

CUMBERLAND *v.* SUSE *et al.*

P. C., Chilaw, 15,040.

1899.

August 7

Ordinance No. 3 of 1897—Regulation 20 made thereunder—“Diseased”—“Patient”—Obstruction in the removal of patients—Misjoinder of accused.

In Ordinance No. 3 of 1897, the word “diseased” means one who is actually diseased and not one merely infected; and “patient” means one actually suffering from some disease.

In order to constitute a charge of obstruction under regulation 20 made under that Ordinance, it is necessary to prove that the “diseased persons” occupied someone or other of the three classes of houses or places mentioned in the regulation.

Unless the obstruction offered be concerted, each of the accused should be separately charged and tried.

THIS was a prosecution under regulation 20 made under Ordinance No. 3 of 1897. A patient suffering from smallpox of a virulent type, in the village of Udappu, was removed from his house to the hospital, where he died. Ten days after his death the Assistant Government Agent, attended by a medical officer and others, went to the village to remove those who were diseased. In his evidence Dr. Wright explained that the accused and the other residents of the village who were to be removed to a place provided by the Government were not actually suffering from smallpox, but were suspected of being infected with the disease, because they lived very close to the house of the diseased patient and had free intercourse with the inmates of the house of that patient. The accused objected to be removed and offered obstruction to their removal.

The Police Magistrate found them guilty.

On appeal by the accused,

Dornhorst and *Jayawardana*, for appellants.

Layard, A.-G., for respondent.

Cur. adv. vult.

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The four appellants have been convicted of an offence against the Quarantine and Prevention of Diseases Ordinance, 1897, in that they without lawful authority or excuse obstructed and impeded the proper authority in the execution of the following regulation No. 29 made under the Ordinance: "It shall be lawful for the proper authority to cause persons diseased with plague, cholera, or smallpox in any house or place hereunder described to be removed to some public hospital or other place provided by Government—(1) in any house or place in which goods are exposed for sale; (2) in any house or place of public resort; (3) in any building in which there are no means of isolating the patients from the other inmates, or in any building where the detention of the patient is likely to prove a source of danger to others."

The most important question raised in appeal was this: Assuming the facts to be as found by the Magistrate, do they disclose an offence? On this point I have had the great advantage of hearing the Attorney-General.

The facts are, in my opinion, proved to be these: On the 27th April a man of the village of Udappu was removed from his house to the hospital, where he died the same day from a very virulent type of smallpox.

During his illness the man was living in a small house inside an enclosure, which contained, beside that building, two other buildings made up of contiguous rooms under one roof. On one side of the enclosure is a public lane, and on the other three sides are village houses. The village is very crowded and the houses are close to one another. On the 7th May the Assistant Government Agent went to this enclosure with the object of having the residents removed to a place provided by Government for the purposes of this Ordinance. The number of those living in this enclosure at the time was about 27, including men, women, and children. The medical officer considered that this enclosure and the persons in it were infected with smallpox, and he advised that all the occupants of the enclosure should be removed to the place where it was proposed to take them to. If the males had gone, no doubt the women and children would have followed, but the males would not go. They refused to go of their own accord or be taken against their will. For this obstruction some of them have been fined.

Now, do the circumstances of this case come within the scope of the above regulation? As this enclosure is not a house or place in which goods are exposed for sale, or is not a house or place of

public resort, the case can only be touched if the buildings in the enclosure are buildings in which there are no means of isolating or retaining the patients, &c. But, above all, it depends upon the meaning of the word "diseased" in the regulation. If the word diseased mean actually diseased and not merely infected, then the present case is outside this regulation. For none of the appellants or occupants of the enclosure was actually diseased. The Ordinance under which the regulation is made enacts, "that, "unless the context otherwise requires, 'diseased' shall mean 'infected or suspected of being infected with 'disease.' " In what sense does the context require the word "diseased" to be taken in this regulation? With all deference to the Attorney-General, it seems to me clear that the context requires the word "diseased" to mean one who is actually diseased. For else, what is meant when the regulation speaks of isolating the patient from the other inmates and for providing for the patient to be allowed to remain in a house in which goods are exposed for sale? A patient contrasted with other inmates is a diseased person contrasted with others not so diseased. "Patient" is here used as equivalent to diseased, but a patient in the ordinary sense of the term means a person suffering from some disease or indisposition.

The Attorney-General argued that the word "patient" has itself a limited use in pathology. But a patient in the ordinary sense surely means a person suffering from some disease or indisposition? What else does a smallpox patient mean than a person suffering from smallpox? Then regulation 30 seems to throw some light on the 29th regulation, for it says, "that except "as provided for by these regulations, and except as provided for "by Ordinance No. 8 of 1866, it shall not be lawful for any person "to remove any person suffering from cholera, small-pox, &c., from the house in which such person shall be "to any other house without the sanction in writing of the "proper authority."

Now, this is the first place in the regulations in which the words "suffering from" occur, but it takes for granted that the regulations have provided for the removal of a person suffering from a contagious disease. The actual circumstances of the present case would be exactly covered by any regulation under section 5 of the Ordinance, letter *k*. Section 5 enacts, "that the regulations may "provide (*k*) for the removal from infected localities to places of "observation or other places of persons found in such localities." No regulation providing for this state of things has been made that I can find; and if I could find any other regulation covering this particular case. I would affirm the conviction, because on all

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the points taken by the appellant's counsel I am against him, except on the point of law. As no other offence against this or any other regulation has been committed, I must set aside this judgment and acquit the accused.

I may add that I do not think that these persons should have been joined in one charge, unless it was proved to be a concerted obstruction, because the offence is of a separate character; one person may have the authority of sufficient excuse, and another person may not.

