

decent act in a public place, contrary to sec. 205 of the Criminal Code.

T. C. Robinette, K.C., for the applicant.

Edward Bayly, K.C., for the Crown.

MIDDLETON, J., said that the accused was a woman who advertised massage treatment. The evidence disclosed that this was a mere cloak for flagrant immorality; and that, upon the witness for the Crown going to this woman's residence, an abominable offence against morals was committed by her. No one else was present, and the witness and the woman were both parties to the indecent act deposed to.

The information was defective, as it omitted to charge that the act was done "wilfully," which is essential: *Ex p. O'Shaughnessy* (1904), 8 Can. Crim. Cas. 136; *Rex v. Tupper* (1906), 11 Can. Crim. Cas. 199; *Rex v. Barre* (1905), 11 Can. Crim. Cas. 1. This defect, however, was curable by amendment, for the evidence undoubtedly disclosed the wilful nature of the Act.

Section 205 of the Criminal Code provides: "Every one is guilty of an offence . . . who wilfully in the presence of one or more persons does any indecent act in any place to which the public have or are permitted to have access." The learned Judge said that he was driven to the conclusion that the misconduct complained of was not within the statute. The two parties to the offence, and they only, were present; the statute does not aim at the punishment of an act of indecency unless there is some third person present at the time of the occurrence.

Reference to *Stephen's Digest*, 6th ed., p. 132; *Regina v. Wellard* (1884), 14 Q.B.D. 63; *Thallman's Case* (1863), L. & C. 326; *Rex v. Cook* (1912), 27 O.L.R. 406; *Regina v. Watson* (1847), 2 Cox C.C. 376; *Elliot's Case* (1861), L. & C. 103.

Under the section referred to, the act is punishable only when committed in any place to which the public have or are permitted to have access. Attention is drawn to this, in the hope that Parliament may see fit to amend the statute by adopting the phraseology of the English statute 14 & 15 Vict. ch. 100, sec. 29.

Section 205 may well be interpreted so as to include any place to which the public have access as of right or by the invitation or permission of the owner; and the magistrate was justified in finding that this massage parlour, to which apparently all comers were admitted, was a place to which the public "are permitted to have access," within the statute.