Sept. 25,1911

Present : Grenier J.

PERRY *v.* GARDEN.

562—*P. C. Colombo,* 29,483.

Quarantine and Prevention of Diseases Ordinance, 1897—Regulation 23—Medical practitioner attending on patient—Posting of information to proper authority within three hours—Mens rea.

Regulation 23 framed under "The Quarantine and Prevention of Diseases Ordinance, 1897," runs as follows :—

> "Any medical practitioner or person professing to treat disease attending any diseased person shall within three hours of such attendance give information in writing to the proper authority, stating the name of the diseased person, his residence, and the nature of his disease."

Held, that the mere putting the letter in the post was not a sufficient compliance with the law.

The clear meaning of the regulation is that the information should be in the hands of the proper authority within three hours. The question of *mens rea* does not arise in respect of a statutory regulation like the present.

APPEAL from an acquittal by the Attorney-General. The facts are set out in the judgment.

Walter Pereira, K.C., S.-G., for the appellant.—The terms of the regulation are quite explicit. The notice must reach the proper authority within three hours. Posting the notice within three hours is not a sufficient compliance with the regulation. Moreover, this notice has not been posted at all, as the Galle Face Hotel letter box is only a private letter box.

Hayley, for the respondent.—The charge is bad. Where it is a question of hours, it is not sufficient to state "on or about," and objection was taken to it at the trial. The appellant cannot now raise the question whether the posting of the letter was sufficient, for it was never argued in the Court below. The prosecution there attempted to show that on March 12 the accused became aware that the patient was suffering from an infectious disease, and that we did not report it till the 15th. The whole case was fought on those lines. We satisfied the Magistrate that the disease was not diagnosed until the 15th. Now there is a complete change of front, and the charge is that on the 15th we posted the notice in the Galle Face Hotel box, which is a private box, and in the alternative that we were wrong in posting it at all. We are seriously prejudiced as we might have shown that the hotel box is not a private box. In

fact, there is evidence from which this can be gathered. It is proved that letters are taken in a locked bag into the post office sorting room, and are not merely re-posted in the post office. Lastly, it was sufficient to post the notice. Section 5 (*s*) of Ordinance No. 3 of 1897 provides that the Governor may make regulations "for prescribing and regulating the form and mode of service on delivery of notices and other documents." This has not been done, and, therefore, when regulation 23 says that a medical practitioner must "give information in writing," those words must be interpreted in the light of the construction put upon them by Government itself, which has, through its agent, the Municipality, supplied forms intended to be posted, marked "On H. M. S.," and carried free by the post office. It would be a physical impossibility for busy practitioners to take the notices in person. How is the regulation to be followed if the disease is diagnosed at night, when the offices of the "proper authorities" are shut ? In any event the respondent is not liable. Section 6 of the Ordinance says that a person is guilty of an offence if he contravenes any regulation "without lawful authority or excuse." Here there was "lawful excuse," because the Government supplies forms intended for posting, and it is admitted by the witnesses for the prosecution that 99 per cent. of such notices are sent by post, and no objection has ever been taken to that method of giving notice.

Cur. adv. vult.

September 25, 1911. GRENIER J.—

This is an appeal by the Attorney-General from an acquittal, and the grounds are clearly stated in his petition of appeal. The accused, who is a medical practitioner, was charged with having failed to comply with the requirements of regulation 23 framed under "The Quarantine and Prevention of Diseases Ordinance, 1897," in that he being a medical practitioner failed on or about March 12, 1911, to give information in writing to the proper authority within three hours of his attendance on one Mr. Hollingsworth, who was suffering from a "disease" within the meaning of the Ordinance, stating the name and residence of the person suffering from the "disease" and the nature of the "disease." The offence is one punishable under section 7 of Ordinance No. 3 of 1897, under which the Police Magistrate is empowered to pass a sentence of six months' imprisonment of either description, or a fine not exceeding Rs. 1,000, or to pass both a sentence of imprisonment and fine. The regulation in question was passed in the interests of public health to prevent the spread of any disease of a contagious, infectious, or epidemic nature, and hence, I presume, the Legislature has thought fit to make the breach of the regulation punishable in the way prescribed by section 7 of Ordinance No. 3 of 1897.

