judgment of the Second-class Magistrate and from the contention of the accused it cannot be said that he is either the manager or the receiver or the trustee for the community. The mere fact that he is a treasurer of some fund of the community would not make him a trustee of the nandavanam or bring him within the meaning of the term "owner" as used in the Local Boards Act. I therefore set aside the conviction and direct a retrial of the case and the prosecution would be entitled to adduce evidence to show that the petitioner is a person coming within the definition of the term "owner" in section 3, clause (14) or is an occupier of the nandavanam. The fine paid will be refunded.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Madhavan Nair and Mr. Justice Curgenven.

1927, September 23.

LOCAL FUND OVERSEER, MAYAVARAM (COMPLAINANT IN BOTH), PETITIONER,

v.

PAKKIRISAMI THEVAN (ACCUSED IN BOTH), RESPONDENT.*

Madras Local Boards Act, sec. 166 (1)—*Motor Vehicle—Plying for hire—Where and when done—Meaning of—Hiring within Municipal area—Licence from District Board—If required.*

Under section 166 (1) of the Madras Local Boards Act, the act of plying a motor vehicle for hire can only be done at the place and the time the hiring is effected.

Where a person was charged with plying his car for hire from Mayavaram Municipality to Tranquebar, on roads within the area of the District Board of Tanjore, without a licence from

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* Criminal Revision Cases Nos. 100 and 101 of 1927.

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the District Board, in contravention of section 166 (1) of the Madras Local Boards Act, *held*, that ordinarily, the plying of a motor vehicle for hire meant the act of waiting for soliciting custom and that the act was complete, so soon as any person had hired it and no licence from the District Board was required as the said act was committed within the Municipality of Mayavaram and outside the District Board area. *Clarke* v. *Stanford* (1871) L.R., 6 Q.B., 357, *Sales* v. *Lake* [1922] 1 K.B., 553, *Leonard* v. *Western Services, Ld.* [1927] 1 K.B., 702, referred to.

PETITIONS under sections 435 and 439, of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of the Stationary Second-class Magistrate of Mayavaram in Calendar Cases Nos. 200 and 179 of 1926 respectively.

Section 166 (1) of the Local Boards Act (Madras) runs thus:

"No person shall, on any public road in a district, ply any motor vehicle for hire or use any such vehicle for carrying passengers or goods at separate fares or rates on such road, except on a licence obtained from the President of the District Board."

Sir K. V. Reddi and *P. V. Rangaram* for petitioner.

K. S. Lakshmi Narasa Ayyar for respondent.

Public Prosecutor for the Crown.

JUDGMENT.

These two revision petitions have been filed on behalf of the District Board of Tanjore against the judgment of the Stationary Sub-Magistrate of Mayavaram acquitting the accused in each case of an offence punishable under section 207 (*a*) and schedule VIII of the Local Boards Act.

Under the provisions mentioned above, failure to obtain a licence is punishable. In C.C. No. 179, to which Criminal Revision Case No. 101 relates, the complaint against the accused was that he "committed the offence of plying a motor car, Tan. 234

for hire in the District Board Road No. 7-A, two trips, from Mayavaram to Tranquebar, without obtaining the licence from the President, District Board, Tanjore." The terms of the complaint in the other case, C.C. No. 200 of 1926, were similar. In the former case the prosecution adduced the evidence of a local fund maistri stationed at Porayar, which we understand is adjacent to Tranquebar to the effect that the accused's car used to come and stand in the hired car-stand there and obtain passengers. The Sub-Magistrate, we gather, has not accepted this evidence, but it is unnecessary for us to consider whether he should be supported in this finding because the evidence appears to be clearly inconsistent not only with the terms of the complaint but also with those of the question put to the accused. The case was tried as a summons case and he was asked to show cause why he should not be convicted upon a complaint that he had plied his motor car for hire from Mayavaram to Tranquebar on the 27th, 28th and 29th March 1925 without obtaining a licence. Although however the terms of the complaint were not supported by the prosecution evidence, a defence witness was examined who deposed that the accused was in the habit of letting out his car for hire to Vakils, Mirasidars and others wishing to engage a car for a trip from Mayavaram. It may be taken therefore that the accused in this case admitted hiring out his car for journeys from Mayavaram. In the other case (C. C. No. 200) the question put to the accused was in similar terms and the evidence was in consonance with it. In both the cases only the first portion of section 166 (1) would apply because admittedly there is no proof that the vehicles were used for carrying passengers or goods at separate fares or rates. Accordingly the question we have to decide is whether a

