land Act 1980, was responsible for management and direction of subordinate employees and accountable for handling money and ensuring that his department's activities were within budget. He was charged with misconduct in a public office. The trial judge having ruled that the common law offence applied to officers in local authorities, the appellant pleaded guilty. On appeal, it being contended that the offence applied only to servants of the Crown or, if it had a wider application, that it did not apply to the appellant's post.
Held, that the common law offence of misconduct in a public office applied generally to all who discharged a public duty, whether remunerated by the Crown or otherwise. Th appellant was properly described as a public officer and the appeal would be dismissed. Bembridge (1783) 3 Doug. K.B. 327, Henly v. Mayor of Lyme (1828) 5 Bing. 91 and Whitaker (1914) 10 Cr.App.R. 245, [1914] 3 K.B. 1283 followed. Hall [1891] 1 Q.B. 747, Llewellyn-Jones (»»text) (1967) 51 Cr.App.R. 204, [1968] 1 Q.B. 429, and Dytham (»»text) (1979) 69 Cr.App.R. 387, [1979] 2 Q.B. 722 considered. [For misconduct in public office, see Archbold (1994) paras. 28-333 to 334c.]
Appeal against conviction. On October 21, 1993, in the Crown Court at Wolverhampton (Judge Mott) the appellant pleaded guilty to misconduct in a public office (count 1) and was fined GBP350 to be paid on or before

November 18, 1993, with 28 days' imprisonment in default of payment. Three other counts, one of a similar offence and two of false accounting were left on the file. The facts appear in the judgment. He appealed on the grounds that the offence of misconduct in public office could only be committed by servants of the Crown or that if it had a wider application, it did not apply to the post held by the appellant.
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The appeal was argued on February 13, 1995.
Anthony Barker, Q.C. (assigned by the Registrar of Criminal Appeals) for the appellant. J. Burbidge for the Crown.
Cur. adv. vult.
February 24. HIRST L.J. read the judgment of the court: This is an appeal on a point of law by the appellant, Terence William Bowden, against a ruling of His Honour Judge Mott in the Crown Court at Wolverhampton on October 21, 1993, following which the appellant pleaded guilty to misconduct in a public office and was fined GBP350. The sole but very important question at issue is whether the common law offence of misconduct in a public office applies generally to officers in local authorities and, in particular, to the post held by the appellant in his employment by the City of Stoke-on-Trent. The learned judge held that it did so apply, and this conclusion is challenged by Mr Anthony Barker Q.C., on behalf of the appellant, on the footing that, as stated in the grounds of appeal, either the offence only applies to servants of the Crown or, alternatively, if it has a wider application, that it does not apply to the post held by the appellant. The decision turns on the proper interpretation and application of a number of authorities to which we shall shortly refer. The appellant was, at the material time, employed by the Stoke-on-Trent City Council as Miscellaneous Maintenance Manager of the City Works Department. This department was a direct labour organisation, set up in accordance with Part III of the Local Government, Planning and Land Act 1980. Under his contract of employment he was responsible for management and direction of subordinate employees; he was also accountable for the handling of money and obliged to ensure that his department's activities were within budget, it being a statutory duty under section 16 of the above Act for every local authority to secure that, in respect of each financial year, their revenue from construction or maintenance work shows such positive rate of return on the capital employed for the purpose of carrying out the work as the Secretary of State may direct. Following the learned judge's ruling on the point of law, the appellant pleaded guilty to an offence of misconduct in a public office, particularised as follows:

"TERENCE WILLIAM BOWDEN between the 1st day of December 1989 and the 1st day of June 1990 when the holder of a public office namely the Chief Building Maintenance Officer of Stoke City Council dishonestly . . . caused enhancement joinery, plumbing and electrical work to be carried out on the premises known as 61 Honeywell House, Stoke, by council employees when the same was not required under the repairing policy of the Stoke City Council . . ."

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The premises in question were let to the appellant's lady friend. It is convenient at the outset to deploy the relevant authorities in chronological order. In the leading case of Bembridge (1783) 3 Doug. K.B. 327, the defendant, who was an accountant in the office of the Receiver and Paymaster-General of the Forces, deceitfully concealed from his superior his knowledge that certain sums which should have been inserted in a final account were omitted. Following his conviction, on a motion for the arrest of judgment, Lord Mansfield stated at pp. 331-332:

"The duty of the defendant is obvious; he was a trustee for the public and the paymaster, for making every charge and every allowance he knew of; . . . If the defendant knew of the omission . . . and if he concealed it, his motive must have been corrupt. That he did know was fully proved, and he was guilty therefore, not of an omission or neglect, but of a gross deceit. The object could only have been to defraud the public of the whole, or part of the interest. . . . Here there are two principles applicable: first, that a man accepting an office of trust concerning the public, especially if attended with profit, is answerable criminally to the King for misbehaviour in his office; this is true, by whomever and in whatever way the officer is appointed."

