

1896.  
August 18  
and 19.

CASUPATHIPILLAI v. SABAPATHIPILLAI.

*P. C., Batticaloa, No. 11,089.*

*Vaccination—Ordinance No. 20 of 1886, ss. 6 and 15—Omission to take child for vaccination—Section 289 of the Ceylon Penal Code—Breaches of duty under s. 6 of Ordinance No. 20 of 1886—Trial of several accused at the same time therefor—Criminal Procedure Code, s. 207.*

The omission on the part of a parent or guardian to take or cause to be taken a child for vaccination or re-vaccination as required by section 6 of Ordinance No. 20 of 1886, is not an offence punishable under section 15 of that Ordinance. It falls within the purview of section 289 of the Ceylon Penal Code.

It is irregular to charge and try more than one person in the same case for breaches of duty imposed by section 6 of Ordinance No. 20 of 1886.

THE facts of the case appear in the judgment.

*Jayawardena*, for appellant.

*Cur. adv. vult.*

19th August, 1896. WITHERS, J.—

Defendant in this case has been convicted of an offence under clauses 6\* and 15† of Ordinance No. 20 of 1886, in that he, being the father of an unvaccinated child two years old, failed to produce the said child, for the purpose of being vaccinated, to the officer who attended to vaccinate at the complainant's house on the 12th of June last between 8 and 10 A.M., an offence, if one, punishable under section 15 of the said Ordinance with a maximum fine of Rs. 10.

\* "Every child who has no marks of successful vaccination or of smallpox, or who, if he has such marks, resides in a house or building in which there is a patient suffering from smallpox, shall be taken or caused to be taken by his parent or guardian to the place so appointed nearest the residence of such child for the purpose of being vaccinated or re-vaccinated."

† "Every adult who shall not cause himself to be vaccinated, and every parent or guardian who shall not cause the child under his care to be vaccinated (such adult or child not being certified to be in an unfit state for, or insusceptible of, vaccination), or who shall not on the day fixed by section 9 after the vaccination has been per-

formed (in the case of the adult) present himself, or (in the case of the parent or guardian) take or cause to be taken the child for inspection according to the provisions in this Ordinance respectively contained, and every person who acts in contravention of, or fails to comply with the provisions of sections 7 and 8, or any regulations duly made under section 16, or who hinders or obstructs any one in the discharge of any duty imposed upon him by this Ordinance or by any regulation duly made under section 16, and every officer who wilfully signs any false certificate under this Ordinance, shall be guilty of an offence, and be liable to a fine not exceeding rupees ten."

It was argued in the first place that this was an order appealable as of right, because if it came within section 405 of the Criminal Procedure Code there could never be an appeal at all under section 15 of the Vaccination Ordinance, and this could not have been intended. But that it comes within the purview of section 405 of the Criminal Procedure Code is clear from the 400th section of the same Code.

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A point of law was taken in the petition of appeal, that the notice referred to in the judgment was not proved so as to affect the defendant with the offence charged.

That point was not pressed upon me by counsel, and the record discloses that there was sufficient proof of notice to bind the defendant. The point pressed upon me in appeal was that the breach of a parent's duty to take or cause to be taken to the duly appointed place for vaccination a child who has no marks of successful vaccination or of smallpox, imposed on him by the 6th section of the Vaccination Ordinance, is not an offence punishable under the 15th section of that Ordinance.

In support of this argument counsel relied on a ruling of my own in a case brought up in revision from the Police Court of Anurádhapura, to be found in the Civil Minutes of 11th January, 1894. In my judgment I quashed the order in that case for two reasons, the principal reason being that some eight defendants were charged and tried at one trial for similar breaches of duty in violation of section 207 of the Criminal Procedure Code, which enacts that separate offences, such as those clearly were, must be separately tried. The second reason is expressed in these words: "Further, the omission to produce the children whose names were included in the list for vaccination at a certain place of vaccination is not one of the offences mentioned in section 15 of the Vaccination Ordinance. Counsel are unable to explain to me where this so-called offence is to be found." That opinion was perhaps an *obiturn dictum*. On further examination I am still inclined to hold to that opinion, though I think the matter is not wholly free from doubt.

Section 6 of the Ordinance imposes a duty on the parent or guardian of the child to take it to the place duly appointed nearest the residence of such child for the purpose of being vaccinated or re-vaccinated any child who has no marks of successful vaccination or smallpox, or who, if it has any marks, resides in a house or building in which there is a patient suffering from smallpox.

Section 9 imposes further duties on a parent or guardian of the child which has been vaccinated or re-vaccinated at the time and

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place appointed in the notice under section 4. One duty is that upon the same day of the week following the day on which a child has been vaccinated or re-vaccinated, the parent or guardian should again take or cause to be taken such child to the same place at the same hour as before, in order that the officer in attendance may ascertain by inspection the result of such vaccination.

The other duty is that in the event of the vaccination being unsuccessful, such parent or guardian shall cause such child, if the officer so directs, to be forthwith again vaccinated and inspected as on the previous occasion. Mark the distinction of these duties: one is to take a child to the place for the vaccination to treat as the law permits or enjoins him; the other is to cause the child to be forthwith again vaccinated if the officer so directs.

Now, the breaches of the duties mentioned in the 15th section, and which are made fineable offences thereunder, do not seem to embrace the duty imposed on a parent or guardian under section 6. Under the 15th section every parent or guardian who shall not cause the child under his care to be vaccinated shall be guilty of an offence. Causing a child to be vaccinated answers exactly to the duty imposed on the parent or guardian under clause 9.

Again, a parent or guardian who shall not, on the day fixed by section 9 after the vaccination has been performed, take or cause to be taken the child for inspection, shall be guilty of an offence.

That is the other duty imposed by section 9 to which I have alluded, and the distinctive character of the duties is there marked.

Then, again, every person who acts in contravention of, or fails to comply with section 8, and any regulation made under section 16, &c., shall be guilty of an offence, and shall be liable to a fine not exceeding Rs. 10.

Hence it appears to me that the duty required by section 6 of the Ordinance was for some reason or other omitted from section 15 by the Legislature. It may be that the Legislature thought that a more important duty than any one specified in section 15 of the Ordinance, and left it to be dealt with under the provisions of section 289 of the Penal Code, which enacts as follows:—

“Whoever wilfully neglects or omits to perform any duty imposed upon him by, or wilfully disobeys or infringes, any provision of any Ordinance or statute heretofore or hereafter to be enacted, for which neglect, omission, disobedience, or infringement no punishment is or shall be by this Code or any other Ordinance or statute otherwise specially provided, shall be punished with a fine.”

It may be thought that the breach of the duty under section 6 should in certain circumstances be marked by a fine exceeding Rs. 10.

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Now, in the case before me, I think it proper to affirm the judgment, though, properly speaking, it is an offence punishable under section 289 of the Penal Code.

I do so because there was sufficient evidence before the Magistrate that the appellant knew of the appointed time and place, and unlawfully omitted to take the child there for the purpose of being vaccinated, the place appointed being the nearest one to the residence of the child, and the child having no marks of successful vaccination.

