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1959
April 21, 22.

Lord Parker C.J., Donovan and Salmon JJ.

Metropolis—Hackney carriage—"Plying for hire"—Hire car—Company operating service of hired cars at London Airport—Cars chauffeur driven—Available for use by passengers and public—Not licensed as hackney carriages—Cars advertised at desks where bookings made—No indication at standing places that cars available for hire—Whether "plying for hire"—Metropolitan Public Carriage Act, 1869 (32 *&* 33 *Vict. c.* 115), *s.* 7.

Judicial Precedent—Divisional Court decision—Whether binding on Divisional Court—Only if impossible to distinguish.

A car hire company, under a contract with the Ministry of Transport and Civil Aviation, operated a service of chauffeur-driven motor-cars at the North and Central terminals of London Airport, available day and night at a fixed schedule of fares, for the use of passengers and members of the public admitted to the airport by the Minister. The cars were not licensed as hackney carriages. Bookings were made at desks at each terminal, where the service was extensively advertised, but there was no indication at the standings where the cars waited that they were for hire, intending passengers being escorted to one of the cars by an employee of the company. On October 28, 1958, the respondents each hired a car for a short journey from London Airport, and subsequently the company and the two chauffeurs were convicted by justices, on informations laid by the respondents, of offences under section 7 of the Metropolitan Public Carriage Act, 1869,[1] as being the owners and drivers of unlicensed hackney carriages unlawfully plying for hire:—

Held, that the words "plies for hire" in section 7 connoted some exhibition of the vehicle to the public as available for hire; that the cars in question were not exhibited to the public as being available for hire and, therefore, were not plying for hire within the meaning of section 7; and, accordingly, the justices had come to a wrong decision and the appeals must be allowed.

Griffin v. *Grey Coaches Ltd.* (1928) 45 T.L.R. 109 distinguished.

Allen v. *Tunbridge* (1871) L.R. 6 C.P. 481 approved in *Armstrong* v. *Ogle* [1926] 2 K.B. 438; 42 T.L.R. 553; *Clarke* v. *Stanford* (1871) L.R. 6 Q.B. 357 and *Gilbert* v. *McKay*, 62 T.L.R. 226; [1946] 1 All E.R. 458 considered.

Semble, that although "plying for hire" must have the same meaning in relation to hackney and stage carriages, a stage carriage

[1] Metropolitan Public Carriage Act, 1869, s. 7: "If any unlicensed "hackney or stage carriage plies for "hire, the owner of such carriage shall "be liable to a penalty not exceeding "£5 for every day during which such "unlicensed carriage plies. . . . The "driver also shall in every such case "be liable to a like penalty unless he "proves that he was ignorant of the "fact of the carriage being an unlicensed carriage."

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such as a coach or omnibus, may be exhibited, even if it is not on view when an intending passenger buys a ticket, if a schedule of regular services is advertised and a vehicle or vehicles has been regularly performing the services for some time in full view of the public.

CASE STATED by Middlesex justices sitting at Uxbridge.

On December 16, 1958, informations were laid by the respondent, Harry John Sherwood, against the appellant, Walter Joseph Cogley, and the appellant company, the Car Hire Group (Skyport) Ltd., alleging that Cogley was the driver and the appellant company the owners of an unlicensed hackney carriage which, on October 28, 1958, at North terminal, London Airport, unlawfully plied for hire, contrary to section 7 of the Metropolitan Public Carriage Act, 1869. Similar informations were laid by the respondent, John Lawrence Kavanaugh, against the appellant, William Howe, as the driver, and the appellant company, as the owners, of an unlicensed hackney carriage which, on the same date, from the Central terminal at London Airport, unlawfully plied for hire, contrary to section 7 of the Act. Both the respondents were taxi-drivers.

The justices heard the informations on January 19, 1959, and found the following facts: At London Airport there were two separate sets of buildings used for handling passengers, the Central and North terminals. The appellant company's business was to hire " self-drive " cars and also to hire cars with chauffeurs. The latter could be hired out on the spot or booked in advance. The major part of the company's business consisted of hiring cars with chauffeurs to persons who required immediate transport. The company conducted its business at both terminals. By virtue of a contract between the company and the Minister of Transport and Civil Aviation made on March 29, 1956, the company maintained and staffed at each terminal a desk at which the service they provided was well advertised. It appeared from photographs exhibited to the case that at the front of each desk notices bearing the words " Book your car here " were displayed, and there were notices (similar at each desk) giving the name and address of the appellant company, and bearing the words " Official Car Hire " Service London Airport. Cars to all parts." The contract also provided, inter alia, that the company would provide at such times during the day and night as the Minister might require and at charges specified in the contract, car hire services at the airport for the benefit of travellers, users of the airport and such other persons as might be admitted thereto by the Minister; that the

company would at its own expense take out and maintain all licences and policies of insurance necessary to the use of the vehicles, and at all times comply with all statutory or other requirements relating to the use of such vehicles; and that neither the company nor its servants should solicit custom at the airport. At each terminal the company used a standing for its vehicles appointed by the Minister which was conveniently placed so as to make the vehicles readily available to any member of the public who had hired a vehicle at the desk. In the case of the Central terminal the standing was a roadway to which the public did not have access. The standing places were so defined by marks on the roadway which were not easily seen when cars were parked there. The cars appeared to be private cars, and when standing at the appointed place would not give the appearance of being cars which were available for hire; and the uniform worn by the drivers was similar to that of private chauffeurs.

In addition to the notices displayed at both the company's desks, at Central terminal there were advertisements in other parts of the main concourse and facilities for telephoning the desk from other parts of the building, and at North terminal inside the customs area there was a push-button on the wall labelled "Car "hire. Push." When the button was pushed an employee of the company attended. The company's desks were so positioned as to be plainly visible to passengers arriving at either the Central or North terminals. The advertisements and notices displayed on the desks and elsewhere were a clear intimation to members of the public who were at the airport that the services which the company provided were available for their use if desired.

