R v Tan and others (Court of Appeal, criminal division)

Court of Appeal, Criminal division

February, 1983

The judgment of Lord Justice Ormrod in the 1970 case of Corbett v Corbett has had far-reaching consequences. The test which he used to establish sex for legal purposes is a narrow and restrictive one, which condems trans people to being classified for ever in the sex assigned at birth, and its application to this criminal case had serious consequences for the defendants.

The Appeals Court ruled in this case that Ormrod's test applied to a trans woman convicted for engaging in prostution. By classifying her as male rather than as female, she and her co-defendants could be convicted of more serious offences (and thus exposed to more severe penalties) than if she had been recognised as female.

R v Tan and others

COURT OF APPEAL, CRIMINAL DIVISION

MAY LJ, PARKER AND STAUGHTON JJ

Hearing dates: 7, 8 DECEMBER 1982, 10 FEBRUARY 1983

Criminal law - Disorderly house - House used by one prostitute for provision of sexual services - Prostitute advertising that such services available there - Prostitute seeing only one client at a time - No one else present when prostitute providing services for client - Whether prostitute keeping a 'disorderly house'.

Criminal law - Prostitution - Living on earnings of prostitution - Man living on earnings of prostitution - Offence for a 'man' to live on earnings of prostitution - Accused a male at birth but subsequently undergoing sex change operation - Accused living on earnings of prostitution - Whether accused a 'man' living on earnings of prostitution - Sexual Offences Act 1956, s 30.

Criminal law - Prostitution - Living on earnings of prostitution - Male prostitution - Prostitute a male at birth but subsequently undergoing sex change operation and working as female prostitute - Accused living on prostitute's earnings - Whether accused living on earnings of prostitution of 'another man' - Sexual Offences Act 1967, s 5(1). 12

A single prostitute who provides services in private premises to one client at a time without spectators is guilty of the common law offence of keeping a disorderly house if it is proved that the services provided are open to the public and are of such a character and are conducted in such a manner (whether by advertisement or otherwise) that their provision amounts to an outrage of public decency or is otherwise calculated to injure the public interest to such an extent as to call for condemnation and punishment (see p 18 g h, post).

R v Higginson (1762) 2 Burr 1232, R v Rogier (1823) 2 Dow & Ry KB 431, R v Berg, Britt, Carr é and Lummies (1927) 20 Cr App R 38, Shaw v DPP [1961] 2 All ER 446, R v Quinn [1961] 3 All ER 88 and R v Brady [1964] 3 All ER 616 considered.

A person who was born a male and remains biologically a male but who has undergone a sex change operation is neverthelesss capable of being convicted under s 30a of the Sexual Offences Act 1956 of being 'a man' who lives on the earnings of prostitution. Similarly, if such a person engages in prostitution, a man or woman who lives on that person's earnings as a prostitute is guilty of the offence of living on the earnings of the prostitution 'of another man' contrary to s 5(1)b of the Sexual Offences Act 1967 (see p 19 f to j, post).

a Section 30 provides:

'(1) It is an offence for a man knowingly to live wholly or in part on the earnings of prostitution.

(2) For the purposes of this section a man who lives with or is habitually in the company of a prostitute, or who exercises control, direction or influence over a prostitute's movements in a way which shows he is aiding, abetting or compelling her prostitution with others, shall be presumed to be knowingly living on the earnings of prostitution, unless he proves the contrary.'

b Section 5(1), so far as material, provides: 'A man or woman who knowingly lives wholly or in part on the earnings of prostitution of another man shall be liable … (b) on conviction on indictment to imprisonment for a term not exceeding seven years.'

Corbett v Corbett (orse Ashley) [1970] 2 All ER 33 applied.

Notes

For the common law offence of keeping a disorderly house, see 11 Halsbury's Laws (4th edn) para 1057, and for cases on the subject, see 15 Digest (Reissue) 1054-1055, 9076-9078.

For living on the earnings of prostitution, see 11 Halsbury's Laws (4th edn) paras 1068, 1070.

For the Sexual Offences Act 1956, s 30, see 8 Halsbury's Statutes (3rd edn) 433.

For the Sexual Offences Act 1967, s 5, see ibid 580.