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person who lets out his car for hire in Mayavaram, which is a Municipality, must obtain a licence from the Tanjore District Board if the car travels beyond the Municipal limits and traverses any of the District Board roads. The argument of Sir K. V. Reddi for the District Board is that a vehicle plies for hire on a public road if it is made use of as a hired vehicle on that road, so that it is not a necessary condition that the actual hiring should take place upon that road. The alternative view is that the plying of a motor vehicle for hire means the act of waiting for soliciting custom, and that therefore so soon as any person has hired it the act of plying for hire is complete. If this be so, that act was committed if at all, within the Municipality of Mayavaram, and not within the District Board area, so that no licence would be required from the District Board and these cases would fail.

We have no doubt that the latter is the correct view. The phrase "to ply for hire" is used in the English as well as in the Indian enactments relating to hackney and stage carriages, and we have been shown no reason why the same signification should not be attached to it in India as in England. Our attention has been drawn to three English cases. In the earliest of these *Clarke* v. *Stanford*(1), the question which arose was whether a carriage which stood on the premises of a Railway Company to await the arrival of trains, with the object of conveying any passenger who chose to hire it, was plying for hire within the meaning of the Metropolitan Public Carriage Act of 1869. The case turned upon whether the railway premises, not being a public place, were a place in which a vehicle could be said to ply for hire, and although that question does

(1) (1871) L.R., 6 Q.B., 357.

not arise here, it is clear from the judgments that "plying for hire" was taken to mean the act of soliciting custom. This is made clear too in *Sales* v. *Lake*(1). Certain persons arranged to run a charabanc from London to Brighton, all seats being booked and tickets paid for beforehand and no other passengers being accepted. The charabanc started from Grosvenor Gardens, where it was joined by passengers with their tickets, and the question was whether it was a stage carriage plying for hire at that place. This question was answered in the negative, Lord TREVETHIN, C.J., expressing the view that a carriage could not accurately be said to ply for hire unless two conditions were satisfied. "(1) There must be a soliciting or waiting to secure passengers by the driver or other person in control without any previous contract with them, and (2) the owner or person in control who is engaged in or authorizes the soliciting or waiting must be in possession of a carriage for which he is soliciting or waiting to obtain passengers." Mr. Justice AVORY delivered himself to the same effect. This case is therefore authority not only for the view that "plying for hire" is an act which results in the vehicle being hired and not an act consequential upon the hiring but also for a distinction between plying for hire, that is obtaining passengers on the spot and without any previous arrangement, and merely letting out a car for hire by previous arrangement. The third English case, *Leonard* v. *Western Services, Ld.*(2) affords a fairly close parallel with the circumstances now in question. A lady purchased a return ticket by motor omnibus from Newport in Wales to Risca, travelling to Risca by one of the omnibuses of the company and returning by

(1) [1922] 1 K.B., 553. (2) [1927] 1 K.B., 702.

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another. The omnibuses were licensed to ply for hire in Newport but were not so licensed in Risca. The question was whether the return omnibus, in accepting the lady as a passenger on the strength of her return ticket, was plying for hire in Risca. This point was found against, Lord HEWART, C.J., observing "There is no occasion for soliciting passengers within the district (Risca). It is not open to the omnibus driver by diligence or by skill to attract to his employers the customers of other employers. There is therefore no plying for hire in the district, the hiring having already been done". And SALTER, J., said: "Without attempting any exhaustive definition of the expression, I think that in order to constitute 'plying for hire' within the meaning of the Acts there must be a general invitation by the person in charge of the vehicle to the members of the public to make contracts with him for carriage in the vehicle".

It is quite clear from these decisions that the act of plying for hire can only be done at the place and time that the hiring is effected,—in the present instances at Mayavaram—and that is a sufficient finding to dispose of these cases. We do not need to enter into the question as to what precisely the act consists in; but it is clear that not every case of hiring out a vehicle will fall within its meaning. We dismiss the Criminal Revision Cases.