

The captain of the “Monowai” did not have the visiting flag flying, as he should have done under section 117, Public Health Act.

Everything necessary to be done by the ship’s officers to have this number of people passed under examination in so short a time was done. One passenger, a Mr. Chamberlain, did not appear for examination, and Dr. James required of the captain that this passenger should be produced. This requisition was made about 8.15 a.m. The passenger did not appear. Dr. James left the ship about 8.30 without granting pratique. The same day at 10.35 a.m. Dr. James again visited the ship, and, having examined Chamberlain, granted pratique. The berthing of the vessel was delayed about two hours in consequence of the refusal to grant pratique on the first occasion. Serious monetary loss and inconvenience was the result of such delay.

Deductions from Evidence.

The facts I deduce from the consideration of the whole evidence are :—

That there was a feeling on the part of some of the passengers by various ships against the precautions taken by the authorities against the introduction of disease.

That on the part of Captain Macdonald, the master of the “Monowai,” there was a feeling that Dr. James had on a former occasion been wanting in courtesy to him.

That there was on the part of Dr. James a feeling that the time had arrived when it was necessary to demonstrate to shipmasters and others the necessity of more prompt attention to his requirements when making examinations under the Public Health Act.

That Dr. James was not well-informed as to his powers, or of the law, or of the powers and duties of the captain and officers of vessels in regard to himself or his duties.

That Captain Macdonald held the erroneous opinion that he had no power to compel passengers to submit to examination, and therefore that all he was required to do was to “permit” the Health Officer to examine the passengers and crew in any part of the vessel. Captain Macdonald thought that if he did not obstruct or prevent the examination he fulfilled his duty.

There is a sharp conflict of testimony as to what occurred in the smoking-room at 8.15 a.m. The captain alleges that he told Dr. James that Chamberlain would be up in a few minutes, and Dr. James alleges that the message he received was that Chamberlain said he would not come for any doctor. The evidence of Dr. James and Captain Macdonald conflict, and there is no corroborative evidence on either side.

Findings.

In my opinion there was on both sides a want of tact and of any desire to conciliate. Dr. James was wrong in leaving the ship at such short notice. Dr. James, before taking the extreme step of leaving the vessel, should have given more time, and should have given more deliberate notice (preferably in writing) of his intention to leave if the passenger was not produced. Captain Macdonald should have protested against Dr. James leaving the ship without examining the passenger and granting pratique.

In my opinion, as a matter of law, the captain of a vessel arriving in such circumstances as the “Monowai” arrived, has full power to compel passengers to attend for examination, and may even, in extreme cases, apply sufficient force to compel them to so attend. Of course, the application of force must, in each case, be apparently necessary and reasonable in order to effect the object in view.

In this present case, matters had not gone sufficiently far to justify the application of force to Chamberlain, who was said to be in the bathroom, and to whom some reasonable time to dress must have been allowed; but the captain should, in the interests of his owners, have assured Dr. James that he would do all he could to produce Chamberlain, have asked Dr. James to wait a little, should have sent a peremptory message to Chamberlain, and, failing compliance, should have gone himself and pointed out the consequences of such foolish conduct, and then, failing all peaceful means, might have forcibly compelled him to come up for examination. Chamberlain was in perfect health, and no excuse of sickness could be alleged by him.

The explanation of the whole difficulty lies in the feelings I have mentioned as existing on both sides, and a misapprehension of their respective rights and duties.

I append a copy of the evidence taken—the file of papers containing the correspondence on the subject used at the inquiry is in the Public Health Office, and can be referred to if necessary.

I have, &c.,

Wellington, 27th September, 1901.

W. R. HASELDEN, S.M., Commissioner.

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