Cases referred to in judgment

- Corbett v Corbett (orse Ashley) [1970] 2 All ER 33, [1971] P 83, [1970] 2 WLR 1306, 27(1) Digest (Reissue) 29, 137.
- Jenks v Turpin (1884) 13 QBD 505, DC, 8(2) Digest (Reissue) 644, 176.
- R v Berg, Britt, Carr é and Lummies (1927) 20 Cr App R 38, CCA, 14(2) Digest (Reissue) 507, 4150.
- R v Brady, R v Ram [1964] 3 All ER 616, CCA, 15 Digest (Reissue) 1055, 9078.
- R v Higginson (1762) 2 Burr 1232, 97 ER 806, 15 Digest (Reissue) 1055, 9080.
- R v Quinn, R v Bloom [1961] 3 All ER 88, [1962] 2 QB 245, [1961] 3 WLR 611, CCA, 15 Digest (Reissue) 1055, 9077.
- R v Rogier (1823) 2 Dow & Ry KB 431.
- Shaw v DPP [1961] 2 All ER 446, [1962] AC 220, [1961] 2 WLR 897, HL, 14(1) Digest (Reissue) 139, 965.

Appeals and applications for leave to appeal

On 28 September 1982 in the Crown Court at Inner London Sessions, before Mr R U Thomas sitting as an assistant recorder and a jury (1) the appellant Moira Tan was convicted of keeping a disorderly house at 89b Warwick Way, London SW1 (count 1), was sentenced to six months' imprisonment and was deprived of property rights in 13 apparatus found on the premises, (2) the appellant Gloria Gina Greaves was convicted (i) of keeping a disorderly house at 89b Warwick Way, London SW1 (count 1), (ii) of keeping a disorderly house at 15 Clarendon Street, London SW1 (count 2) and (iii) of living on the earnings of prostitution (of the applicant Tan) contrary to s 30 of the Sexual Offences Act 1956 (count 3), was sentenced to six months' imprisonment, concurrent, on counts 1 and 2, and to twelve months' imprisonment, consecutive, on count 3, and was also fined £10,000 on count 3 (or six months' consecutive imprisonment in default of payment) and deprived of property rights in apparatus found at 89b Warwick Way and 15 Clarendon Street, (3) the appellant Brian Greaves was convicted of living on the earnings of prostitution (through his association with Gloria Greaves) contrary to s 30 of the 1956 Act (count 4), and of living on the earnings of male prostitution (of the appellant Gloria Greaves), contrary to s 5 of the Sexual Offence Act 1967 (count 5). Each of the appellants appealed against conviction on points of law. The appellant Tan appealed against sentence by leave of Bush J. The appellants Gloria Greaves and Brian Greaves applied for leave to appeal against sentence. Their applications were referred by Bush J to the full court. The facts are set out in the judgment of the court.

Nicholas Freeman for the appellant Tan.

Andrew Patience for the appellants Gloria Greaves and Brian Greaves.

John P V Bevan for the Crown.

At the conclusion of the hearing of the appeals May LJ announced that for reasons to be given later the court (1) would allow the appeal of Brian Greaves against his conviction on count 4 and would quash that conviction, but that all the other appeals against conviction would be dismissed, (2) would grant the applications for leave to appeal against sentence, treating the hearing as the hearing of the appeals against sentence, and (3) would allow the appeals against sentence inasmuch as all sentences would be suspended for two years.

JUDGMENT

10 February 1983. The following judgment was delivered.

PARKER J. On 28 September 1982 the appellants were convicted in the Crown Court at Inner London Sessions on an indictment containing five counts. On count 1, Tan and Gloria Greaves were convicted of keeping a disorderly house at 89b Warwick Way, London SW1, and were each sentenced to six months' imprisonment. Both were, in addition, deprived of property rights in apparatus found at such premises. On count 2, Gloria Greaves was convicted of keeping a disorderly house at 15 Clarendon Street, London SW1, and was sentenced to six months' imprisonment, concurrent with the sentence on count 1, and was also deprived of property rights in apparatus found there. On count 3, Gloria Greaves was convicted of living on the earnings of prostitution contrary to s 30 of the Sexual Offences Act 1956, and was sentenced to twelve months' imprisonment, consecutive to the sentences imposed on counts 1 and 2, was fined £10,000 or six months' consecutive in default of payment and was ordered to pay the prosecution's costs. The total custodial sentence imposed on her thus amounted to eighteen months' imprisonment. On count 4, Brian Greaves was convicted of living on the earnings of prostitution contrary to s 30 of the 1956 Act, and was sentenced to twelve months' imprisonment. On count 5, Brian Greaves was also convicted of living on the earnings of male prostitution contrary to s 5 of the Sexual Offences Act 1967, and was sentenced to twelve months' imprisonment, concurrent with the sentence on count 4.

