

164a

J A M A I C A

IN THE COURT OF APPEAL

R.M. COURT CRIMINAL APPEAL No. 53/65

BEFORE: The Hon. Mr. Justice Duffus (President)
 The Hon. Mr. Justice Henriques
 The Hon. Mr. Justice Shelley (Acting)

Scor

R. vs GEORGE SPENCE

Mr. F. M. Phipps for the Crown

Appellant appeared in person

19th January, 1965.

DUFFUS, P.:

The appellant, George Spence, was convicted by the learned Resident Magistrate for the parish of Saint James, of a breach of the Airport Regulation 1959, made under Law 8 of 1959, that "he unlawfully did enter a certain part of the Montego Bay International Airport to wit: the Arrival Concourse, to which members of the Public were not for the time being admitted, without the permission of an authorised officer having first been obtained."

Evidence in support of the charge was given by Special Constable Gerald Smith, who stated that he saw the appellant within the Arrival Concourse which was a prohibited area to members of the public; that he spoke to him and he did not leave; whereupon, he warned him that he would be prosecuted. Evidence was also given by Mr. Eric Williams, the manager for the Montego Bay Airport to support the evidence of Special Constable Smith. Williams, the Airport manager, was an "authorised Officer" under the Airport Regulations 1959, and he stated that he had never given the appellant permission to enter this Concourse.

The case for the appellant was, that he was a Taxi Operator and President of the Montego Bay Cab Company with a licence to operate an Express Service from the Montego Bay

/ Airport....

Airport. He stated that on the 21st of June, the date of the alleged event, he was with his motor car at the Arrival Concourse. The back of his car protruded over the Arrival Concourse; that he was standing on the asphalted road in front and not within the prohibited area. The passengers arrived. They had a lot of baggage and to assist certain passengers who were putting baggage in his car he stepped up on the Arrival Concourse at the back of the car and told the driver to be careful when he was packing the baggage. He said that he had permission to be on the Arrival Concourse; that he had got that permission from the previous Airport Manager, one Mr. Casserley, but the permission was not in writing. The learned Resident Magistrate did not accept the defendant's case, he accepted the case for the prosecution and convicted.

The appellant, had filed no grounds of appeal. The matter first came before the Court on the 4th of October, last year, and at the request of the appellant the Court granted an adjournment to enable him to file grounds of appeal. He thereupon filed his grounds of appeal, which consisted entirely of allegations to the effect that there had been a miscarriage of justice, in that, his trial before the learned Resident Magistrate for Saint James was irregular in a number of respects relating to the Information on which he was tried. These allegations in the grounds filed by the appellant did not appear to have been raised before the learned Resident Magistrate who tried the case. Certainly, there was nothing on the notes which had been sent to this Court to indicate that any of the points now raised by the appellant before the Court of Appeal had been raised before the Resident Magistrate.

The Court, therefore, again adjourned the case, on the 8th of November and referred the grounds to the Resident Magistrate for Saint James asking him to give full particulars and his comments on these grounds. The Court has received the learned Resident Magistrate's comments and copies thereof were

/ served.....

served on the appellant. The Court finds that there is no merit whatever in any of the points now raised by the appellant. Even if there had been any merit in them, the proper place for him to have raised them was in the first instance, before the learned Resident Magistrate at the time of his trial and this does not appear to have been done. However, the Court has carefully examined, all the points raised by the appellant in these grounds, and is satisfied that there is no substance in any of them. The case was essentially a question of fact for the learned Resident Magistrate. There was abundant evidence to show that the appellant was in the prohibited area, in breach of the Regulation, and there is also evidence to support the Crown's case, that he had no permission to be in that area. In the circumstances, the appellant was properly convicted. The appeal is dismissed and the conviction and sentence affirmed.