

held that the omission of a Magistrate to make a further inquiry as directed under section 436, does not deprive him of the jurisdiction that he has, quite apart from any order of a revisional Court directing a further inquiry, to summon an accused person, the ruling in *Jatindra Nath Daw v. Hem Chandra Daw*⁽¹⁾ being referred to in support of the existence of the jurisdiction. This would be sufficient to dispose of the petitioners' contention that the Subdivisional Magistrate had no jurisdiction to summon them as he did. In my opinion, if I may say so with respect, the order for a further inquiry did not make it obligatory for the Subdivisional Magistrate to proceed again under section 202. and the Subdivisional Magistrate not only had jurisdiction (even apart from the order for further inquiry) to proceed under section 204, but was actually acting in compliance with the order when he summoned the petitioners.

.1929.
 HEMA SINGH
 v.
 KING-
 EMPEROR.
 DHAVLE, J.

APPELLATE CRIMINAL.

Before Terrell, C.J. and Dhavle, J.

KING-EMPEROR

v.

RAM TAHAL SINGH.*

1929.

May, 30.

Motor Vehicles Act, 1914 (Act VIII of 1914), section, 16 and Rule 28(1), Form G—vehicle licensed to carry four passengers—more than four carried but not for hire.

Where the permit granted in respect of a motor vehicle prohibits the carrying of more than four passengers, the carrying of more than this number is an infringement of the terms of the permit and is punishable under section 16 of the Motor Vehicles Act, 1914, even though, at the time of the infringement, the vehicle was not on hire.

*Government Appeal no. 3 of 1929, from a decision of Rai Bahadur Murlidhar Rai Chowdhury, Deputy Magistrate, 1st Class, Hazaribagh, dated the 1st February, 1929.

(1) (1909) I. L. R. 36 Cal. 415.

1929.

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v.
RAM TAHAL
SINGH.

Hawkins v. Edwards(1), applied.

The facts of the case material to this report are stated in the judgment of Terrell, C.J.

Sir Sultan Ahmad, Government Advocate, for the appellant.

B. C. De. for the respondent.

COURTNEY TERRELL, C.J.—The object of this appeal is to obtain a construction of rule 28 of the rules made under the Indian Motor Vehicles Act of 1914. Clause (1) of that rule is as follows:—

“No motor vehicle shall be let or ply for hire in any local area or along any public road in the province unless it possesses a special permit in Form G annexed to those rules granted by the District Magistrate, and every such vehicle shall be subject to the conditions prescribed in such permit.”

Now the facts as found in the judgment of the Deputy Magistrate are that the respondent who is a public motor vehicle proprietor had a vehicle which he was in the habit of letting for hire and in respect of which he had obtained a permit in the prescribed form. On a particular occasion he allowed five of his friends gratuitously to ride in that vehicle on the public highway. The prescribed form G of the permit forbids the use of the permitted vehicle for the carriage of more than four passengers at a time. The respondent was charged with an offence under section 16 of the Act for having driven the motor vehicle with more than the permitted number of four passengers. It was argued on behalf of the respondent and the argument succeeded before the Magistrate that the proper construction of the first clause of rule 28 was such that the conditions prescribed in the permit did not apply to the motor vehicle save when it was being let or was in fact plying for hire and that inasmuch as on the particular occasion the use of the vehicle was gratuitous that the conditions did not apply.

The first part of the clause means in my view that none but vehicles provided with a special permit

(1) (1901) 2 K. B. 169.

may be let or ply for hire and the second part of the clause means that such vehicles, that is to say such vehicles being provided with a permit, are subject to the conditions. The rule may be more logically put in the form of three propositions as was suggested in the course of the argument by my learned brother Dhavle. The first proposition would be every vehicle plying for hire must have a special permit. The second proposition is every vehicle having a special permit may ply for hire and the third proposition is that every such vehicle as may ply for hire (that is to say as may be provided with a permit) shall be bound by the terms of the permit, and therefore it is not open to the owner of a motor vehicle in respect of which a permit has been granted to free that vehicle from the conditions of the permit during the time for which the permit is granted by allowing it to carry passengers otherwise than on the condition of it being let or allowed to ply for hire. We have been assisted in the construction of this rule by the report of an English case *Hawkins v. Edwards*(1) in which a controversy exactly similar to that in this case was raised upon the wording of the English Act. Of course the words of the English Act have no bearing upon the words of the Indian Act nor is the judgment of the Court on that Act binding upon us but the reasoning employed was precisely similar and in that case Lord Alverstone held that the conditions of the license apply to the licensed vehicle for the period of the license irrespective of whether it was in use at the time as a carriage standing or plying for hire and by a parity of reasoning the same conclusion is to be arrived at in this case. For these reasons the appeal should, in my opinion, be allowed and as this is a test case and one of importance both to the Government and to the proprietors of motor vehicles I would impose a nominal penalty of one rupee.

DHAVLE, J.—I agree.

1929.

KING.
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COURTNEY
TERRELL,
C. J.

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