With the admitted object of obtaining evidence on which to base these proceedings, on October 28, 1958, the respondents arranged for two of the company's cars to be hired, one from the Central terminal and one from North terminal. In both cases the intending car passengers desired to hire a private car from the company and approached the desks and asked to be driven to Twickenham from the North terminal and Richmond from the Central terminal respectively. At the North terminal the clerk at the desk wrote on a printed form the name of the driver and the reference number of the car. The passenger was escorted to a waiting car owned by the company and driven to Twickenham by the appellant, Cogley. At the Central terminal, the desk clerk made entries in a book and the passenger was escorted to a waiting car owned by the company and was driven to Richmond by the appellant, Howe. Both passengers were asked for and

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paid to the driver a fare representing three shillings per mile for the journey. The two cars used for the journeys to Twickenham and Richmond on the day in question were not licensed as hackney carriages.

It was contended by the appellants and the appellant company (a) that the two cars were not exhibited to intended passengers as being for hire or at all and there was no solicitation of intending passengers in any shape or form, and that the advertisements at the desks could not be treated as solicitation within the context of the statute; (b) that for a "plying for hire" to exist there must be a solicitation by words or conduct by either the driver or the person in charge of the vehicle of persons who had not entered into a prior contract; (c) that the solicitation of the public involved in plying for hire must be in relation to a particular vehicle; and (d) that the evidence showed that not until after the contract was made at the desk was the car or the driver selected for the journey.

It was contended by the respondents that (a) "hackney "carriage" was defined by section 4 of the Metropolitan Public Carriage Act, 1869, as "a carriage for the conveyance of pas- "sengers which plies for hire within the limits of this Act, and is "not a stage carriage." The limits of the Act were the Metropolitan Police District, the City of London and the liberties thereof. London Airport was within the Metropolitan Police District and the Act accordingly applied; (b) "plying for hire" really meant carrying out the business of carrying passengers for hire or reward: that by applying the principles of common sense the evidence showed that the cars in question were in fact acting as taxi-cabs and that as the cars were not licensed as hackney carriages the offences alleged had been committed.

The justices, having referred to section 4 of the Act, decided that London Airport was within the limits of the Act and the vehicles concerned were clearly "carriages for the conveyance of "passengers," were not stage carriages, and were not licensed as hackney carriages. Their decision accordingly rested on their finding whether or not the vehicles were "plying for hire." They considered all the cases quoted to them and failed to extract therefrom a comprehensive and authoritative definition of "plying for "hire." Whatever such a definition might be, they expressed the view that it must include a solicitation of the public to be forthwith conveyed in a carriage which was "readily" available to an agreed destination for an agreed fare. On the authorities, it appeared to them that the solicitation might be not only by words

but by the exhibition of the vehicles, public display of advertisements, or a combination of both, and, in their opinion, any acts, words, notices or conduct which brought to the notice of a member of the public that a vehicle was readily available to transport him to his destination on payment of a fare. The fact that a vehicle was on view had, in their opinion, merely a high evidential value and was not an essential condition of plying for hire. Indeed, it was not necessary that at the time that the agreement was reached by the hirer and the passenger for the passenger's conveyance that the actual driver or the vehicle to be used was known (*Griffin* v. *Grey Coaches Ltd.*[2]).

The justices rejected a submission that on the authority of *Hunt* v. *Morgan*[3] a vehicle could, in law, only ply for hire if it was standing on a properly authorised rank or was stationary in a public street. They took the view that the ratio decidendi of *Hunt* v. *Morgan*[3] was not what constituted "plying for hire" but what was "a place" at which a hackney carriage which was in fact plying for hire was compelled to accept a fare. They considered that the facts in *Griffin* v. *Grey Coaches Ltd.*[4] and the present cases had two substantial similarities: in both cases the existence of the service offered to the public was made known by advertisement, and the vehicle used was not on view or allocated to the particular journey at the time the agreement for the journey was made. They came to the conclusion that a part of the company's ordinary business was to provide transport immediately on request for a fare. To do so the company kept cars and drivers at a reasonably accessible place ready for immediate use. The company offered its services to the public at London Airport by manning desks on which were displayed notices and advertisements at the place where they were most likely to be seen by the passengers arriving by air and, indeed, did their best to advertise their services. In the justices' opinion that constituted a solicitation of the public to hire the company's cars which were immediately available and, accordingly, they decided that the company's vehicles were plying for hire. They convicted the appellants and the appellant company of the offences charged and ordered their absolute discharge. They ordered the company to pay £12 12s. costs. The appellants and the appellant company appealed.

The question for the opinion of the court was whether or not

[2] 45 T.L.R. 109.

[3] [1949] 1 K.B. 233; 65 T.L.R. 15; [1948] 2 All E.R. 1065.

[4] 45 T.L.R. 109.

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the justices were right in law in finding that the vehicles in question were " plying for hire."

Neil Lawson Q.C. and *W. A. Macpherson* for the appellants. The only question is whether the two cars were " plying for hire " within the meaning of section 7 of the Metropolitan Public Carriage Act, 1869. If they were not, they were not hackney carriages, and therefore licences were unnecessary. If the contention of the prosecutors is correct, whenever a car hire company carries passengers for hire and reward the vehicles used are necessarily plying for hire and unless licensed as hackney carriages offences are committed against section 7 of the Act. In this case the justices considered the authorities relating to stage carriages as well as those concerning hackney carriages, but it is essential to observe the difference between the activities of stage carriages and those of private hire cars. A stage carriage normally uses a regular route at regular times, holding out thereby a promise to the public to appear regularly at a certain place and undertake a particular journey. A private hire car is hired to go to any destination at any time at an agreed rate.

