

JAMAICA

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL No. 64 of 1971

BEFORE: The Hon. Mr. Justice Fox, Presiding
The Hon. Mr. Justice Smith, J.A.
The Hon. Mr. Justice Graham-Perkins, J.A.

SOLOMON VASSELL v. R.

K. Douglas for the appellant.

H. Downer for the Crown.

1971

Jul. 29, 30. Nov. 19

SMITH, J.A.

The Airports Regulations, 1959, by regulation 3(xx), prohibit, within an airport, the parking of a vehicle elsewhere than in a place provided for that purpose. The questions for decision in this appeal are: (a) when is a vehicle parked? and (b) was the appellant's vehicle parked in the circumstances to be described hereafter?

The word "parking", in para. (xx), is not defined in the regulations. The 1933 supplement to the Oxford English Dictionary defines "park", the verb, thus: "To place or leave (a vehicle) in a park or other place." This is the meaning which Sir Wilfrid Greene, M.R. gave to the word in Ashby v. Tolhurst (1937) 2 K.B. 242, a civil case. He said, at p.249:

"You take a car park ticket in order to obtain permission to park your car at a particular place, and parking your car means, I should have thought, leaving your car in the place. If you park your car in the street you are liable to get into trouble with the police. On the other hand, you are entitled to park your car in places indicated by the police or the appropriate authorities for the purpose. Parking a car is leaving a car and, I should have thought, nothing else. The right, therefore, which this document starts off by giving on its face is a right to park the car."

What do the words "leave (or leaving) a car (or vehicle) in a place" mean? Do they refer to the driver physically leaving the vehicle, as contended on behalf of the appellant? Or are they used in the sense of placing the vehicle in the place, as contended on behalf of the Crown? If the former is

the correct meaning then a driver who places his vehicle in a no-parking area and sits in it commits no offence. The (U.K.) Divisional Court had similar words to construe in Strong v. Dawtry (1961) 1 All E.R.926. Lord Parker, C.J. construed them in the latter sense and the other members of the court agreed. The words which had to be construed in that case were: "..... shall be payable on the leaving of the vehicle in the parking place" Lord Parker said, at p.928:

"The argument that has been adduced to this court is based on the word 'leaving.' It is said that a driver has not left a vehicle until he has done all he intends to do as part of the operation of parking. That argument is based on an interpretation of 'leaving' as meaning the driver physically leaving the car. It is to be observed, however, that the words here are 'payable on the leaving of the vehicle in the parking place' which, to my mind, clearly denote the placing or depositing of the car in the parking bay. Accordingly, I read those words as meaning that the payment is to be made as soon as the vehicle is placed in the parking place."

What is the meaning to be given to the word "parking" in regulation 3(xx)? Is it permissible to give it the dictionary meaning? The use of dictionaries as aids in the construction of statutes has sometimes been deprecated, but there are many instances referred to in works on the interpretation of statutes in which they have been used for this purpose. In R. v. Peters (1886) 16 Q.B.D. 636 at 641 Lord Coleridge said:

"I am quite aware that dictionaries are not to be taken as authoritative exponents of the meanings of words used in Acts of Parliament, but it is a well-known rule of courts of law that words should be taken to be used in their ordinary sense, and we are therefore sent for instruction to these books."

And in Camden (Marquis) v. I.R.C. (1914) 1 K.B.641 at 647, 648 Cozens-Hardy, M.R. said:

"It is for the court to interpret the statute as best it may. In so doing the court may no doubt assist themselves in the discharge of their duty by any literary help they can find, including of course the consultation of standard authors and reference to well-known and authoritative dictionaries."

In the same case, at pp. 649, 650, Swinfen Eady, L.J. said:

"It is the duty of the court to construe a statute according to the ordinary meaning of the words used, necessarily referring to dictionaries or other literature for the sake of informing itself as to the meaning of any words."

Recent examples of the use of the Oxford English Dictionary in this connection are to be found in: Re Ripon Housing Confirmation Order 1938 (1939) 2 K.B. 838 at 847 and McVittie v. Bolton Corpn. (1945) 1 K.B. 281 at 288. See also Goodhew v. Morton (1962) 1 W.L.R. 210 at 213 where the New Oxford Dictionary was used.

