J A M A I C A

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL No. 166/77

BEFORE: The Hon. Mr. Justice Zacca, P. (Ag.)
The Hon. Mr. Justice Kerr, J.A.
The Hon. Mr. Justice Rowe, J.A. (Ag.)

REGINA v. SAINT JAMES PARISH COUNCIL

Dr. L. Barnett for appellant.

Mr. D. Muirhead, Q.C., Mr. Goffe and

Mrs. Shirley Lewis for Prosecution.

February 13, 14; April 28, 1978

ZACCA, P. (Ag.):

On February 14, 1978, we allowed this appeal, quashed the conviction and set aside the sentence. We promised to put our reasons in writing. This we now do.

The appellant was convicted by the Resident Magistrate for the Parish of St. James on an Information which charged a breach of Regulation 4(iii) of the Airports Regulations, 1959. Regulation 4 states:

> "Within an airport the following acts are prohibited unless the permission of an authorised officer has first been obtained -
>
> (i) .....
>
> (ii) .....

(iii) removing, displacing, damaging, defacing or altering any building, structure or other property, whether movable or immovable (including any notice) forming part of or provided for or in connection with the airport. "

The evidence disclosed the following facts: The Airports Authority of Jamaica, the body which manages and controls Airports, including the Sangster International Airport, Montego Bay, St. James, entered into a lease agreement with Roto Advertising (Jamaica) Limited for the erection of eleven Bill Boards on land which formed part of the Sangster International Airport. These Bill Boards were subsequently erected in November 1975.

Prior to the erection of the Bill Boards, the Airports Authority of Jamaica wrote a letter dated 9th December, 1974, to the St. James Parish Council in Montego Bay, requesting approval for the erection of these Bill Boards. In September, 1975, the St. James Parish Council, the local planning authority, informed Roto Advertising (Jamaica) Limited, that the application for the erection of the Bill Boards was refused. Despite this refusal, as mentioned above eleven Bill Boards were erected on land forming part of the Sangster International Airport in Montego Bay.

In March, 1976, the St. James Parish Council, by their agents removed the eleven Bill Boards, no permission having been granted for their removal. As a result the appellant was charged with a breach of Regulation 4 (iii) of the Airports Regulations, 1959.

Section 3 (1) of the Airports Authority Act, 1974, establishes a body to be called the Airports Authority of Jamaica. The duties of the Authority include the management and control of prescribed airports - s. 8 (1). The Sangster International Airport, Montego Bay is a prescribed Airport under the law. The Authority is empowered by s. 8 (2) (d) to grant leases or concessions in respect of the Airport's land and building.

The Town and Country Planning (Montego Bay Area) Confirmed Development Order, 1964, was made in exercise of powers conferred on the Minister [illegible] and Country

Planning by s. 7 (2) of the Town and Country Planning Act. By this Order, development of land within the [illegible] area is subject to the provisions of Regulation 4 which states:

> " Subject to the provisions of this Order no development of land within the area to which this Order applies, shall take place except in accordance with the development plan and any planning permission granted in relation thereto;
>
> Provided that the planning Authority may in such cases and subject to such conditions as may be specified by directions given by the Minister under this Order grant permission for development which does not appear to be provided for in this Order or in the development plan, and is not in conflict therewith. "

It is not in dispute that the Sangster International Airport falls within the area of this Development Order.

S. 10 (i) of the Town and Country Planning Act provides:

> " Every confirmed development order (hereafter in this Act called a "development order") shall -
>
> (a) .....
>
> (b) .....
>
> (c) .....
>
> (d) provide for the grant of permission for the development of land in the area to which the development order applies, and such permission may be granted -
>
> (i) in the case of any development specified in such order, or in the case of development of any class so specified, by the development order itself;
>
> (ii) in any other case by the local planning authority (or, in the cases hereinafter provided, by the Authority) on an application in that behalf made to the local planning authority, in accordance with the provisions of the development order. "

The St. James Parish Council is the local planning Authority for the Montego Bay Area. (S. 2 - Town and Country Planning Act).

The Resident Magistrate, in her findings, came to the conclusion that Advertisements did not fall within the term Development, as s. 26 of the Town and Country Planning Act had made it clear that advertising was to be treated separately. The Airports Authority, therefore, did not require permission from the

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local planning authority for the erection of the Bill Boards on the Airport lands. The appellant could not therefore remove the Bill Boards without the permission of an authorised officer.

For the appellant it was submitted that the construction of the Bill Boards on Airport lands was a "building" and therefore a "development" within the meaning of the Town and Country Planning Act. The Airports Authority was subject to the Town and Country Planning Act and therefore required planning permission from the appellant. No permission having been given the appellant was entitled to remove the Bill Boards having served the required notices on the Airports Authority.