The authorities relating to hackney carriages as distinct from stage carriages show (1) that plying for hire has to be considered in relation to the particular vehicle and not in relation to its owner, and (2) that a necessary feature of plying for hire is the presence of the vehicle ready at any moment to be hired by the customer. *Case* v. *Storey*,[5] *Clarke* v. *Stanford*[6] and *Allen* v. *Tunbridge*,[7] in each of which the question of whether a hackney carriage was plying for hire arose, were decisions of the Courts of Exchequer, Queen's Bench and Common Pleas respectively which concerned carriages standing within the precincts of railway stations ready to convey passengers arriving by train. In *Case* v. *Storey*[8] the Court of Exchequer held that a carriage standing on the premises of a railway company by their leave for the accommodation of passengers arriving by train was plying for hire. The case concerned another Act and the decision has since been superseded, but reliance is placed on the observations of Kelly C.B.[9] as to the meaning of the words " plying for hire," namely, " the carriage is at the disposal of any one of the public " who may think fit to hire it."

The circumstances were similar in *Clarke* v. *Stanford*,[10] where

[5] (1869) L.R. 4 Ex. 319.
[6] (1871) L.R. 6 Q.B. 357.
[7] (1871) L.R. 6 C.P. 481.
[8] L.R. 4 Ex. 319.
[9] Ibid. 323.
[10] L.R. 6 Q.B. 357.

there was a prosecution under section 7 of the Act of 1869. The Court of Queen's Bench held that there was a plying for hire within the meaning of the Act because the presence of the vehicle in the railway yard constituted a solicitation of the public to hire it. That decision was followed by the Court of Common Pleas in *Allen* v. *Tunbridge*,[11] but in the latter case there was a verbal solicitation by the driver. When considering solicitation of the public, there is an important difference in principle between solicitation by the presence of a vehicle in full view of the public and solicitation by advertisement as in the present case.

[LORD PARKER C.J. One of the essential ingredients in plying for hire appears to be that a particular vehicle should be held out as available to be hired by a member of the public who comes to it. Any system whereby booking or advertisement is done at an agency destroys that because the intending passenger is not assigned the vehicle he picks out but one someone else picks out for him.]

It should be pointed out that in *Foinett* v. *Clark*[12] carriages standing on part of a railway yard rented exclusively by their owner ready to be hired by railway passengers were held to be plying for hire although the drivers had instructions not to solicit and passengers took their tickets at an office. In that case the court applied the definition of plying for hire given by Kelly C.B. in *Case* v. *Storey*.[13]

[LORD PARKER C.J. From those authorities it seems that a vehicle which is plying for hire must be exhibited.]

That point was raised in *Cavill* v. *Amos*,[14] where there was a prosecution under the Town Police Clauses Act, 1847. There a taxicab which was held to be plying for hire was exhibited, but it was suggested that there might be a plying for hire although the vehicle was not exhibited if a man went about touting for customers. The striking feature of *Gilbert* v. *McKay*,[15] which was cited to the justices, was that a large number of vehicles—which were held by the court to be plying for hire—was exposed in a public street in much the same way as taxicabs are exhibited on public stands in public streets.

It is submitted that the authorities relating to stage carriages show (1) that there must be solicitation by the driver or person in control of the vehicle, and (2) the person soliciting must be in possession of the carriage for which he is soliciting or waiting

[11] L.R. 6 C.P. 481.
[12] (1877) 41 J.P. 359.
[13] L.R. 4 Ex. 319, 323.
[14] (1899) 16 T.L.R. 156.
[15] [1946] 1 All E.R. 458; 62 T.L.R. 226.

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to obtain passengers: *Sales* v. *Lake*,[16] *per* Lord Trevethin C.J.[17] In *Armstrong* v. *Ogle*,[18] where an omnibus was held to be plying for hire, Lord Hewart C.J. set out the principle to be applied.[19] That case stresses the fact that in posing the test: Is it plying for hire? in relation to a stage carriage, the regularity of the carriage along a definite route and its availability to any member of the public who has knowledge of its regular use of that route and its readiness to carry passengers can amount to solicitation. [Reference was also made to *Leonard* v. *Western Services Ltd.*[20]] In *Griffin* v. *Grey Coaches Ltd.*[21] the decisive factor in finding that there was a plying for hire was the existence of posters advertising the regular times and routes of coaches travelling from Brighton to London which amounted to a solicitation of the public by advertisement to take tickets for a vehicle which, although not exhibited to the public at the times tickets were taken, would be produced to undertake a particular journey at a particular advertised time. It was not a case where a person made a private contract to hire a car for a particular journey at any time to any place.

[LORD PARKER C.J. If it had not been for that case the justices might well have come to a different conclusion.]

Yes. The authorities taken as a whole make it clear that the activities of the owner of the vehicle for hire and the activities of the vehicle itself must not be confused. It is the vehicle which plies for hire. The statute does not prevent people from letting unlicensed vehicles out on hire. To establish that a vehicle is plying for hire two elements have to be present. There has to be a solicitation by words or conduct by the persons in charge of a particular vehicle and there has to be an attraction to the public by means of the particular vehicle which is held out as available for hire.

When considering section 7 of the Act it is not unimportant to bear in mind that the legislature was there concerned to prevent the use of unlicensed hackney and stage carriages, first, because of the danger of obstruction referred to in *Hunt* v. *Morgan*,[22] and, secondly, because of the necessity of ensuring the competence of the drivers and the fitness of the vehicles for the conveyance of members of the public. When applying section 7 to the

[16] [1922] 1 K.B. 553; 38 T.L.R. 336.
[17] [1922] 1 K.B. 553, 558.
[18] [1926] 2 K.B. 438; 42 T.L.R. 553.
[19] [1926] 2 K.B. 438, 445.
[20] [1927] 1 K.B. 702; 43 T.L.R. 131.
[21] (1928) 45 T.L.R. 109.
[22] [1949] 1 K.B. 233; 65 T.L.R. 15; [1948] 2 All E.R. 1065.

circumstances of the present case these circumstances are absent and there is nothing which compels the court to hold that these cars are hackney carriages.