Willes and Buller JJ. concurred. In Henly v. Mayor of Lyme (1828) 5 Bing. 91 a civil action was brought against the Mayor and Burgesses of Lyme Regis for failing, in breach of their public duty, to repair the Cob. The claim succeeded before Littledale J. at the Dorchester Spring Assizes in 1828. On a motion in arrest of judgment Best C.J. upheld the decision and stated as follows (at p. 106):

"Now I take it to be perfectly clear, that if a public officer abuses his office, either by an act of omission or commission, and the consequences of that, is an injury to an individual, an action may be maintained against such public officer. The instances of this are so numerous, that it would be a waste of time to refer to them. Then, what constitutes a public

officer? In my opinion, every one who is appointed to discharge a public duty, and receives a compensation in whatever shape, whether from the Crown or otherwise, is constituted a public officer."

The learned Chief Justice then instanced certain classes of office holders, including bishops, clergymen and Lords of the Manor and also the Bank of England. He then concluded by enunciating the established principle that:

". . . if a man takes a reward - whatever be the nature of that reward, whether it be in money from the Crown, whether it be in land from the Crown, whether it be in lands or money from any individual - for the discharge of a public duty, that instant he becomes a public officer . . ."

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In Hall (1891) 1 Q.B. 747, an overseer for the poor, who was charged with the duty by statute to prepare The Register of Qualified Voters in Parliamentary and Council Elections in Whitechapel, was indicted on a number of counts, on the footing that he corruptly omitted from the register persons qualified to vote, or included therein persons who were dead or otherwise not entitled to vote. All the counts were laid as common law misdemeanours. On a motion to quash the indictment it was held by Charles J. that by virtue of the provisions of the Reform Act 1832 and subsequent statutes regulating elections, the only remedies available were those laid down in the statutes, and that accordingly the indictment was bad. It was clearly implicit in the decision that, but for the statutory provisions, the indictment would have been good. There are three reported twentieth century authorities in which convictions for the offences of misconduct in a public office have been upheld on appeal. In Whitaker (1914) 10 Cr.App.R. 245, (1914) 3 K.B. 1283, the Court of Criminal Appeal (Lawrence L.J., Lush and Atkin JJ.) upheld the conviction of a commanding officer who had accepted, from a firm of caterers, sums of money paid to induce him to accept their representative as tenant of the regimental canteen. In response to the argument that the appellant was not a public officer, the Court stated at p. 252 and p. 1296:

"A public officer is an officer who discharges any duty in the discharge of which the public are interested, more clearly so if he is paid out of a fund provided by the public."

The Lyme case was cited in argument by the Attorney-General, Sir John Simon Q.C. (at p. 248). In Llewellyn-Jones (1967) 51 Cr.App.R. 204,

[1968] 1 Q.B. 429, the Court of Appeal (Criminal Division) (Lord Parker C.J., Winn L.J. and Willis J.) heard an appeal against conviction by a County Court Registrar who had made an order with the intention of gaining improper personal advantage. The court rejected the submission that the count laid in the indictment did not reveal any offence known to the law, which Lord Parker C.J. stated at p. 209 and p. 435:

". . . can in general terms be described as misbehaviour in public office."

Having cited the cases of Hall and Bembridge (referred to above), the court upheld the conviction stating that:

"assuming . . . there must be some element of dishonesty involved . . . that was inherent in the words of the count." (at p. 211 and p. 437)

Finally in Dytham (»»text) (1979) 69 Cr.App.R. 387, [1979] 2 Q.B. 722, the Court of Appeal (Criminal Division) (Lord Widgery C.J., Shaw L.J. and McNeill J.) upheld the conviction of a constable who, while in uniform, had witnessed the commission of serious offences of violence, but had wilfully failed to
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take any steps to preserve the Queens' Peace, or to protect the person of the victim, or to arrest his assailant. In the course of his judgment Lord Widgery C.J. quoted the following passage from Stephen's Digest of the Criminal Law, 9th ed. 1950, p. 114, as follows:

"'Every public officer commits a misdemeanour who wilfully neglects to perform any duty which he is bound either by common law or by statute to perform provided that the discharge of such duty is not attended with greater danger that a man of ordinary firmness and activity may be expected to encounter."

Having cited Bembridge (supra), Lord Widgery C.J. proceeded:

"The neglect must be wilful and not merely inadvertent, and it must be culpable in the sense that it is without reasonable excuse or justification. In the present case . . . The allegation made was not of mere non-feasance but of deliberate failure and wilful neglect. This involves an element of culpability which is not restricted to corruption or dishonesty but which must be of such a degree that the misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment."