All the appellants appealed on points of law. Tan appealed against sentence by leave of the single judge. Applications by Gloria Greaves and Brian Greaves for leave to appeal against sentence were referred by the single judge to the full court. The single judge also granted all three defendants bail, pending the hearing of their appeals and applications.

The appeals against conviction, the appeal against sentence and the applications for leave to appeal against sentence were heard on 7 and 8 December 1982. On the conclusion of the hearing, the appeal of Brian Greaves against his conviction on count 4 was allowed and that conviction was quashed, but all other appeals against conviction were dismissed. 14The applications for leave to appeal against sentence were granted and the hearing treated as the hearing of the appeals against sentence. All the appeals against sentence were allowed, to the extent only that all sentences of imprisonment were suspended for two years. We then said that we would give our reasons later. This we do now. We deal first with counts 1 and 2.

At 89b Warwick Way, Tan, and at 15 Clarendon Street, Gloria Greaves, provided sexual services for reward to those wishing to receive them. Tan rented 89b Warwick Way from Greaves. The services provided were of a like nature in each case. They involved the use of much equipment of a similar kind and were provided in the case of Warwick Way by Tan alone and in the case of Clarendon Street by Gloria Greaves alone. They were provided in private, in that there were no other participants than the client or customer and, in the one case, Tan, and, in the other, Greaves. In no case were there any observers. There might,

however, from time to time, be a customer waiting in a neighbouring room whilst a previous customer was in receipt of the services for which he had come to the premises.

The services provided at both premises were of a particularly revolting and perverted kind. Straightforward sexual intercourse was not provided at all. With the aid of a mass of equipment, some manual (such as whips and chains), some mechanical and some electrical, clients were subjected, at their own wish and with their full consent, to a variety of forms of humiliation, flagellation, bondage and torture, accompanied often by masturbation.

The availability of the services provided at both premises was advertised extensively, including by insertion in what are known as 'contact magazines', which are published and available to the public. An example of such an advertisement, in relation to each of the premises, is as follows.

89b Warwick Way:

'Humiliation enthusiast, my favourite pastime is humiliating and disciplining mature male submissives, in strict bondage, lovely tan coloured mistress invites humble applicants, T.V., C.B., B., D. and rubber wear, 12 p.m. to 7 p.m. Mon. to Fri. 89 Basement Flat, Warwick Way, Victoria, SW1.'

15 Clarendon Street:

'The most equipped mistress in Town, report now for C.P., W.S., D.H.N. Racks, stocks, pillory, dungeon, T.V.'s wardrobe, stiletto heels, boots, rubber, leather, E-shocks, Maid training etc. etc. You name it? Madam has it, also madam does nursing treatments, intimate examinations, Victorian and modern enemas. Bottle and breast feeding. Nappy changing by Nanny. Report to Madam Stern, 15 Clarendon Street, Basement Flat, Victoria, London, SW1.'

It will be noted that in these two cases, addresses but not telephone numbers are given. In other cases, there were telephone numbers provided and appointments could be made either by telephone or by going to the premises. The advertisements constitute a clear invitation to any member of the public so inclined to resort to the premises and there submit himself to perverted practices.

At the close of the prosecution case at the trial, it was submitted that there was no case to answer, on the ground that, where a single prostitute provided sexual services to a single client at a time in private in certain premises, such premises were incapable in law of being a disorderly house. That submission was rejected. The case was left to the jury, who duly convicted on both counts. No complaint is made of the summing up and it was indeed accepted that if premises are, despite the fact that the sexual services are always provided to a single client in private, capable of being a disorderly house, then both the premises here in question were virtually certain to be found by a jury to be within that description. The submission made at the trial was repeated before us as the only ground of appeal on counts 1

and 2.

Keeping a disorderly house is a common law offence, albeit that it received limited statutory attention in the Disorderly Houses Act 1751 in two respects, namely, first, that by s 2 places kept for public dancing, music or other public entertainment within or within 20 miles of the cities of London and Westminster were, unless licensed, deemed 15 to be disorderly houses and, second, that by s 5 prosecutions were encouraged against those keeping bawdy-houses, gaming houses or other disorderly houses. We can find little assistance in this Act on the question whether, as was submitted on behalf of the appellants, an essential ingredient of a disorderly house is a plurality of either participants or spectators. Such indication as there is suggests, however, that such plurality is not required. A bawdy-house would clearly cover a house in which two prostitutes operated entirely in separate rooms, never saw more than one client at a time and were never observed by anyone else, and the wording accepts or recognises that a bawdy-house is or may be a disorderly house.