The justices, who dealt with this matter with great care, were wrong on the question of solicitation of the public. In saying that certain of the facts in *Griffin* v. *Grey Coaches Ltd.*[23] and the present case were similar they completely overlooked the vital differences between a coach service operating on a regular route and a private hire car which can be hired by any person who wishes to hire it for a particular purpose.

[LORD PARKER C.J. There is in practice a difference between stage carriages and private hire cars, but where is the difference in the words "ply for hire"? The appellants must show that in the case of a private car or carriage the essence of plying for hire is the holding out of the particular vehicle, whereas in the case of a stage carriage it is the holding out of the particular service.]

It is submitted that the legislature contemplated a difference between the two because in the Act a stage carriage is defined with reference to place of plying for hire, whereas a hackney carriage is a vehicle which plies for hire "within the limits of "this Act": see section 4. If "hackney carriage" had been defined in relation to a street or place, these appeals would not be before the court, because London Airport is private property and the cars were not standing in a public street or place. [Reference was made to *Hunt* v. *Morgan.*[24]] It may be that in relation to a stage carriage "ply for hire" has the same meaning as in the Oxford English Dictionary, i.e., from place to place. It may apply not only to what happens preliminary to but during the hiring. If the justices' decision is correct, then every car hire company which advertises the services of its cars will be offending against section 7 unless it is made clear that some hours' notice is necessary before an intended hirer can be provided with a vehicle. The justices have confused the way in which the hirers carry on their business and the activities of the vehicles themselves. In the present case that difference is basic. The justices were wrong and the appeals should be allowed.

James Borders for the respondents. If the appellants abandon the exhibition of the particular vehicle as an essential element of soliciting the public, this case comes back to *Gilbert* v. *McKay.*[25] The only essential difference between that case and the present

[23] 45 T.L.R. 109.
[24] [1949] 1 K.B. 233.
[25] [1946] 1 All E.R. 458.

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is that in *Gilbert* v. *McKay* [25] the vehicles were on a stand in a public street so that they were exhibited. But apart from that the case is on all fours with this case. Here the cars take their places at the Central and North terminals at London Airport. Members of the public who wish to hire a car ask for it at the office and one is allocated. At one terminal they can be seen by members of the public and at the other they cannot. The extensive advertisements that they are available for hire is evidence of solicitation. The hackney carriage cases are no authority for the proposition that a particular vehicle must be allocated. Reliance is placed on the definition of plying for hire given by Lord Trevethin C.J. in *Sales* v. *Lake*.[26]

[LORD PARKER C.J. One must look at that definition in relation to the facts of that case, which concerned a charabanc. The principle was laid down by Montague Smith J. in *Allen* v. *Tunbridge*.[27] The difficulty is to apply it to the facts of each case.]

All the definitions of plying for hire in the cases seem to be on all fours with the definition the justices have adopted in the present case. There is no definition which lends colour to making plying for hire applicable only where the particular vehicle is being exhibited.

[DONOVAN J. If the true view is that one has to look at the activities of the vehicle itself and not at what the owner is doing, it might be possible to say that in *Gilbert* v. *McKay* [28] the vehicles were plying for hire but that in this case they were not.]

It is submitted that there was evidence here that the vehicles were plying for hire, and, unless the appellants can prove that the justices' reasoning was wrong, this court cannot interfere with their decision. The appellants must show that there is a difference with regard to the exhibition of a stage carriage and a private hire car. Unless they can do so this case is beyond dispute. There is no such distinction as they seek to draw. *Griffin* v. *Grey Coaches Ltd.*[29] is authority for the proposition that a stage carriage need not be on view to the public. The essential difference between a stage carriage and a hackney carriage is that in a stage carriage passengers are charged separate fares for distinct stages, whereas in a hackney carriage that is not so. Taxicab cases on the question of plying for hire do not deal with the point raised concerning the availability for hire of

[25] [1946] 1 All E.R. 458.
[26] [1922] 1 K.B. 553, 558.
[27] L.R. 6 C.P. 481, 485.
[28] [1946] 1 All E.R. 458.
[29] 45 T.L.R. 109.

the particular vehicle. In *Skinner* v. *Usher* [30] a licensed hackney carriage standing on a piece of ground opposite a railway station which crossed over to the station to pick up a passenger was held to be soliciting or waiting and accordingly plying for hire. These cars were doing exactly the same thing. They were under someone else's control, but they were waiting for passengers with whom they had no previous contract. [Reference was made to *Birmingham Midland Motor Omnibus Co.* v. *Thompson.*[31]]

[DONOVAN J. It may be difficult to draw a parallel between that case, which concerned motor-buses going regularly along a street to a garage, and this case.]

In considering this question all the facts must be taken into account. There was ample evidence of solicitation by reason of the advertisements at the airport and the fact that plenty of cars were available. Vast numbers of persons at the airport could see the passengers conducted to the cars. It is obvious that plying for hire was going on. There is nothing to prevent the appellant company from obtaining hackney carriage licences and so conducting their business lawfully. Their agreement with the Minister provides specifically that they should take out all necessary licences. That is a very comprehensive provision when it is remembered that all that has to be done in the case of a motor-car is to obtain a road licence and insure the car. On the facts as found, there was evidence that the cars were plying for hire, and unless the appellants can show that the justices have erred in law, and it is submitted they cannot, the appeals must fail.

