

1930

Present : Akbar J.

JAYASUNDERA v. SILVA.

636—*P. C. Ratnapura, 43,193.*

Motor bus—Taking passengers from private garden adjoining highway—Prescribed route—Motor Car Ordinance, No. 20 of 1927, s. 2, schedule 4, rules 1 and 4.

Where a driver halted his motor bus in a private garden, adjoining the highway, for the purpose of inviting passengers to take seats on hire,—

Held, that he had violated rules* 1 and 4 of the rules in the fourth schedule of the Motor Car Ordinance, No. 20 of 1927.

A PPEAL from an acquittal from the Police Court of Ratnapura.

Wcerasooria, for complainant, appellant.

Ameresekere, for respondent.

June 30, 1930. AKBAR J.—

This is an appeal on a very interesting point of law, which has been argued very ably by counsels on both sides. The point is one that occurs every day in practice,

* The relevant parts of the rules are as follows :—

(1) No omnibus shall ply or stand for hire except on routes approved by the licensing authority

(4) Where, in an Urban area, notices are exhibited by a licensing authority indicating stopping places for omnibuses, an omnibus shall not be stopped for the purpose of taking up or setting down passengers except at a place so indicated.

and the appeal is from an acquittal by the Police Magistrate of Ratnapura, with the sanction of the Solicitor-General.

The charge is laid under rule 4 of the rules in the fourth schedule of the Motor Car Ordinance, No. 20 of 1927, in that the accused took his bus on to a private garden adjoining the highway, which had been prescribed for him as the correct route under rule 1 of the rules under the fourth schedule, for the purpose of taking in passengers. As a matter of fact there can be no doubt that this is a violation of rule 1 itself, with which the accused has not been charged. It is an undoubted violation of rule 1, because under rule 1 an omnibus is prohibited from plying or standing for hire except on a route approved by the licensing authority. "Plying for hire" is defined under section 2 as meaning plying or standing for hire whether on a highway or not, so that it is quite clear that when the prescribed route endorsed by the licensing authority laid down the particular highway, the accused had no right to stand his bus for hire by passengers except on the prescribed highway, and by taking his bus into a private garden and getting passengers to enter it for hire he was clearly violating rule 1. It is therefore open to me to alter this conviction to a conviction for a breach of rule 1 instead of rule 4 if necessary. I do not, however, propose to do so, because I think that the accused is guilty even under rule 4. It will be seen that rules 2, 3, and 4 are closely inter-related. Rule 2 states that no bus is to be allowed to stand on any highway except (a) "on a public stand or stopping place indicated as such by a notice from the Licensing Authority, or . . . (c) for the purpose of taking up or setting down passengers and then only so long as may be reasonably necessary for the purpose." Rule 3 then goes on to say that when an omnibus does stop in the circumstances mentioned in rule 2 (that is, to take or set down passengers) it must do so as near to the left or near side of the road as possible. Then comes rule 4 under

which this accused is charged, which states that where in an urban area notices are exhibited by a licensing authority indicating stopping places for omnibuses, an omnibus shall not be stopped for the purpose of taking up or setting down passengers except at a place so indicated. This rule 4 is therefore a modification of rule 2 (a) and 2 (c). Therefore rule 4 can only apply when the bus is on a highway, but it is highway as defined in the Ordinance and not as commonly understood. "Highway" is defined in section 2 as including every place over which the public have a right of way or to which the public or any part of the public are granted access. The words "any part of the public are granted access," are of the greatest significance in this definition.

The learned Police Magistrate admits that the expression "highway" would include the private approach road to a hotel or theatre but that it would not include a private approach road in a

private garden where a bus is halted for the purpose of inviting passengers to take their seats on hire. I cannot see the difference between the two cases. The words "to which any part of the public are granted access" will clearly include a private garden to which intending passengers for a certain destination are allowed to come in to get into the bus.

On this interpretation I think the accused is liable to be convicted. As this case is of some public importance I have stated fully the reasons why I think such an act as the accused committed in this case could even have been held to be a breach of rule 1 of the schedule. As this case has been brought to test a point, I do not think that I should sentence the accused to anything more than a nominal punishment. I set aside the acquittal and convict the accused and fine him Re. 1.

Set aside.