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April 2, 20.

[APPELLATE JURISDICTION.]

MUNNS *v.* THE QUEEN.

Appeal—Conviction—Quarantine Ordinance 1880, *s.* 13.

The master of a vessel was convicted under s. 13 of the Quarantine Ordinance 1880 for having failed to disclose the existence of an infectious disease which had broken out on board his vessel after she had been quarantined and before she had obtained pratique,

Held, on appeal, that he was rightly so convicted, as s. 13* applies to every master of a vessel from the time she is boarded by the pilot until she is admitted to pratique by the Health Officer.

Held, also, that the words "attempt to conceal" in the information and conviction may be regarded as surplusage and do not constitute a second distinct offence so as to invalidate the conviction.

This was an appeal from the decision of the Chief Police Magistrate at Suva, whereby the respondent, who was the master of the schooner *Midge*, had been, at the instance of the Acting Chief Medical Officer of the Colony, fined in the minimum penalty of 40*l.* under s. 13 of the Quarantine Ordinance (XXV. of 1880), for having endeavoured to conceal from the Health Officer

* S. 13 is as follows:—

"Every master or surgeon of a vessel which shall have on board any person affected with any contagious or infectious disease who shall fail to declare the same to the Health Officer or Pilot or who shall attempt to conceal from the Health Officer any person so affected or who shall refuse or fail to bring every person on board such vessel before such Health Officer for inspection at the request of such Health Officer and the master of any vessel that on the demand of the Health Officer shall fail or refuse to produce for inspection by him the log-book and journal of such vessel shall on conviction be punished by a fine which shall not be less than forty pounds nor exceed two hundred pounds or by imprisonment for not less than three nor more than twelve months and in aggravated cases these penalties may be cumulative."

of Levuka the existence of measles on board his vessel.

Mr. Garrick appeared for the appellant.

The Attorney-General (Mr. Udal) in support of the conviction.

The grounds of appeal were six in number, but only two of them, the 5th and 6th, which raised important points under the Quarantine Ordinance, were argued by Mr. Garrick. The fifth ground denied the applicability of the Ordinance to a vessel, which had already been visited by the Health Officer on the vessel's arrival in port, where an infectious disease had broken out between that time and the vessel receiving pratique. The sixth ground alleged that two offences had been charged in one conviction, and that the conviction was therefore bad.

The summons upon which the conviction was made, and which followed the summons in its terms, charged the appellant as follows:—

For that he, at Levuka, on or about the 16th day of December, 1893, on board the schooner *Midge*, she then being in quarantine, did unlawfully attempt to conceal and fail to declare to the Acting Health Officer of the port of Levuka the existence of an infectious disease, to wit, measles, then existing on board the said schooner in the persons of two of the native seamen of the said vessel, he, the aforesaid J. B. Munns, being then the master of the said schooner, contrary to the Ordinance in such case made and provided.

After hearing the arguments of counsel, which sufficiently appear from the judgment, his Honour reserved his decision, and on the 20th April, the Criminal Sessions having intervened, delivered the following judgment:—

H. S. BERKELEY, C.J. This was an appeal from a conviction by the Chief Police Magistrate under the Quarantine Ordinance 1880.

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The conviction, so far as material, states that the appellant was convicted—

> For that he did at Levuka on or about the 16th day of December, 1893, on board the schooner *Midge*, she then being in quarantine, unlawfully attempt to conceal and fail to declare to the Acting Health Officer of the port of Levuka the existence of an infectious disease, to wit, measles, then existing on board the said schooner *Midge* in and on the persons of two native seamen of the said vessel.

The conviction follows the wording of the information in respect of the charge laid against the appellant.

The proceedings were taken against the appellant under s. 13 of the Quarantine Ordinance 1876, which, so far as material, are as follows :—

> Every master or surgeon of a vessel which shall have on board any person affected with any contagious or infectious disease who shall fail to declare the same to the Health Officer or pilot, or who shall attempt to conceal from the Health Officer any person so affected . . . . shall on conviction be punished by a fine, &c.

It was objected on the appeal that this conviction was bad on two grounds. (1) Because the information contained two distinct charges upon either of which the appellant might have been convicted, and that the conviction, which follows the wording of the information, does not state on which of the two distinct offences charged the appellant was convicted. (2) Because the circumstance out of which the charge arose occurred fifteen days after the arrival of the vessel at Levuka and while she was in quarantine, and therefore at a time when the appellant was not legally bound to make any declaration under s. 13 of the Quarantine Ordinance nor in any way bound to conform to the provisions of that section, such obligation having ceased when on arrival at port the vessel had been placed in quarantine after the appellant had answered all questions then put to him.