The appellant relied on ss. 2, 5, 10, 11, 13, 23 and 24 of the Town and Country Planning Act. The appellant contends that having refused permission and the Bill Boards having been erected, notice was served on the Airports Authority in accordance with s. 23 of the Town and Country Planning Act to have the Bill Boards removed. The Bill Boards not having been removed, the appellant removed them by virtue of s. 24 of the Town and Country Planning Act.

For the prosecution it was submitted that the Airports Authority Act of 1974 gave the Authority powers to regulate or restrict advertisements at the Airport (s. 21 (1) (d). It was further contended that by virtue of ss. 26 and 27 of the Town and Country Planning Act the Authority did not require planning permission from the appellant. In any event they contend that the erection of Bill Boards was not a "building" and therefore not a "development" within the meaning of the Town and Country Planning Act. It was further submitted that the Airports Authority Act had repealed or rendered inapplicable those provisions in the Town and Country Planning Act relating to advertisements. The respondent relied on s. 8, 11, and 22 (1) (d) of the Airports Authority Act, 1974.

In order to determine the questions posed for the consideration of the Court it will be necessary to look at certain provisions of the Town and Country Planning Act and the

Airports Authority Act, 1974.

S. 5 (2) Town and Country Planning Act states:

"In this Act, unless the context otherwise requires, the expression "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. "

In s. 2 which is the interpretation section, the word "building" includes any structure or erection and any part of a building as so defined, but does not include plant or other machinery comprised in a building.

S. 11 (1) of the Town and Country Planning Act states:

"Subject to the provisions of this section and section 12, where application is made to a local planning authority for permission to develop land, that authority may grant permission either unconditionally or subject to such conditions as they think fit, or may refuse permission; and in dealing with any such application the local planning authority shall have regard to the provisions of the development order so far as material thereto, and to any other material considerations. "

In making application to the appellant for the erection of the Bill Boards, the Airports Authority submitted a plan which showed that the Bill Boards were to be 37 ft. 4 ins. long and 25 ft. 4 ins. in height. Steel stansions were to be used which required an excavation of the earth some 6 ft. deep and 4 ft. wide. The evidence disclosed that normal foundation excavation for a residential house was 2 ft. deep.

The Resident Magistrate in her findings described the Bill Boards as a massive structure.

Did the Bill Boards constitute a development within the meaning of s. 5 (2) of the Act? The Attorney for the appellant submitted that the word development included "building" and that the definition of "building" in s. 2 of the Act would include the Bill Boards. Reliance was also placed on the case of Cheshire County Council v. Woodward (1962) 1 A.E.R. 517. At p. 519 Lord Parker, C.J. states:

> " No doubt in cases where the structure is affixed to the land it will in general be part of the land and constitute development. Equally, if the structure in question is intended to move about, and can be wheeled on and off the land, in general its installation will not constitute development, but in between one can envisage many situations in which the question may be finely balanced and it may be difficult to decide on which side the scales come down.
>
> Counsel for the planning authority has said that, owing to the very wide definition of "building" in s. 119 (1) of the Town and Country Planning Act, 1947, each of these pieces of equipment constitutes a building, and if, that is right, I should have thought that it would be abundantly clear that their erection would be a building operation. However, approaching the matter as I do, it seems to me that when the Act defines a building as including 'any structure or erection and any part of a building so defined', the Act is referring to any structure or erection which can be said to form part of the realty, and to change the physical character of the land. "

In support of their argument that the erection of Bill Boards was not a "building" the prosecution relied on the case of Royle v. Orme (1932) 96 J.P. & Local Government Review Reports 468. It was further submitted that the Town and Country Planning Act in the Interpretation section 2 defines "advertisement" and therefore it is to be treated separately and distinct from "building". If therefore, the erection of the Bill Boards was a hoarding or similar structure, the Bill Boards should not be construed as a "building" within the terms of the Act as it would fall within the definition of "advertisement". S. 2 defines "advertisement" -

"means any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, in the nature of and employed wholly or in part for the purposes of advertisement, announcement or direction, and without prejudice to the foregoing provision includes any hoarding or similar structure used or adapted for use for the display of advertisements, and references to the display of advertisements shall be construed accordingly. "

In our view the case of Royle v. Orme cannot assist the prosecution in the instant case. The question for decision in that case was whether certain hoardings or similar structures used for the purposes of advertising which were erected on a wall exceeded 12 feet in height. Although the wall including the hoarding exceeded 12 feet in height, the hoarding did not by itself exceed 12 feet in height. It was held that the words, in the bye law, 12 feet in height meant the measurement of the hoarding itself and not the height at which it was above ground level. The erection of the Bill Boards was a massive structure requiring the excavation of earth 6 ft. deep and steel stansions embedded in concrete. It certainly formed part of the realty of the land and indeed changed the physical character of the land. We therefore, hold that the erection of the Bill Boards was a "building" within the terms of the Town and Country Planning Act and that it was a "development" within the meaning of s. 5 (2) of the Act. In any event it seems that the erection of the Bill Boards would be caught within the meaning of "development" by the use of the words 'or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land' in s. 5 (2) of the Town and Country Planning Act. The Ejusden Generis rule cannot be applied to these words as there is no genus to be identified in the words "building, engineering, mining or other operations".

