

1943

Present : Cannon J.

RODRIGO, Appellant, and ABEYGUNAWARDENE, Inspector of Police, Respondent.

153—*M. C. Gampaha, 15,554.*

Omnibus—Carrying passengers on an unauthorised road—Proof that passengers were carried for reward unnecessary—Motor Car Ordinance, No. 45 of 1938, s. 83 (2).

Where the accused was charged with carrying a number of passengers in an omnibus on an unauthorised road which afforded the bus the only means of access to its garage,—

Held, that the accused had offended against the provisions of section 83 (2) of the Motor Car Ordinance irrespective of whether the passengers were carried for reward or not.

A PPEAL from a conviction by the Magistrate of Gampaha.

Clement de Jong for accused, appellant.

G. E. Chitty, C.C., for respondent.

Cur. adv. vult.

June 11, 1943. CANNON J.—

The appellant was charged on two counts, namely :—

- (1) Driving a bus on an unauthorised road contrary to section 83 (2) of the Motor Car Ordinance, No. 45 of 1938 ; and
- (2) At the same time and place driving the bus with passengers on this unauthorised road (which affords the bus the only means of access to the garage) contrary to regulation 6 (2) made under sections 82, 83, and 174 of the Motor Car Ordinance, No. 45 of 1938.

The regulation referred to in the second charge is an exception to the section referred to in the first charge. The exception permits a bus to go on an unauthorised road which is the only means of access to its garage, provided that the bus carries no passengers on that road. The defence was that although there were a number of people in the bus, they were not passengers within the meaning of the Ordinance, because they were not being carried for reward. The Magistrate dismissed the first charge and convicted on the second charge. The main ground of appeal is that there was not sufficient evidence to justify the Magistrate's finding of fact that some of the people in the bus were being carried for reward and the question has arisen whether or not it was necessary to prove that they were, in fact, being carried for reward. The Ordinance in section 176 defines "passenger" as a person carried in a hiring car excluding the driver, or in the case of an omnibus, a conductor. An omnibus is defined as a hiring car having seat accommodation for more than seven passengers. A "hiring car" is defined as a motor car used for the conveyance of passengers for fee or reward.

It was submitted for the appellant that taking the two definitions of "passenger" and "hiring car" together, no offence was being committed unless the passengers were being carried for fee or reward. For the

respondent, Mr. Chitty points out that the definition of "passenger" makes no reference to fee or reward and submits that the character of the vehicle as an omnibus does not change according to whether the people being carried in it pay or do not pay. A finding to the contrary would defeat the purpose of the legal provisions mentioned in the charges, which are obviously made for the safety of the travelling public. In my view the words in the definition of hiring car "used for the conveyance of passengers for fee or reward" are not limited to the period of time during which the bus is actually carrying passengers for reward and therefore the words "for fee or reward" cannot be added to the definition of "passengers". On the admitted evidence that a number of people were in the bus other than the driver and the conductor, the Magistrate was therefore entitled to convict. The conviction should, however, have been on the first charge, the regulation forming the subject of the second charge being merely a permitted exception to the section in the first charge. It was an available defence for the accused, which defence would have failed when it was shown that there were a number of people in the bus other than the driver and the conductor. The Magistrate's decision must be amended so that the conviction will be recorded as being on the first, not on the second charge, the penalty remaining the same. Subject to this amendment the appeal is dismissed. A relevant English decision is *Hawkins v. Edward*¹.

Conviction altered.

¹ (1901) 2 K. B. 169.