J. R. Cumming-Bruce intervening for the Minister of Transport and Civil Aviation. On the question of plying for hire it is interesting to observe the language used in the earlier statutes where the legislature has drawn a distinction between a carriage "let for hire" and one plying for hire. That distinction had been maintained as far back as 1694: see 5 & 6 W. & M., c. 22, ss. 5 and 6. In the Hackney Carriage Act, 1831, the words used in section 22 are "if any person shall keep, use, employ or let "to hire any hackney carriage . . ." and in section 23 "if any "carriage shall be used for the purpose of standing or plying for "hire as a hackney carriage in any public street or place." In section 4 hackney carriage is defined as "a carriage . . . which "shall be used for the purpose of plying for hire in any public "street or road . . ." It is clear, therefore, that sections 22 and 23 distinguish between the case where letting for hire is

[30] (1872) L.R. 7 Q.B. 423.

[31] [1918] 2 K.B. 105.

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envisaged and plying for hire. The latter words seem to be selected as apt for cases where the vehicle is on view in a street or place. In the Act of 1869 the words "letting for hire" are not used at all. It is only the ordinary use of language to distinguish between letting for hire and plying for hire. It emerges from the reasoning of the justices set out in the case that they considered themselves compelled by successive authorities to conclude that operations commonly thought of as falling within the category of letting for hire have to be regarded in this context as plying for hire. That conclusion must be regarded with some suspicion in the light of the growth of the private hire industry over the past 50 years. Up to the present no one has sought to control or bring it within the ambit of the Act of 1869. It may be that during all that time the industry has been acting unlawfully, but it is submitted that in such circumstances the court will construe the section and consider its application with great care before finding that it has to be construed so widely as to affect the growth of this industry which is now so widespread. It is submitted that on the construction of section 7, in the case of hackney carriages exhibition of the vehicle for the purpose of attracting customers is an essential ingredient of plying for hire. In the case of a stage carriage there is an element of attraction to passengers by exhibition which arises from the frequent and regular passage of the vehicles along a known route.

[SALMON J. That involves construing the words "plies for "hire" in two different ways.]

It is submitted that that is not so. They are merely two different modes of exhibiting. There is, particularly among courts of summary jurisdiction, an obvious temptation, when faced with a problem of construction, not to start with the words of the statute but to be beguiled into examining the cases in which the courts have dealt with a series of analogous facts and being forced to a conclusion which is difficult to reconcile with the language of the statute. That is what the justices have done here. Section 7 is not apt to deal with the licensing of vehicles let to hire, but, as a result of the authorities, the justices have reached the conclusion that the words "plies for hire" deal with every case of letting for hire.

Borders replied.

Lawson Q.C., in reply, adopted the argument put forward by Cumming-Bruce.

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LORD PARKER C.J. This is an appeal by way of case stated by justices for the county of Middlesex sitting at Uxbridge, before whom four informations were preferred charging offences against section 7 of the Metropolitan Public Carriage Act, 1869, in that the appellants were respectively the owners and drivers of two unlicensed hackney carriages, which had unlawfully plied for hire. The justices, after very careful consideration of the authorities, felt constrained to hold that the offences were proved. They convicted the appellants accordingly, but gave them an absolute discharge, ordering in the case of the appellant company that it should pay 12 guineas costs. [His Lordship stated the facts and continued:]

The Metropolitan Public Carriage Act, 1869, provides, so far as it is relevant to these proceedings, by section 2 that: "The limits of this Act shall be the Metropolitan Police District "and the City of London and the liberties thereof." By section 4, which is the definition section, it is provided that: "In this Act "'stage carriage' shall mean any carriage for the conveyance "of passengers which plies for hire in any public street, road or "place within the limits of this Act, and in which the passengers "or any of them are charged to pay separate and distinct or at "the rate of separate and distinct fares for their respective places "or seats therein. 'Hackney carriage' shall mean any carriage "for the conveyance of passengers which plies for hire within the "limits of this Act, and is not a stage carriage." Finally, section 7 provides that: "If any unlicensed hackney or stage "carriage plies for hire, the owner of such carriage shall be liable "to a penalty not exceeding £5 for every day during which such "unlicensed carriage plies. . . ."

It is quite clear that London Airport is within the limits of the Act, and the only question therefore falling to be determined in these proceedings is whether either or both of the two cars were plying for hire. If they were, then they were clearly unlicensed, and an offence was committed.

The court has been referred to a number of cases from 1869 down to the present day dealing with hackney carriages and stage carriages. Those decisions are not easy to reconcile, and like the justices, with whom I have great sympathy, I have been unable to extract from them a comprehensive and authoritative definition of "plying for hire." One reason, of course, is that these cases all come before the court on case stated, and the question whether a particular vehicle is plying for hire, being largely one of degree

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and therefore of fact, has to be approached by considering whether there was evidence to support the justices' finding.

In those circumstances it was unnecessary, and clearly inadvisable, for the court to attempt to lay down an exhaustive definition. Indeed, that was specifically referred to by Lord Hewart C.J. in *Griffin* v. *Grey Coaches Ltd.*[1] in 1928. Lord Hewart C.J. said[2]: "In the course of the argument reference has "been made to a considerable number of cases, and attention "has been directed to the occasional narrowness of the field of "argument and decision in those cases. But it is to be observed "that cases on this interesting question of plying for hire usually "turn upon the question whether there was or was not evidence "in the particular facts of the case justifying the conclusion "arrived at by the justices. Nowhere is there any attempt to "formulate an exhaustive definition of the meaning of the term "'plying for hire; . . .'"

