J A M A I C A

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL No. 13/1972

BEFORE: The Hon. Mr. Justice Henriques, J.A. President
The Hon. Mr. Justice Smith, J.A.
The Hon. Mr. Justice Graham-Perkins, J.A.

R. V. HERMAN DORNER

W.H. Swaby for the appellant.
Mrs. Ruby Walcott for the Crown.

February 15, 16, & March 1973

GRAHAM-PERKINS, J.A.,

The appellant was convicted by Her Honour Miss L. E. Parker in the Resident Magistrate's Court, Kingston, on an information which charged him with a breach of Reg. 3 (xx) of the Airport Regulations 1959 and sentenced to pay a fine of $35.00. From that conviction and sentence the appellant appealed. On February 16 last we allowed his appeal and set aside his conviction. We promised to put our reasons therefor in writing and this we now do.

With his characteristic and commendable thoroughness Mr. Swaby, on behalf of the appellant, argued several grounds of appeal. We find it necessary, however, to deal with one only of those grounds, namely, that the information was bad for duplicity.

As originally enacted, Reg. 3 (xx) provided:

> "3. Within an airport the following acts are prohibited -
> (xx) parking a vehicle elsewhere than in a place provided for that purpose and in the manner required by an authorised officer."

In April 1962 this regulation came under the searching examination of the former Court of Appeal in Davies v. R. (1961-62) 4 W.I.R. 375.

McGregor, C.J.; delivering the judgment of the Court said (at p. 377):

> " It seems clear to us that the intention of the regulation was to create two offences, the one, parking otherwise than in a place provided by the Minister for that purpose, the other, parking otherwise than in a manner required by an authorisedofficer. To obtain this interpretation it is necessary to insert the words 'otherwise than' between the words 'and' and 'in the manner'. Counsel admits the necessity to insert these or similar words. This necessity arises because 'elsewhere' does not properly qualify the words 'in a manner'.
>
> Is this court permitted, under the circumstances, to place a meaning upon the regulation which would not give rise to an absurd interpretation, but would interpret it in such a way as to carry out the apparent intention of the legislature?".

The learned Chief Justice then cited certain passages from the 11th edn. of Maxwell on The Interpretation of Statutes, and from the speech of Lord Dunedin in Whitney v. I.R. Comr. (1926) A.C. 37, and answered the question posed in the second paragraph quoted above thus:

> " We are satisfied that as hitherto suggested the introduction of the words 'otherwise than' rather than the words 'elsewhere than' to qualify the words 'in the manner required' can be made so that the regulation may be read intelligibly."

We respectfully agree with and, for the purposes of this appeal, adopt the interpretation so placed on the regulation as originally enacted.

The learned Chief Justice ended the judgment of the Court with these words (at p. 378):

> " Before parting with this case, may we express the hope that the opportunity will be taken to express the regulation in words that leave no room for ambiguity."

On what must be one of the very rare occasions on which the views of the Courts of this land did not pass unnoticed the then Minister of Communications and Works, on August 2, 1962, in exercise of the powers conferred on him by s. 4 of the Airports Law 1959, amended Regulation 3(xx) by deleting the word "and" and substituting therefor the words "or otherwise than". The regulation then read:

> "3. Within an airport the following acts are prohibited -
> (xx) parking a vehicle elsewhere than in a place provided for that purpose or otherwise than in the manner required by an authorised officer."

Parenthetically it may be observed that the regulation was again amended in 1964 so as to vest the authority therein contained in a constable as well as an authorised officer. It will be noted that by its clear language the regulation as amended in 1962 created, by the use of the disjunctive "or", two separate and distinct offences, namely,

> (i) parking a vehicle elsewhere than in a manner provided for that purpose, and
>
> (ii) parking a vehicle otherwise than in a manner required by an authorised officer.

It is apparent, however, that neither the learned resident magistrate nor the officer responsible for the drafting of the information herein was aware of the 1962 amendment referred to above. We say this because the information as laid read as follows:

> " Herman Dorner ... at the Palisadoes Airport ... unlawfully did park the said motor vehicle elsewhere than in a place provided for that purpose and ina manner required by a constable."

That this information charged two separate and distinct offences is beyond debate. Indeed this was conceded by Mrs. Walcott.

We did not think that the principle enunciated in R. v. Clow (1963) 2 A.E.R. 216, and followed in cases such as Sookdeo v. R. (1963) 6 W.I.R. 450, was applicable to the

circumstances of this case. It will be recalled that in Clow's case the appellant was charged with causing death by dangerous driving and that the particulars in the indictment alleged that he caused the deceased's death by driving a motor vehicle on a road at a speed and in a manner dangerous to the public. The Court of Criminal Appeal after a careful review of the authorities, held that the indictment had been properly drawn and that the appellant had been rightly convicted because, even if the offences charged were separate offences, it was permissible to charge them conjunctively where the matter related to one single and indivisible incident. In our view there was, in this case, no single and indivisible incident giving rise to two offences that could have been charged conjunctively. The evidence, which we found it unnecessary to review, clearly described a situtation in which the appellant had parked his car elsewhere than in a place provided for that purpose. The evidence did not in any wise suggest that by so parking his car the appellant was committing another offence which could have been charged conjunctively in the same information. For the foregoing reasons we held that the appellant's conviction could not stand, the information having charged two distinct, independent and unrelated offences, and being therefor bad for duplicity.