If it is true, as contended, that two distinct offences are charged against the appellant in one and the same conviction then I think the conviction cannot be sustained. The question then is, does this conviction charge two distinct offences? The 13th section, which I have just quoted, clearly creates two distinct offences, namely: (1) Failure in certain stated circumstances to declare the existence of certain disease. (2) Attempt to conceal from the Health Officer infected persons. Is the appellant in so many words or in effect charged with these two distinct offences? On the true construction of the language of the information and of the conviction, which are practically identical, it seems to me that the appellant is not so charged. It seems to me that only one offence is charged against him, namely, that of failure to declare the existence of infectious disease on board his vessel. It is true that he is also charged with attempting to conceal the existence of such disease, but unless that charge is merely a repetition of the charge of failure to declare the existence of the disease it is no charge of any offence at all; for it will be observed that the second of the two distinct offences created by the 13th section is not that of attempting to conceal the existence of disease but that of attempting to conceal any person affected with disease. Now, the appellant is not charged, nor has he been convicted of attempting to conceal any person nor was any evidence to that effect given before the magistrate. The concealment alleged is not that of any person, but of the existence on board the vessel of an infectious disease.

Regarded as a repetition of the charge of failure to declare the existence on the vessel of infectious disease the words "attempt to conceal," which appear both in the information and in the conviction, may, I think, be

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regarded as surplusage; on the other hand unless so regarded the words are meaningless as conveying no charge of any offence under the Ordinance, and may accordingly be rejected and the conviction may be treated as if they did not appear therein. In either case their presence in the conviction will not affect its validity.

I am of opinion for these reasons that only one offence is charged against the appellant, namely, that of failing to declare the existence of infectious disease on his vessel and that in consequence the first ground of appeal cannot be sustained.

On the second ground of appeal it is contended that the conviction is bad because at the time the Health Officer paid his visit, namely, after the vessel had been in quarantine for some days, there was no obligation on the appellant to declare the existence of any disease of which he might have been aware on his vessel. In support of this contention it is argued that the 13th section applies only to a vessel on her arrival in port and before she is placed in quarantine; that once a vessel is quarantined the section has no further application to it or its master. It is urged that the 13th section follows immediately after those sections which deal with the duties of pilot and Health Officer towards a vessel coming from abroad. That the declaration required by the section is to be made to the pilot as well as to the Health Officer, and it is argued that a declaration to the pilot can only refer to a declaration to be made to him in that capacity which would cease as soon as the vessel was berthed, which she would be when quarantined. Similarly it is argued that the declaration to the Health Officer contemplated by the Ordinance is to be made to him at the time he first visits a vessel and before quarantine in order

to enable him to decide whether or not to quarantine her. It is contended that the 9th, 10th, 11th, and 13th sections are to read as one, the 13th merely containing the penal provisions dealing with those who disobey the preceding sections.

It seems to me, however, that this contention, plausible perhaps at first sight, is in reality baseless. I think the section applies to a vessel both before and after she has entered the port; both before and after she has been berthed and quarantined. The declaration to the pilot is of course to be made to him before she is berthed, because after that he is no longer on board *qua* pilot, but the Health Officer retains his capacity in that respect towards the ship not only as long as the pilot retains his but afterwards and until he has given the vessel pratique. The fallacy of the contention on behalf of the appellant is that the Health Officer ceases to stand in that relation in respect to a vessel as soon as he has placed her in quarantine. As the obligation to make the declaration to the pilot continues so long as he stands in that relation to the vessel, so does the obligation to make the declaration to the Health Officer continue so long as he stands in that capacity to the vessel; and that is until he gives her pratique.

I do not think the 13th section is limited in its application as contended by Mr. Garrick. The section refers in general language to "every master of a vessel which shall have on board any infectious disease." It seems to me therefore that the penalty is incurred by "every master" who knowing of the existence of infectious disease on his vessel shall (1) fail to disclose its existence to the pilot or to the Health Officer on arrival, and (2) to every such master who at any time before his vessel is admitted to pratique fails to make known to the

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Health Officer the existence of disease on his vessel if such existence is known to him. The fact that the disease broke out on the vessel after she was quarantined can make no difference, the sole question would be did the master know of the existence of the disease before he was admitted to pratique and did he fail to declare such existence to the Health Officer.

The construction contended for by the appellant would enable the master of a vessel placed in quarantine to conceal from that moment the existence of disease on his vessel and thereby obtain pratique which would otherwise in the interests of the public safety have been denied. Such a construction would defeat the very object of the Quarantine Ordinance. The section should therefore only receive such a construction where no other is possible. It seems to me however that such is not the true construction: but that on a fair and reasonable construction the 13th section applies to every master of a vessel from the time she is boarded by the pilot until she is admitted to pratique by the Health Officer.

This appeal will therefore be dismissed with costs.

Appeal dismissed with costs.