I think the proper course is to start with the words of the Act and to construe them, before seeing whether there are any decisions binding upon us which constrain us to put a different construction upon the words. Approaching the matter in this way, the first thing that strikes one is that the Act is dealing with carriages plying for hire, not with persons carrying on the business of letting out carriages. It is the carriage that must ply for hire, and, though a human agency must clearly be involved, the Act is directing one's attention to the carriage under consideration and posing the question: is *it* plying for hire? While no doubt in 1869 persons were engaged in letting out carriages on hire, the legislature clearly could not then envisage the considerable business which has grown up of recent years of hiring out cars. Indeed today, as a matter of common sense, I do not think that anyone would say that vehicles belonging to the many car hire concerns are plying for hire in the ordinary sense of the word. It seems to me that the Act is prima facie dealing with a particular carriage whose owner or driver invites the public to be conveyed in it.

The idea is well set out by Montague Smith J. in *Allen* v. *Tunbridge*,[3] where he said[4]: "I am of the same opinion upon "the authority of the case in the Queen's Bench. It appears "to have been held there that, if the proprietor of a carriage "sends it to a place for the purpose of picking up passengers,

[1] (1928) 45 T.L.R. 109.
[2] Ibid. 110.
[3] (1871) L.R. 6 C.P. 481.
[4] Ibid. 485.

" that is a plying for hire within the Act. That is very different " from a customer going to a job-master to hire a carriage."

Indeed that passage was approved in *Armstrong* v. *Ogle*.[5] In that case Lord Hewart C.J. said [6]: " What is the principle " to be applied? It was stated in a single sentence by Montague " Smith J. in *Allen* v. *Tunbridge* [7] where he said (referring to a " previous case): ' It appears to have been held there, that, if " ' the proprietor of a carriage sends it to a place for the purpose " ' of picking up passengers, that is a plying for hire within the " ' Act. That is very different from a customer going to a job- " ' master to hire a carriage ' "; then Lord Hewart said [8]: " The " contrast is between a particular and definite private hiring and " a public picking up of passengers."

The decision in *Allen* v. *Tunbridge* [9] was a decision of the Court of Common Pleas, but the same idea is, I think, behind the contemporary decisions in the courts of Queen's Bench and the Court of Exchequer. Thus in *Case* v. *Storey* [10] Kelly C.B., in referring to the words " plying for hire " under a different Act, said [11]: " Those words must mean that the carriage is to be at " the disposal of any one of the public who may think fit to " hire it."

In *Clarke* v. *Stanford* [12] Cockburn C.J. said [13]: " But where " a person has a carriage ready for the conveyance of passengers, " in a place frequented by the public, he is plying for hire, al- " though the place is private property." Mellor J. said [14]: " But " what is the carriage there for? Though the driver makes no " sign, he is there to be hired by persons who arrive by train, " and there is no restriction as to the persons who, arriving by " train, shall hire the carriage; it is therefore plying for hire, " within the meaning of the statute." Lush J. said [15]: " This " carriage was awaiting the arrival of a train, in order to be hired " by any person who might come by the train. That is a plying " for hire within the meaning of this statute."

In the ordinary way, therefore, I should, apart from authority, have felt that it was of the essence of plying for hire that the vehicle in question should be on view, that the owner or driver should expressly or impliedly invite the public to use it, and that the member of the public should be able to use that vehicle if

[5] [1926] 2 K.B. 438; 42 T.L.R. 553.
[6] [1926] 2 K.B. 438, 445.
[7] L.R. 6 C.P. 481, 485.
[8] [1926] 2 K.B. 438, 445.
[9] L.R. 6 C.P. 481.
[10] (1869) L.R. 4 Ex. 319.
[11] Ibid. 323.
[12] (1871) L.R. 6 Q.B. 357.
[13] Ibid. 359.
[14] Ibid. 360.
[15] Ibid.

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he wanted to. Looked at in that way, it would matter not that the driver said: "Before you hire my vehicle, you must take "a ticket at the office," aliter, if he said: "You cannot have "my vehicle but if you go to the office you will be able to get "a vehicle, not necessarily mine."

There are, however, some cases which point to a different conclusion. For my part, however, I find it unnecessary to go into them and for this reason. In all the cases where it has been held that a carriage was plying for hire, it was in fact there and on view. Thus, in *Gilbert* v. *McKay* [16] cars were held to be plying for hire even though, as I assume, a member of the public could not choose his vehicle, but be that as it may, the vehicles were clearly on view, they were standing, like taxis might stand on a rank, outside offices bearing the sign "Cars for Hire." It is true that in that case it was suggested that there might be a plying for hire even if the cars were not on view, and the same appears in *Cavill* v. *Amos*,[17] where Channell J.,[18] in giving judgment, said: "In ordinary cases, in order that there should be "a plying for hire, the carriage itself should be exhibited. He "thought, however, that a man might possibly ply for hire with "a carriage without exhibiting it, by going about touting for "customers." For myself I think that it is of the essence of plying for hire that the carriage should be exhibited.

Here I think it is clear that the cars in question were not exhibited in this sense of the word. As I have said, the only cars that were on view were at one terminal, and to any ordinary member of the public they did not appear to be for hire; they appeared merely to be ordinary private cars with private chauffeurs.

It is said, however, that the cases concerning stage carriages and in particular the case of *Griffin* v. *Grey Coaches Ltd.*,[19] to which I have already referred, force one to a different conclusion. Indeed, I think it was that case that chiefly influenced the justices. Thus in setting out their reasons, they say this: "Indeed it is "not necessary that at the time the agreement is reached by the "hirer and the passenger for the passenger's conveyance that "the actual driver or the vehicle to be used is known (*Griffin* v. "*Grey Coaches Ltd.* [19])." A little later on they say: "We "considered that the facts in *Griffin* v. *Grey Coaches Ltd.*[19] and "the cases before us had two substantial similarities: in both

[16] [1946] 1 All E.R. 458; 62 T.L.R. 226.
[17] (1899) 16 T.L.R. 156.
[18] Ibid. 157.
[19] 45 T.L.R. 109.

" cases the existence of the service offered to the public was made " known by advertisement and the vehicle used was not on view " or allocated to the particular journey at the time the agreement " for the journey was made."