Two early cases were cited in argument, namely *R v Higginson* (1762) 2 Burr 1232, 97 ER 806 and *R v Rogier* (1823) 2 Dow & Ry KB 431. In the first of such cases, a motion in restraint of judgment on the ground that the indictment on which the defendant had been convicted was too general failed, but the court held the indictment good without giving reasons and without hearing argument. The particulars in the indictment certainly alleged that 'certain evil and ill-disposed persons … come together … fighting of cocks, boxing, playing at cudgels and misbehaving themselves', but there is nothing to indicate that, had the indictment alleged that a succession of 'evil and ill-disposed persons' had resorted to the premises and there separately and successively indulged with the proprietor in 'cock-fighting, boxing, playing at cudgels and misbehaving', the indictment would have been bad.

R v Rogier (1823) 2 Dow & Ry KB 431 is more helpful. The defendants were convicted of keeping a common gaming house and permitting an unlawful game called 'Rouge et Noir'. As in *R v Higginson*, there was a motion in restraint of judgment. In his judgment Abbott CJ said (at 433):

'If a common gaming house be so conducted that it becomes a receptacle for idle and disorderly persons, who are permitted to assemble there and enter into play for sums of an illegal amount, it becomes a public nuisance, and the maintaining it is an offence indictable at common law; and if the game of "Rouge et Noir," or any other game, however innocent in itself, is played at by such persons, and to an excessive amount, it becomes an illegal game, and those who hold out to others the means of so playing at it are guilty of a common law offence.'

This case is of importance for two reasons. First, it shows that a game innocent in itself may become unlawful if it is played for stakes which a jury consider to be excessive. Second, it contains the plain statement that those who hold out to others the means of playing such a game are guilty of a common law offence. The reference to people being permitted to assemble was said to indicate that a plurality of persons was necessary. In its context, however, we have no doubt that it contains no such indication. It is no more than a reference to the facts of the particular case. We should also mention that, if and in so far as this case appears to indicate that there can be no conviction for keeping a gaming house or indeed other disorderly houses unless there is a public nuisance, it has since been decided that this is

unnecessary (see *R v Quinn*, *R v Bloom* [1961] 3 All ER 88, [1962] 2 QB 245, to which we revert hereafter).

The first case in which the definition of what constitutes a disorderly house was expressly considered was *R v Berg, Britt, Carr é and Lummies* (1927) 20 Cr App R 38. The appellants in that case were convicted of a 'conspiracy to corrupt the morals of and to debauch persons resorting to a certain disorderly house', and two of them were convicted of keeping a disorderly house. The recorder, in directing the jury, had used the definition of 'disorderly' in Webster's Dictionary, namely 'Not regulated by the restraints of morality; unchaste; of bad repute, as a disorderly house'. In his judgment Avory J said (at 41-42):

'The Recorder's definition, from Webster is somewhat vague, but would be correct if the element of keeping open house is present and there is added "being so conducted as to violate law and good order." … The argument that unless the house is open to the public at large its disorderliness is not indictable is refuted by *Rogier* ((1823) 2 Dow & Ry KB 431) cited by Hawkins J. in *Jenks v. Turpin* ((1884) 13 QBD 16505): those cases referred to gaming houses, but the decisions equally apply to the practices here in question … The gist of the indictment was that the accused were lewd and immoral persons assembled for the purpose of unnatural practices.'

The facts of the case are not set out in the report, but it may be inferred that the accused and others took part in exhibitions of a perverted nature for the edification of those resorting to the premises. The case provides clear authority that (a) there must be some element of keeping open house, albeit the premises need not be open to the public at large, (b) the house must not be regulated by the restraints of morality, or must be unchaste or of bad repute, and (c) it must be so conducted as to violate law and good order.