In our view, there is no way of discovering the sense in which the word "parking" was used in the regulations without recourse to an authoritative dictionary. This, as the passages cited show, is one of the recognized and approved ways of discovering the ordinary meaning of words used in a statute. It is a general rule of construction that words of a statute must be construed as bearing their plain, ordinary meaning unless it is clear that they were used in a technical sense. In our judgment, the meaning to be given to the word "parking" in the regulations is that stated in the supplement to the Oxford English Dictionary. This meaning, it has been shown, has the authoritative support of Greene, M.R.

For the appellant, it was submitted that "parking" should be given the meaning stated in Ashby v. Tolhurst, supra, by Greene, M.R., though, in the way in which counsel interpreted this meaning, it was contended that the appellant had not parked but was "waiting." It was submitted that waiting for the purpose of taking on passengers does not constitute parking. There is a statement to this effect in R. v. Foster-Davis (1930) Clark's Reps. 334, though this case was not cited by counsel. In that case Adrian Clark, J. said, at p.335: "The expression 'Parking,' it is agreed, may be taken as synonymous with the definition of what constitutes an offence under s. 1(6) of the Towns and Communities Act" (7 Vic. c. 14). S. 1(6) of the Act provided that: Every person who shall, in any thoroughfare cause any carriage to stand longer than may be necessary for loading or unloading; or for taking up or setting down passengers is liable to a penalty." The respondent in the case had allowed his motor car to stand for two hours on Church Street in Kingston. In those circumstances, Brown J., with whose judgment Barrett-Lennard C.J. agreed, said that there could be no question that the motor car was parked. The meaning of the word "parking" did not, therefore, arise for the Full Court's decision. The statement of Adrian Clark J. defining the word was, therefore, obiter.

Is this extended meaning attributed by Adrian Clark, J. to the word correct? I confess that during the argument I was inclined strongly to the

view that a vehicle could not be said to be parked if it was placed in a no-parking area merely for the purpose of taking up or setting down a passenger. I thought then, and still do, that this was a reasonable view to take. But is this the law? Can we give the word this extended meaning? If Adrian Clark J's. definition is right then a loaded truck could lawfully be placed, and allowed to remain, in a no-parking area for as long as was necessary to unload it - even if it took an hour.

With great respect, we can find no legal basis on which Adrian Clark, J's. definition can be supported. The words "longer than may be necessary" et cetera do not form part of the ordinary meaning of the word "park." There is nothing from which the inference may be drawn that that was the accepted meaning of the word when the Airports Regulations were made in 1959. In our opinion, there is no warrant for our extending the ordinary meaning of the word to include the additional words. We are not empowered, in our view, to give the word a meaning which the context of the legislation does not justify. It seems to us that if an exception is to be made to enable vehicles to take up and set down passengers or load and unload in no-parking areas this must be done by the competent legislative authority and not by the court. It will be found that this exception is almost always made expressly whenever similar legislation is enacted in England prohibiting the standing or waiting of motor vehicles in restricted areas.

The other question to be decided is whether or not the appellant was rightly held to have parked his motor car on the occasion for which he was charged. The evidence which the learned resident magistrate appears to have accepted was that the appellant drove his taxi from the public parking area at the Palisadoes airport to take up two arriving passengers and their luggage. The parking bays, where motor cars waiting to take arriving passengers are parked, were full. The pre-Christmas rush was on. The appellant stopped his car in the roadway in front of the parked cars, which had their backs to the terminal building. The complainant, a special constable on duty in uniform, went to the appellant while he sat in his car and told him that he could not park there. The appellant replied that he was not parking but was taking up a passenger. The appellant then got out of his car and was preparing to receive his passengers when the constable arrested him.

It appears not to have been disputed at the trial that where the appellant stopped his car was not a place provided for parking. On the evidence which was accepted, it is clear that the appellant placed his car elsewhere than in a place provided for that purpose. This is what regulation 3(xx) prohibits. In our judgment he was rightly convicted. The appeal is accordingly dismissed and the conviction and sentence affirmed.