In *Griffin's* case,[19] which concerned a stage carriage, the company, Grey Coaches Ltd., were owners of motor charabancs, plying at regular hours between London and Brighton. The question was whether the vehicles were plying for hire at Brighton, in respect of which there was no licence. It appears that there were extensive advertisements exhibited at the office in Brighton advertising the times of departure of the charabancs, and tickets could be purchased at the office up to 10 minutes before the advertised time, but not afterwards. At the time when the tickets were purchased there was no charabanc in the garage adjoining the office, and it was not until 20 minutes later that the charabanc was driven up by one of the company's servants into the yard to take on the passengers. In the course of his judgment Lord Hewart C.J. said [20]: " What is the real difference, " apart from mere accidental difference, between that state of " affairs and the state of affairs which exists where the driver of " the coach, by gesture or by words, invites the members of the " public to board, and to travel upon, a vehicle which they can " see? It may be, as has been said, that the particular coach " was not then appropriated to the particular journey. It was " waiting to be appropriated; it was in a proper and convenient " place for that very purpose."

I do not think that that decision in regard to a stage carriage is compelling authority in the present case. This court, of course, treats itself as bound by its own decisions. There is, however, at present no appeal, and that being so, I do not think that the court should treat itself as bound by a previous decision unless there can be said to be no real distinction. It is true that " plying for hire " must have the same meaning whether applied to stage carriages or hackney carriages. In the former case, however, it may well be far easier to find a plying for hire. Indeed, where a schedule of regular services is advertised and a vehicle or vehicles has been performing those services for some time in full view of the public, there is something to be said for the view that they are exhibited in the sense that I have indicated, even though a particular vehicle is not on view when the ticket is bought. I do not think that *Griffin's* case [21] compels

[19] 45 T.L.R. 109. [20] Ibid. 111. [21] 45 T.L.R. 109.

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me to come to a conclusion in regard to hackney carriages different from that indicated earlier in this judgment.

In my judgment the justices were wrong in treating this case as indistinguishable from *Griffin's* case.[21] No conceivable blame attaches to them, and indeed the court is grateful for the clear reasoning set out in the case upon which their decision was based. I would allow this appeal.

DONOVAN J. The Lord Chief Justice has already quoted the definition of "hackney carriage" in section 4 of the Act of 1869, and I need not repeat it. Section 6 gives the Secretary of State power to license to ply for hire both stage carriages and hackney carriages within the territorial limits of the Act, namely, the Metropolitan Police District and the City of London and the liberties thereof. Section 9 gives him power to make regulations, inter alia, for fixing the stands of hackney carriages; section 7 provides that if any unlicensed hackney carriage plies for hire or uses one of the fixed stands, the owner is liable to a continuing penalty.

The motor-cars concerned in the present case are hackney carriages within the definition in section 4, and London Airport is within the territorial limits of the Act. The sole issue is whether these cars, in the circumstances detailed in the case, "ply for hire" within the meaning of section 7.

When that section was enacted hackney carriages were, I suppose, solely horse-drawn, and indeed one meaning of the word "hackney" is "an ambling horse." The purpose of the Act of 1869 was clearly to exercise control over these vehicles so as to ensure a proper standard of safety and cleanliness, and of competency in their drivers, for the driver had to be licensed too under section 9. The motor-car has now displaced the horse carriage and the competence, at any rate, of the driver is ensured, so far as it can be, by other legislation. In addition, a very large business has grown up of private hire of motor-cars. These new conditions do not mean that plain words in the statute are now to be given something other than a plain meaning. They do, however, in my view involve that when the court is asked to apply the language of 1869 to the vastly different circumstances of 1959, then a very close scrutiny of the words is called for.

The expression "ply for hire" is not defined in the statute, and I would respectfully concur in the justices' finding that no comprehensive definition is to be found in the decided cases.

[21] 45 T.L.R. 109.

But the term does connote in my view some exhibition of the vehicle to potential hirers as a vehicle which may be hired. One can perhaps best explain the reason by taking an example. It is a fairly common sight today to see in smaller towns and villages a notice in the window of a private house "Car for Hire." If the car in question is locked up in the owner's garage adjacent to the house, it could not in my view reasonably be said that at that moment the car was "plying for hire." If a customer wishes to hire it, he comes and makes his terms with the owner. On the return journey the owner might exhibit a sign on its windscreen, as some of them do, "Taxi" and then clearly he would be plying for hire. Similarly, if he left the car outside his house, the same notice on the car would involve, I think, that the car was then plying for hire, and the notice in the window might also then have the same effect.

The essential difference in the circumstances that I have compared is that in the one case the car is not exhibited at all, whereas in the other it is, coupled with the notification that it may be hired. I am fortified in suggesting a test of exhibition by several considerations. The first is that there is no decided case where a hackney carriage was held to be plying for hire where it was not exhibited so as to be visible to would-be customers. In *Gilbert* v. *McKay* [22] the cars were just outside the premises of the car hire firm, which bore advertisements that cars were for hire.

Secondly, in section 7, the words are: "If any unlicensed . . . "carriage plies for hire," thus indicating that one is to look and see what the vehicle itself is doing, albeit under human agency. I find it very difficult to say that a vehicle which is not exhibited in some way is a vehicle plying for hire. Like my Lord, I do not regard the decision in *Griffin* v. *Grey Coaches Ltd.* [23] as antagonistic to this view. There it is true that the charabanc was not on view at the time that the passenger booked his seat. But the court was dealing with a regular service at regular times along a regular route. One can, I think, exhibit a vehicle such as an omnibus or a charabanc just as effectively for the purpose of hire in this way as by any other. By these means it will come to the notice of prospective customers, which after all is the object of exhibition.

The court is dealing in this case with two particular vehicles,

[22] [1946] 1 All E.R. 458.

[23] 45 T.L.R. 109.