Have ss. 26 (1) and 27 (1) of the Town and Country Planning Act taken away the control of advertisements which involves development, from the local planning authority?

S. 26 (1) states:

> "Subject to the provisions of this section the Minister shall make regulations under this Act for restricting or regulating the display of advertisements in any area to which a development order applies, so far as appears to him to be expedient in the interests of amenity or public safety, and without prejudice to the generality of the foregoing provision, any such regulations may provide ..... "

S. 27 (1) states:

> "Where the display of advertisements in accordance with regulations made under section 26 involves the development of land within the meaning of this Act, planning permission for that development shall be deemed to be granted by virtue of this section, and no application shall be necessary in that behalf under any other provision of this Act. "

It is clear that s. 27 (1) contemplates advertisements involving development of land which would normally require planning permission. If, however, such advertisements are displayed in accordance with regulations made under s. 26, planning permission for that development is deemed to be granted and no application for permission would be necessary to be made to the local planning authority.

Unfortunately, no regulations have ever been made by the responsible Minister. Since there are no regulations then there cannot be any display of advertisements in accordance with regulations made under s. 26. If, therefore, the display of advertisements involves the development of land, as it does in the instant case, the Airports Authority cannot claim exemption under s. 27. No permission can be deemed to have been granted and an application for permission to erect the Bill Boards would have to be made to the local planning authority, i.e. the appellant.

It is only if regulations are made under s. 26, and the display of advertisements involving development of land, is made in accordance with those regulations, then planning permission is deemed to have been granted and no application shall be necessary for planning permission.

The erection of the Bill Boards is, therefore, a "development" within the meaning of s. 5 (2) of the Town and Country Planning Act. The Airports Authority required planning permission for the development of the airport lands from the local planning authority. Such permission having been refused and the Bill Boards erected, the appellant was entitled to remove the Bill Boards, (s. 24 of the Act) having served the required notice under s. 23 of the Act. It follows that it was unnecessary for the appellant to obtain the permission of an authorised officer of the Airports Authority to remove the Bill Boards.

A further submission made on behalf of the prosecution was that s. 8 (2)(a); s. 11 (1) and s. 22 (1)(d) of the Airports Authority Act had repealed or rendered inapplicable those provisions in the Town and Country Planning Act which relate to advertisements at the airport. It was argued that the Airports Authority Act was a special Act passed subsequent to the Town and Country Planning Act and repealed those provisions by implication.

S. 8 (2) of the Airports Authority Act states:

"In the exercise of its functions the Authority may -

(a) construct, alter and maintain buildings at present prescribed airports and elsewhere. "

S. 11 (1) of the Act states:

"Except in so far as may be allowed by general directions of the Minister, the Authority shall not proceed with the implementation of any long range plans for the development of any prescribed airport except in accordance with the provision of a scheme made by the Authority and submitted to the Minister and approved by him. "

S. 22 (1) states:

"Subject to section 3 of the Civil Aviation Act, the Authority may, in respect of any prescribed airport, with the approval of the Minister make regulations for regulating the use and operation of the airport and the conduct of all persons while within the airport, and, in particular, such regulations may -

(a) .....
(b) .....
(c) ...../52

(d) regulate or restrict advertising or minimising obstruction within the airport. "

It was, therefore, submitted that in so far as advertisements at the Airports are concerned, only the provisions of the Airports Authority Act apply to the Authority.

At p. 366 7th Ed. Craies on Statute Law, the learned author states:

> "Where two Acts are inconsistent or repugnant, the later will be read as having impliedly repealed the earlier. The court leans against implying a repeal, 'unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied'. Before coming to the conclusion that there is a repeal by implication the court must be satisfied that the two enactments are so inconsistent or repugnant that they cannot stand together before they can, from the language of the later, imply the repeal of an express prior enactment - i.e. the repeal must, if not express, flow from necessary implication. "

We consider this to be an accurate statement of the principle and can find no reason for saying that the provisions in the Airports Authority Act relied upon are in any way repugnant or inconsistent with the relevant provisions in the Town and Country Planning Act. There is, therefore, no basis for saying that the doctrine of implied repeal arises. It follows, therefore, that the Airports Authority is subject to the provisions of the Town and Country Planning Act.