The definition of disorderly house was further considered in *R v Quinn, R v Bloom* [1961] 3 All ER 88, [1962] 2 QB 245. The premises there in question were used for the performance of acts of strip-tease, some of which acts were, on the evidence, seriously indecent and, in some respects, revolting. The appellants were convicted of keeping a disorderly house and the convictions were upheld. The court, subject to two comments, accepted a definition which was advanced by the prosecution and derived, at least in part, from observations of the House of Lords in *Shaw v DPP* [1961] 2 All ER 446, [1962] AC 220. That definition was in the following terms ([1961] 3 All ER 88 at 91, [1962] 2 QB 245 at 255):

'A disorderly house is a house conducted contrary to law and good order in that matters are performed or exhibited of such a character that their performance or exhibition in a place of common resort (a) amounts to an outrage of public decency or (b) tends to corrupt or deprave or (c) is otherwise calculated to injure the public interest so as to call for condemnation and punishment.'

The two comments made by the court were, first, that the essence of the charge in that case was that indecent performances had taken place, and that the charge might be based on some other ground. The definition must therefore be taken as limited to cases in which indecent exhibitions are alleged. Second, although the elements specified in (a), (b) and (c) of the definition were expressed as alternatives, they should not be regarded as mutually exclusive.

In addition to accepting, subject to the two comments, the definition advanced by the prosecution, the court also rejected in short shrift both the argument that a public nuisance was a necessary ingredient of the offence and the argument that, since those resorting to the premises did not themselves take part in any indecent behaviour, the premises could not be a disorderly house.

The last case to which it is necessary to refer is *R v Brady, R v Ram* [1964] 3 All ER 616, where the court accepted without deciding that, in order to constitute the common law offence of keeping a disorderly house, some element of persistent use was required.

If the definition in *R v Berg, Britt, Carr é and Lummies* is taken, there can be no doubt that there was evidence in the present case on which the jury could find that the premises were in each case not regulated by the restraints of morality. It is said, however, that it was not so conducted as to violate law and good order, since what took place between the defendants and each client was not itself a criminal offence and that there was not the necessary element of open house.

Both contentions we reject. A strip-tease performance is not itself a criminal offence, but *R v Quinn, R v Bloom* shows that it may so overpass what is acceptable, that it may become unlawful just as gaming may be excessive and thus unlawful. It is for the jury to set the standard. As to the element of open house, there was clearly a public invitation to resort to the premises for the purpose of indulging in perverted and revolting practices. This invitation by advertisement was equally clearly part of the conduct of the premises, and we have no doubt that it was open to the jury to find both that this constituted a sufficient element of open house and that, as a result, the premises were conducted in violation of law and good order.

In *Shaw v DPP* [1961] 2 All ER 446 at 460, [1962] AC 220 at 281 Lord Reid, in his minority opinion, said: 17

'The evidence shows that the invitations were to resort to certain of the prostitutes for the purpose of certain forms of perversion. That I would think to be an offence for a different reason … the authorities … establish that it is an indictable offence to say or do or exhibit anything in public which outrages public decency … In my view, it is open to a jury to hold that a public invitation to indulge in sexual perversion does so outrage public decency as to be a punishable offence.'

Lord Reid was not prepared to go as far as other members of the House of Lords but, even on the basis of his minority opinion, it would have been open to the jury to hold that the advertisements in the present case alone constituted an offence and thus that the premises were conducted contrary to law and good order.

Turning to the definition in *R v Quinn, R v Bloom*, it clearly cannot be applied in terms to the present case, for here there were no performances or exhibitions as such. If, however, *R v Berg, Britt, Carr é and Lummies,* and *R v Quinn, R v Bloom* are taken together, in the light of what was said in *Shaw v DPP*, we have no hesitation in rejecting the submission made. Were it correct, it would mean that it would be open to anyone (so long as perverted practices were conducted with one client at a time) to advertise such services without restriction, no matter how revolting they might be, thereby encouraging the public to indulge

in them and to allow others (so long as they did not observe or take part) to await their turn to partake of such practices.

No doubt a prosecution in circumstances like the present is novel. It was submitted that the trend is for the criminal law to withdraw from concern with what takes place between consenting adults in private (with the single exception of buggery between a man and a woman) and that the courts should not create a new offence. We accept that the prosecution is novel, that the courts should not or should at least be slow to create new offences and that the tendency alleged exists. Novelty is, however, no valid objection (see *Berg* and *Shaw*) and to reject the submission is not to create a new offence but to hold that a certain set of circumstances, not hitherto made the subject of the charge, fall squarely within the scope of an existing offence.