The Magistrate, before whom a large body of evidence was placed, both by the prosecution and defence, found that the accused did

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not have knowledge that the disease he was treating Mr. Hollingsworth for was an infectious one till between 12 and 1 P.M. on March 15. He also found that the accused filled in the form "B" and posted it before 4 P.M. on March 15, within three hours of his having left his patient, with the knowledge that the patient was suffering from an infectious disease. The Magistrate says in his judgment that the form was one supplied by the authorities, and that the post office must be taken in this case to be the agent of the authorities, and that he notices that the form is "On H. M. S.," and is carried free of any charge. The Magistrate further found the accused posted the form within three hours of his attendance of the patient, at which attendance he obtained the knowledge that the patient was suffering from an infectious disease, and he considered the accused entitled to an acquittal, as it was the usual practice for notice to be given through the post office and not by messenger, and the accused had posted the notice within three hours of leaving the patient.

The Attorney-General has apparently challenged the finding of the Magistrate that the accused did not have knowledge that the disease was an infectious one till between 12 and 1 P.M. on March 15, and submits in his petition of appeal that the accused had reason to suspect at 12 o'clock on March 15 that Mr. Hollingsworth was suffering from an infectious disease and failed to report to the proper authorities within three hours of his suspicion, as the regulation applies to suspected cases of infectious disease.

The term "disease" has been defined in the interpretation clause of the regulation to mean "infected or suspected of being infected with disease." It seems to me however immaterial, in the view that I have taken of the regulation in question, at what particular period of time the accused had knowledge or suspected that the disease Mr. Hollingsworth was suffering from was an infectious one. The question is whether, on his discovering or suspecting that Mr. Hollingsworth was a "diseased person," he gave information in writing within three hours to the proper authority. I will assume that the Magistrate was correct in his finding that the accused knew the disease was an infectious one between 12 and 1 P.M. on March 15, although he might have had reason to suspect at 12 o'clock that it was a case of infectious disease. The regulation in question runs as follows:—

> Any medical practitioner or person professing to treat disease attending any diseased person shall within three hours of such attendance give information in writing to the proper authority, stating the name of the diseased person, his residence, and the nature of his disease.

The use of the imperative "shall" clearly indicates the intention of the Legislature, and the regulation taken as a whole can only have one meaning, and that is that the medical practitioner is bound

within three hours of his attendance on a diseased person to give information in writing to the proper authority. The term " proper authority " has been defined to mean in the interpretation clause " the Chairman of a Municipal Council," or the Principal Medical Officer, or the Provincial Surgeon of the Province, or the Health Officer of the Municipality, or any officer appointed by the Governor to perform the duties of the proper authority. It is admitted by the defence that the accused posted the form supplied by the authorities in the letter box of the Galle Face Hotel. At the time he so posted it, I think he must have known that there was no reasonable probability of its reaching the Medical Officer of Health until considerably over three hours had elapsed. In fact, it did not reach its destination till the day after it was posted. I cannot hold, having regard to the stringent provisions of regulation No. 23, that the mere putting of a letter in the post was a sufficient compliance with the law. The clear meaning of the regulation, as I read it, is that the information should be in the hands of the proper authority within three hours, as otherwise there would be no limit of time within which the information should be given. The regulation does not mean that you are to post your letter at any time within three hours, and then not concern yourself as to when the letter reaches its destination. The information must be in the hands of the proper authorities at any time within three hours, and you must take the necessary steps to ensure its delivery within that time.

It was submitted by the learned counsel for the respondent that in the circumstances I have mentioned a medical practitioner would be obliged to have a messenger with him always. I think we need not concern ourselves about matters of detail in sending the information, but we have to look to the plain meaning of the regulation and give it its proper effect.

Now, the ground upon which the Magistrate has acquitted the accused is one that I cannot possibly sustain. It may be the practice, as he finds, for notice to be given through the post and not by messenger, but no practice of this kind can be advanced in justification of a breach of the regulation. The accused may be unfortunate in having been selected for the present prosecution, but in law the practice relied upon by the Magistrate cannot be pleaded so as to excuse the accused from the consequences of his non-compliance with the regulation ; so long as the regulation stands, there is no escape from it in the present case.

It was urged by counsel for the accused that there was an absence of *mens rea* in this case ; but I fail to see how in respect of a statutory regulation like the one in question such a position can be advanced. It must be presumed that the accused had knowledge of the object and meaning of this regulation, as any ordinary man on reading it would have, and therefore the element of *mens rea* does not enter into the case at all.

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The only other point I need notice is that it was contended for the accused that he had "lawful excuse" for not complying with this regulation in the manner required by it, because the practice had been to post the notice on a certain form, and not send it by messenger. I can hardly consider any practice which sets at defiance the regulation itself as constituting a lawful excuse. If the regulation is oppressive, and compliance with it is difficult, proper steps should be taken to amend it or to alter it ; so long as it is part of our statute law, it must be obeyed.

I would set aside the acquittal and convict the accused of the offence charged against him, and as this is the first case of its kind that I know of I would impose a fine of Rs. 10.

Appeal allowed.