

1928
 SHWE KYO
 AND
 OTHERS
 v.
 KING-
 EMPEROR.
 MAUNG BA, J.

that such opium was under their control, it would not be safe to punish them on mere suspicion.

I am constrained to hold that the case against these four appellants is not free from reasonable doubt. They are accordingly acquitted. Bail bonds are cancelled.

APPELLATE CRIMINAL.

Before Mr. Justice Carr.

KING-EMPEROR

v.

MAUNG BA WIN AND OTHERS.*

1928
 Dec. 12.

Burma Vaccination Law Amendment Act (I of 1909), ss. 4, 13—Vaccination Act (XIII of 1880), ss. 9, 17, 18, 22—Prosecution of parent for refusal to vaccinate his child, illegal under the local Act—Parent entitled to notice, explanation, and order of a magistrate under the provisions of the Vaccination Act.

It is illegal to prosecute a person under the provisions of s. 13 of the Burma Vaccination Law Amendment Act of 1909 for his refusal to allow his children to be vaccinated. That section is only applicable to a person who refuses to be vaccinated himself. S. 4 is the only provision in the Act under which the vaccination of a child can be ordered if the child is under six months of age and has been exposed to infection. To enforce vaccination of a child over six months the provisions of ss. 9, 17, 18 and 22 of the Vaccination Act, 1880, must be observed. Under those sections a parent is to be given notice to attend at a specified time and place with his child for vaccination and if he fails to do so, the superintendent of vaccination must report the matter to a duly appointed magistrate who has to summon the parent for an explanation. If the explanation is unsatisfactory the magistrate can order him to have his child vaccinated and on his failure to do so, he can be prosecuted.

CARR, J. —One judgment will suffice to dispose of Criminal Revisions Nos. 1160A to 1177A inclusive. They are concerned, respectively, with Criminal Regular Trials Nos. 128, 134, 135, 129, 133, 130, 132, 148, 149, 150, 153, 155 and 157 of the First Additional Magistrate, Moulmeingyun, and Nos. 75, 76, 84, 85 and 86 of the Second Additional Magistrate, Moulmeingyun.

* Criminal Revisions Nos. 1160A to 1177A, against the orders of the First and Second Additional Magistrates of Moulmeingyun.

In all these cases the accused were prosecuted by a vaccinator of the name of Maung Han for an offence alleged to be under section 13 (1) of the Burma Vaccination Law (Amendment) Act, I of 1909, and the accused have all been convicted of an offence under that section of that Act, and fines of Rs. 2 have been inflicted in the cases of each of sixteen accused, Rs. 3, in one case, and Rs. 5 in the remaining case. The complaints filed by Maung Han were all on a printed form in Burmese. The form states that the complaint is laid under section 13 (1) of Burma Act I of 1909, and alleges that the accused without cause refused to allow his child to be vaccinated by the vaccinator. In some cases Maung Han laid complaints against both parents, in others against one parent only. In one case, No. 75 of the Second Additional Magistrate, Maung Han actually prosecuted both parents and also the child, aged 4 years of age. The complaint against the child was exactly the same as that against her parents, namely, that she refused to allow her child to be vaccinated. This child was actually summoned to appear before the Court as an accused. The attention of the Magistrate is called to section 82 of the Indian Penal Code. I am glad to note that the child was not convicted. Although in some cases Maung Han instituted proceedings against both parents, in every case the Magistrate was satisfied with inflicting punishment on one parent, and acquitted the other without giving any valid grounds for his acquittal.

The First Additional Magistrate in his cases stated particulars of the offence as follows:—"Without any reason refused to allow his child to be vaccinated when asked by the complainant vaccinator, and thereby committed an offence punishable under section 13 (1), Burma Vaccination Act."

1928
 KING-
 EMPEROR
 v.
 MAUNG HA
 WIN AND
 OTHERS.
 CARR. I.

1928
 KING-
 EMPEROR
 v.
 MAUNG BA
 WIN AND
 OTHERS.
 CARR, J.

The Second Additional Magistrate in his cases stated particulars of offence as follows :—“ That you . . . failed to submit your children to the vaccinator for vaccination when summoned, and thereby committed an offence punishable under section 13 (1) of Burma Act I of 1909.”

With one exception all the accused pleaded guilty, but it is obvious that they were pleading guilty to the fact that they had refused to allow their children to be vaccinated, and not to an offence under section 13 (1) of Burma Act I of 1909.

It is quite obvious that the Magistrate never referred to section 13 (1) of Burma Act I of 1909 before accepting these complaints and convicting the accused. Section 13 (1) in the plainest terms relates to the refusal of a person to be vaccinated himself, and has nothing whatever to do with the refusal of parents to allow their children to be vaccinated. The law relating to vaccination in Burma is contained in the Indian Vaccination Act, XIII of 1880, the Burma Vaccination Law (Amendment) Act, I of 1909, and section 49 of the Burma Rural Self-Government Act, IV of 1921. The provisions of the two former Acts have, under section 49 of the latter Act, been extended to the Myaungmya District by Department of Public Health Notifications Nos. 112 and 113, dated the 10th September 1924.

In Burma Act I of 1909, section 4 is the only provision under which vaccination of a child can be ordered and that section applies only if the child is under six months of age and has been exposed to infection. It is not alleged, much less proved, in any of these cases that either of these conditions existed. There is nothing in Burma Act I of 1909 to authorise any officer to require the parent of a child over six months of age to have it vaccinated, and for such a provision it is necessary to turn to section 9 of India Act XIII

of 1880, which requires the parent or guardian or a child who has attained the age of six months to have it vaccinated. Section 9 of Act XIII of 1880 would therefore seem to apply in the present case. But the proper procedure to be adopted in enforcing section 9 is laid down in sections 17 and 18 of that Act. Under section 17 a notice must be served on the parent, requiring him to attend at a time and place to be specified in the notice to have the child vaccinated, and then under section 18, if that notice is not complied with, the Superintendent of Vaccination must report the matter to a Magistrate duly appointed in that behalf, who shall summon the parent and demand his explanation, and if such explanation is not satisfactory, make an order directing the parent to comply with the notice before a date to be specified. It is only on the failure of the parent to obey the order of the Magistrate that he can be convicted of an offence, which offence will fall under section 22 of the Act. This procedure was not adopted in any of the present cases, and consequently the convictions are all unsustainable. The convictions in all these 18 cases are set aside, and the fines must be refunded to the accused.

It is not known from what source the vaccinator Maung Han obtained the printed forms of complaint which he filed in these cases. These printed forms do not set out any offence whatever under the Vaccination Law, and they are entirely illegal. The District Magistrate, Myaungmya, should take steps to see that complaints of this type are not in future received by any Magistrate in his district. It is obvious that in the present cases all these complaints ought to have been dismissed under section 203, Criminal Procedure Code. It is most deplorable that ignorant villagers should be harassed by illegal complaints of this kind made against them by public authorities.

1928
 KING-
 EMPEROR
 MAUNG BA
 WIN AND
 OTHERS.
 CARR, J.