In *Quinn* the court did not seek to lay down an exhaustive definition. Nor do we. Many forms of conduct may fall within the scope of the offence, and to attempt to establish a universal definition with precision is both undesirable and impossible. It is, however, both desirable and possible to indicate how a jury should be directed, where the ground on which the charge is based is that the premises are being used for the provision of sexual services. In such cases, the direction, adapting the definition in *R v Quinn*, *R v Bloom* [1961] 3 All ER 88 at 91, [1962] 2 QB 245 at 255, would in our judgment be that, in order to convict, the jury must be satisfied that the services provided are open to those members of the public who wish to partake of them and are of such a character and are conducted in such a manner (whether by advertisement or otherwise) that their provision amounts to an outrage of public decency or is otherwise calculated to injure the public interest to such an extent as to call for condemnation and punishment. They should further be directed that the fact, if it be a fact, that the services are provided by a single prostitute to one client at a time and without spectators does not prevent the house being a disorderly house.

Finally, with regard to the appeal on counts 1 and 2, we observe that acceptance of the submission would involve results that fly in the face of common sense. Premises would, for example, be incapable of being a disorderly house if there was a large notice in neon lights over the door containing an open invitation to be whipped or subjected to any form of perversion, with the tariff set out. Yet the law would be powerless to intervene, save, perhaps, under the Indecent Displays (Control) Act 1981, so long as the service itself was provided successively to those resorting to the premises and this would be so, notwithstanding that the adjoining premises had similar notices and provided similar services. To hold that the law was powerless in such a case, but could act in the case of a much more discreet invitation so long as there was in addition to the prostitute and her client a watcher or watchers, offends against common sense.

In *Shaw v DPP* [1961] 2 All ER 446 at 453, [1962] AC 220 at 268 Viscount Simonds said:

'Let it be supposed that at some future, perhaps, early, date homosexual practices 18 between adult consenting males are no longer a crime. Would it not be an offence if, even without obscenity, such practices were publicly advocated and encouraged by pamphlet and advertisement? Or must we wait until Parliament finds time to deal with such conduct? I say, my Lords, that if the common law is powerless in such an event, then we should no

longer do her reverence.'

It may well be that in the circumstances supposed by Viscount Simonds a jury would not now convict, but it is for the jury and not the judges to decide whether conduct exceeds the limits of what, at any period of time, is acceptable. For the judges to adopt the stance that no matter how it may be advertised or provided anything, except heterosexual buggery, is permissible between consenting adults in private would be for the judges partially to usurp the functions of juries. The judges' task is to determine whether conduct is capable of being a crime. It is for the jury to decide in an individual case whether it is.

In the case of the two counts presently under consideration, the recorder rightly decided that it was open to the jury to convict. On the evidence, the jury did convict and it could not be and was not suggested that, if the legal submission failed, there was otherwise than ample evidence to justify the convictions in both cases.

For the above reasons, the appeals on counts 1 and 2 were dismissed.

An essential ingredient of the offences charged in counts 3 and 5 was that Gloria Greaves was a man. It was accepted that Gloria Greaves was born a man and remained biologically a man, albeit he had undergone both hormone and surgical treatment, consisting in what are called 'sex change operations', consisting essentially in the removal of the external male organs and the creation of an artificial vaginal pocket.

In *Corbett v Corbett (orse Ashley)* [1970] 2 All ER 33, [1971] P 83 it was held that a person who was born a man and remained biologically a man was a man for the purposes of marriage, and thus that a form of marriage between a man and another person born a man was a nullity, no matter that such last-mentioned person had undergone operative and other sex change treatment.

It was, however, contended that for the purposes of s 30 of the Sexual Offences Act 1956 and s 5 of the Sexual Offences Act 1967 another test should be applied; that, if the person had become philosophically or psychologically or socially female, that person should be held not to be a man for the purposes of the sections and that, on this basis, the evidence was inconclusive and the counts ought to have been withdrawn from the jury.

We reject this submission without hesitation. In our judgment, both common sense and the desirability of certainty and consistency demand that the decision in *Corbett v Corbett* should apply for the purpose, not only of marriage, but also for a charge under s 30 of the Sexual Offences Act 1956 or s 5 of the Sexual Offences Act 1967. The same test would apply also if a man had indulged in buggery with another biological man. That the Corbett v Corbett decision would apply in such a case was accepted on behalf of the appellant. It would, in our view, create an unacceptable situation if the law were such that a marriage between Gloria Greaves and another man was a nullity, on the ground that Gloria Greaves was a man; that buggery to which she consented with such other person was not an offence for the same reason; but that Gloria Greaves could live on the earnings of a female prostitute without offending against s 30 of the 1956 Act because for that purpose he/she was not a man and that the like position would arise in the case of someone charged with living on his earnings as a

male prostitute.