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one engaged from the Central terminal, and one from the North terminal of London Airport. The case finds that at the Central terminal the cars stood while waiting to be hired on a roadway to which the public had no access. There is no such precise finding, I think, as to the situation of the standing at the North terminal, but there is certainly no evidence that at either standing there was any notice that the cars, or any of them, were for hire. This, no doubt, explains the contention put in the forefront of the appellants' case, namely, that the two cars were not exhibited to intended passengers, or at all. This is not met by any opposing contention on the part of the respondents. The justices appear to deal with the case on the footing that the cars were not on view, for they say in effect that, despite this, the decision in *Griffin* v. *Grey Coaches Ltd.*[23] compelled them to the conclusion that this circumstance was inconclusive.

I have already stated why, in my view, the charabancs concerned in that case were in fact on view. If, then, the two cars with which this case is concerned were not exhibited to the public as being available for hire, I think it is wrong to say of these vehicles that they were then hackney carriages "plying for "hire."

The respondents' main contention begins in this way: plying for hire really means carrying out the business of carrying passengers for hire or reward. With respect, I think this suggested definition is misleading. The business is carried on by the owners of the cars and section 7 is not designed to regulate that business as such. It deals with the vehicle itself, and enacts that the vehicle shall not, if unlicensed, ply for hire. Of course the vehicle can do nothing except under human control, but the section is contemplating the function which the vehicle itself is fulfilling, albeit under human control, at a particular time.

I do not find it possible to say that a hackney carriage not on view to the public is, when not so on view, plying for hire, particularly when at the same time there is no indication in or around it that it ever does such work. I agree with the judgment of the Lord Chief Justice, and, accordingly, like him, I would allow this appeal.

SALMON J. I also agree, although not without some doubt, that, for the reasons stated by my Lord, this appeal should be allowed. Such doubt as I feel springs not from the words of the

[23] 45 T.L.R. 109.

statute, which appear to me to be reasonably plain, but from the multifarious decisions upon it. If the matter were res integra, I should have thought that it was obvious that the words "plying for hire" have a meaning different from and narrower than "letting for hire" or "carrying on a private hire business." But for authority, I should have thought that a vehicle plies for hire if the person in control of the vehicle exhibits the vehicle and makes a present open offer to the public, an offer which can be accepted, for example, by the member of the public stepping into the vehicle.

In cases such as these, the member of the public knows nothing, and has no time to make any inquiry about the vehicle or the standing or, indeed, the identity of the owner. It is not surprising that in such cases Parliament should make arrangements that the vehicles which so ply for hire shall be of a certain standard of safety and comfort upon which the member of the public can rely.

But from time to time in the past people owning vehicles which were plying for hire have exercised their ingenuity for circumventing the provisions of the Act of 1869, and on a large number of occasions this court has had to consider those attempts. During the course of the years, observations have been made which deal with the particular circumstances of a case, and these have been adopted and expanded in other cases; and so we have come to a position where, on the authorities, it is possible, as has been pointed out by Mr. Cumming-Bruce, to make a powerful argument, as Mr. Borders has done, for holding that this Act means something quite different from what any ordinary man would think that it meant on reading it.

Indeed, this court, to my mind, is driven to the very brink of saying that whenever a private hire firm has a fleet of motor-cars in its garage and advertises for customers, those motor-cars are plying for hire. That seems to me to be quite wrong. It was never within the contemplation of the legislature that the job-master (who was the counterpart in 1869 of the car hire service of 1959), should be within the Act, as was pointed out by Montague Smith J. in *Allen* v. *Tunbridge* [24] as long ago as 1871. I do not feel that we are constrained by authority to cross the brink. Although authority precludes a finding that the making of a present open offer is a necessary part of "plying for hire," I do not feel compelled by any authority to find that a vehicle plies for hire unless

[24] L.R. 6 C.P. 481.

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it is exhibited. In this case the vehicles were not, as my Lords have pointed out, exhibited, and for that reason I agree that this appeal should be allowed.

Appeal allowed.
Order for costs made by justices to be discharged.
No other order as to costs.

Solicitors: *Coward, Chance & Co.; Alexander Charles, Leyton-stone; Treasury Solicitor.*

E. M. W.

C. A.

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Dec. 10, 11, 19.

Lord Evershed M.R., Romer and Ormerod L.JJ.

MACFARLANE *v.* GWALTER.

Public Health—Nuisance—Cellar—Grating in pavement—Liability of occupier of adjoining premises to repair where grating dedicated as part of highway—Liability for accident arising through non-repair—Public Health Acts Amendment Act, 1890 (53 *&* 54 *Vict. c.* 59), *s.* 35 (1).

Nuisance—Highway—Obstruction.

A grating in the pavement of a public highway was in bad condition and was found to constitute a dangerous trap. The purpose of the grating, which had probably formed part of the highway when it was dedicated, was to admit light to the cellar window of an adjoining building and the defendant, who was the occupier of that building, knew of the condition of the grating and had failed to repair it. The plaintiff was walking along the pavement when her leg went through the grating and she was injured. She claimed damages for injury caused by nuisance arising from breach of the defendant's duty imposed by section 35 (1) of the Public Health Acts Amendment Act, 1890 [1]:—

Held, that, as the defendant was the occupier of the building adjoining the grating, he was under a duty to repair it by section

[1] Public Health Acts Amendment Act, 1890, s. 35 (1): "All vaults, arches and cellars under any street, and all openings into such vaults, arches, or cellars in the surface of any street, and all cellar-heads, gratings, lights, and coal-holes in the surface of any street, and all landings, flags, or stones of the path or street supporting the same respectively, shall be kept in good condition and repair by the owners or occupiers of the same, or of the houses or buildings to which the same respectively belong."

[Reported by M. B. KELLY, Esq., Barrister-at-Law.]