Mr Barker opened his argument by relying on the heading to the section in Archbold dealing with this offence in the 1992 ed., para. 25.333, viz. "Misconduct by Executive and Administrative Officials of the Crown", though he recognised that in the current 1994 edition the heading has been changed to "Misconduct in Public Office". He submitted that the earlier heading accurately represents the law, and that it is significant that all the recent cases related to persons holding high offices of public trust who owed a duty to the Crown. At the very least, the scope of the offence was limited to offences where a breach of trust would significantly disadvantage the public at large. In no case had a local authority employee been held to fall within the scope of the offence and any argument based on the Lyme case was, he submitted, fallacious, seeing that the case concerned civil and not criminal liability. He submitted that the best definition was that given in Stephen's Digest, which did not cover the appellant seeing that, as Mr Barker submitted, he was not bound by either a common law or a statutory duty. In any event, Mr Barker submitted that the appellant's duty was merely contractual and had no public quality. Even if this general submission was wrong, the appellant's position as a middle manager was, he contended, too lowly to fall within the scope of the offence. At one stage in his argument Mr Barker submitted, by analogy with Hall, that the common law offence could not, in any event, apply to local authority employees since their position in this field was covered by the Public Bodies Corrupt Practices Act 1889, which prescribes, in summary,
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offences of bribery by officers of local authorities who corruptly solicit or receive or agree to receive bribes, and by other persons who give promises or offer such bribes to such officers. However, in his reply he did not press the argument since he recognised that the appellant could not have been prosecuted for his present conduct under those statutory provisions and therefore conceded, rightly, in our judgment, that in his words, the 1889 Act could not be the only mechanism. Ably though the argument was presented by Mr Barker, we are unable to accept it, substantially for the reasons submitted by Mr Burbidge on behalf of the prosecution. In our judgment the theme which runs through all these cases over the past 200 years is, in the words of Lord Mansfield in Bembridge, that ". . . a man accepting an office of trust concerning the public is answerable criminally to the King for misbehaviour in his office" and most significantly that ". . . this is true by whomever and in whatever way the officer is appointed". The same principle is to be found in the Lyme case, where, in our judgment, even though it was a civil case, a public office is correctly defined as embracing:

"... everyone who is appointed to discharge a public duty, and receives compensation in whatever shape whether from the Crown or otherwise" (emphasis added).

In that case, significantly, the public officers in question were not servants of the Crown, but the Mayor and Burgesses of a borough (the same applied mutatis mutandis, in Hall). Nothing in the later cases, in our judgment, in any way affects or qualifies this general principle. The fact that, as it happened, most of the cases are concerned with officers or agents of the Crown does not establish any curtailment of the well-established general principle, since in no case has it been laid down that the offence is limited to officers or agents of the Crown. Indeed, the twentieth century cases, in our judgment, proceeded on the basis of this general principle, which there was no need to restate. So far as the appellant's personal position is concerned, he was responsible to his employers, the City of Stoke-on-Trent for the upkeep of their council housing and in that capacity was accountable for the receipt and disbursement of public money derived by the city council either from the rates (or their modern equivalent) or from Central Government grants. Moreover, his salary was paid from the same public funds. He thus, in our judgment, falls fairly and squarely within the definition of "public officer" laid down in the authorities and we are unable to accept the submission that, with these responsibilities, his position was too lowly to qualify. In the words of Best C.J. in the Lyme case, repeated almost verbatim in Whitaker, he was appointed to discharge public duties and received compensation from the City of Stoke-on-Trent. This seems to us to fall fully within the public duty at common law referred to in Stephen's Digest.
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Furthermore, although for reasons already given the 1889 Act does not directly apply, we think that Mr Burbridge is right in submitting that his argument is reinforced by the definition of public office in section 7 of that Act, namely:

"... any office or employment of a person as a member, officer or servant of a public body"

which is itself defined as:

"any council of a county, of a city or a town, or any council of a municipal borough ..."

This is enough to dispose of the appeal and it is unnecessary for us to consider Mr Burbridge's further argument that the appellant personally was bound by the statutory duty laid down in section 16 of the 1980 Act, though it is fair to say that we should have found some difficulty in holding that this provision, which clearly lays a duty on local authorities to secure a positive rate of return on the capital employed for the purpose of carrying out maintenance work, also lays a statutory duty personally on the local authority's officers. However, the point remains open for future consideration. For all these reasons we dismiss this appeal.

Appeal dismissed.

Solicitors: Crown Prosecution Service, Stafford.

PETER JOHN KELSON QC 15.08.02