A further ground of appeal was raised in relation to count 3, namely that the jury were incorrectly, or insufficiently, directed as to the ingredients of the offence. As to this we need say no more than that having carefully considered the summing up we can discern no insufficiency of directions or any misdirection. The appeals on counts 3 and 5 were accordingly dismissed.

There remained, so far as the convictions were concerned, only the appeal of Brian Greaves against his conviction on count 4, which was allowed. We can deal with this very shortly.

When directing the jury on this count, the recorder stated initially that the prosecution relied on the presumption in s 30(2) of the Sexual Offences Act 1956. This was not in fact the case. The recorder mistakenly thought that count 4 charged Greaves with living on 19 the earnings of Gloria Greaves and thus that the presumption would arise if he was living with Gloria Greaves or was habitually in the latter's company. He carefully and properly directed the jury as to the effect of the section and the burden of proof, but it was then pointed out to him by the prosecution that count 4 did not relate to Brian Greaves living on the earnings of Gloria Greaves, but of Tan and another prostitute, with neither of whom was he living, and thus that no question of a presumption under s 30(2) arose. The recorder then withdrew his direction to the jury with regard to that subsection, but gave no further direction, other than to say that the prosecution had to prove everything.

We are satisfied that, on withdrawal of his earlier direction, the recorder should, however shortly, have reminded the jury of the precise matters of which they had to be satisfied before they could convict Greaves of living on the earnings of either Tan or the other prostitute. In the absence of such a direction, the jury may well have been left in a state of some confusion and uncertainty. This being so, the verdict on this count could only be regarded as unsafe and unsatisfactory. It follows, therefore, that the conviction had to be quashed.

We turn now to the sentences. Apart from the custodial sentences, no point was pressed before us and we do not, therefore, find it necessary to deal with the orders for deprivation of property rights against Tan and Gloria Greaves, or the £10,000 fine and costs awarded against Gloria Greaves. We need only say that they were fully justified. As to the custodial sentences, we have no doubt that custodial sentences of the lengths imposed were also fully justified. Indeed, they exhibit a degree of leniency, no doubt flowing from the fact that in the case of Tan and Gloria Greaves they genuinely believed that they were not offending against the law. We considered, however, that the uncertainties in the law justified the exercise of further leniency and that it would be appropriate to suspend the sentences. It should, however, be known that in the case of others offending in like manner immediate custodial sentences of greater length can be expected.

In the case of Brian Greaves the position is different. He was undoubtedly living on the earnings of Gloria Greaves, whether a man or a woman, and can have been in no doubt on the subject. On the other hand, on count 5, which is the only conviction against him which survives and the only charge of living on the earnings of Gloria Greaves, it is said and we accept, first, that he had gone through a ceremony of marriage with and regarded Gloria Greaves as a female and, second, that there was no element of coercion involved. This being

so, we considered it right in this case also to suspend the sentence.

This judgment and the sentences likely to be imposed in the future will, we hope, serve as a warning to others that to invite the public to resort to premises and there indulge in conduct going beyond the limits which a jury regard as tolerable is criminal conduct, even if those responding are attended to in succession and in private, and that such criminal conduct may well result in immediate custodial sentences.

All appeals against conviction dismissed with the exception of Brian Greaves's appeal against his conviction on count 4, which was allowed. All appeals against sentence allowed to the extent that all the sentences of imprisonment were suspended for two years.

The court refused leave to appeal to the House of Lords but extended, under s 34 of the Criminal Appeal Act 1968, the time in which application for leave to appeal might be made to the House by 14 days and certified, under s 33(2) of that Act, that the following point of law of general public importance was involved in the decision: whether premises could be a disorderly house, notwithstanding that every sexual act that took place therein was between a single prostitute and a single customer unobserved by any other person.

14 April. The Appeal Committee of the House of Lords (Lord Diplock, Lord Bridge of Harwich and Lord Brandon of Oakbrook) dismissed petitions by the appellants Tan, Gloria Greaves and Brian Greaves for leave to appeal.

Solicitors: Coles & Stevenson (for the appellant Tan); Knapp-Fishers (for the appellants Gloria Greaves and Brian Greaves); D M O'Shea (for the Crown)