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therefore, dismissing the suit must be set aside, and the case must be remanded to the trial Court to be dealt with on its merits.

Costs in the lower Court and of the appeal to be costs in the suit.

The Court fees payable to Government must be recovered from the respondents.

Decree set aside.

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CRIMINAL APPELLATE.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

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EMPEROR v. T. S. MACHADO.*

Native Passenger Ships Act (X of 1887), sections 9, 10 and 31—Steamer conveying passengers—Absence of certificate A—Voyage, meaning of.

The accused had a steamer which plied between Bombay and Goa for conveyance of passengers. He had certificate A as required by sections 9 and 10 of the Native Passenger Ships Act, 1887; but it expired on the night of 31st May 1921. The steamer left Bombay with passengers on the 31st May 1921 for Goa, where she stayed for a few hours and after picking up passengers at coast ports, returned to Bombay on the 2nd June 1921. The accused was, on these facts, charged with the offence of sailing a ship without a certificate, under section 31 of the Act:—

Held, acquitting the accused, that the accused had committed no offence, for the voyage from Bombay to Goa and back was really one voyage.

Per MACLEOD, C. J.:—"No doubt the rules provided by the Act were intended for the safety of passengers, and the certificate A which expired on the 31st May was one granted for the six months of fair weather. The certificate A which would be granted on the 1st June would necessarily be of a different character, and if it is desired that, in order to secure the safety of the passengers, a ship leaving at the end of May should also hold a rough weather certificate, if the ship does not return during May, then that must be provided for by an amendment in the Act."

* Criminal Appeal No. 498 of 1921.

THIS was an appeal from conviction and sentence passed by Chunilal H. Setalvad, Acting Chief Presidency Magistrate of Bombay.

The accused owned a steamer "San Francisco Xavier," which was plying between Bombay and Goa for conveying passengers. She had certificate "A" as required by section 9 of the Native Passenger Ships Act, 1887. It expired on the midnight of 31st May 1921.

On the evening of the 31st May 1921, the accused's steamer left Bombay for Goa with passengers. She touched the intermediate coast towns and reached Goa where she stayed for a couple of hours and immediately started on her return voyage. Both at Goa and the intermediate ports, she picked up passengers numbering 220, whom she discharged at Bombay on the 2nd June 1921.

The accused was, on these facts, convicted of an offence under sections 9 and 31 of the Native Passenger Ships Act and sentenced to pay a fine of Rs. 212.

The accused appealed to the High Court.

P. N. Godinho, for the accused.

Bahadurji acting Advocate General, with *J. C. Bowen*, Public Prosecutor, for the Crown.

MACLEOD, C. J.:—The accused in this case is the owner of the steamer San Francisco Xavier which left Bombay for Goa on the 31st May 1921 in charge of her Master. At the time of sailing she had certificate "A" as required under sections 9 and 10 of the Native Passenger Ships Act, X of 1887.

Section 9 says :

"A ship intended to carry passengers shall not commence a voyage from a port or place appointed under this Act, unless the master holds two certificates to the effect mentioned in the two next following sections."

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Section 10 says :

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“ The first of the certificates (hereinafter called ‘ certificate A ’) shall state that the ship is sea-worthy and properly equipped, fitted and ventilated, and the number of passengers which she is capable of carrying.”

We are not concerned in this case with certificate “ B,” as that was not required when this particular voyage was commenced under the rules.

The term “ voyage ” is defined in section 5, clause (5), as meaning, when used without the prefix “ long ” or “ short ”, the whole distance between the ship’s port or place of departure and her final port or place of arrival.

The certificate carried by this vessel expired a few hours after the ship had left the port. The ship arrived at Goa and returned after a few hour’s stay to Bombay, arriving on the 2nd June 1921. Unfortunately it is not very clear what was the charge on which the accused was convicted by the learned Chief Presidency Magistrate, or what was the voyage which the ship commenced without holding the certificate ‘ A ’. It cannot be the voyage from Goa, as Goa is not a port or place appointed under the Act. Even assuming it was a port appointed under the Act within British India, considering the nature of the trade carried on by this steamer, sailing from Bombay, calling at coast ports, and stopping a short time at each port and then returning, it cannot be said that the outward voyage from the ship’s port or place of departure was one voyage, and the return voyage from the furthest port reached a second voyage. The ship continues on her voyage the whole time, and in such a case the final port must be the port of original departure. No doubt the rules provided by the Act were intended for the safety of passengers, and the certificate ‘ A ’ which expired on the 31st May was one granted for the six months of fair weather. The certificate ‘ A ’ which would be

granted on the 1st June would necessarily be of a different character, and if it is desired that, in order to secure the safety of the passengers, a ship leaving at the end of May should also hold a rough weather certificate, if the ship does not return during May, then that must be provided for by an amendment in the Act. It seems curious that the learned Magistrate has not noticed in convicting the accused under section 9, taken with section 31, that it is nowhere stated from what port the ship commenced the voyage without a certificate. That would be in itself sufficient to vitiate the conviction. But in any event I am of opinion that on the facts of this case the voyage from Bombay to Goa and back was one voyage. I think, therefore, that the conviction was wrong and it must be quashed, and if the fine has been recovered it must be refunded.

SHAH, J.:—I agree.

Conviction and sentence reversed.

R. R.

CRIMINAL REVISION.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

EMPEROR v. GULABJAN.*

Criminal Procedure Code (Act V. of 1898), section 342—Summons case—Examination of accused—Omission to examine vitiates the trial.

A Magistrate is bound, in a summons case, to examine the accused, as required by section 342 of the Criminal Procedure Code, 1898. If he omits to examine the accused it is an irregularity which vitiates the trial.

Emperor v. Fernandez ⁽¹⁾, followed.

Per MACLEOD, C. J.:—"The provisions of section 342 of the Criminal Procedure Code...taken in conjunction with the provisions of section 364 of the Code, require amendment....It seems to me that while it is obligatory

* Criminal Application for Revision No. 191 of 1921.

⁽¹⁾ (1920) 45 Bom. 672.

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