

Tuesday, September 30, 1879

**ABSTRACT OF THE PROCEEDINGS**

**COUNCIL OF THE GOVERNOR GENERAL OF INDIA**

**LAWS AND REGULATIONS.**

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ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

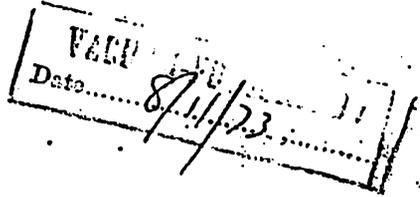
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*Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

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The Council met at Government House on Tuesday, the 30th September, 1879.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, G.M.S.I.,  
*presiding.*

His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I., C.I.E.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.

General the Hon'ble Sir E. B. Johnson, R.A., K.C.B., C.I.E.

The Hon'ble Whitley Stokes, C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble T. H. Thornton, D.C.L., C.S.I.

The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.

The Hon'ble T. C. Hope, C.S.I.

The Hon'ble B. W. Colvin.

TRANSPORT OF SALT BY SEA BILL.

The Hon'ble MR. HOPE moved that the Reports of the Select Committee on the Bill to restrict the transport of Salt by Sea be taken into consideration. He said that the Bill, although it was an old friend, and although it could scarcely be said to come before us again with a new face, still as two-and-a-half years had elapsed since last we had the pleasure of seeing it, he thought it would be as well to call to mind the circumstances under which we had parted, and the fortunes which had occurred to it in the interval.

The Bill was last before the Council on the 28th of February, 1877, when he had the honour to present the report of the Select Committee. The Bill as it then stood prohibited the carriage of salt by sea by vessels of less than 300 tons burden unless covered by a permit, rawána or pass. It gave powers of stoppage, search and arrest, and prescribed penalties for the infraction of the rules laid down. It was intended to take effect on the western coast of British India at once, and on the coast of the Bay of Bengal and elsewhere whenever applied by the Governor General in Council. The Hon'ble Mr. Dalzell objected to the Bill at the time of the presentation of the report, on the ground that it would cause serious annoyance to the small craft by

which salt-traffic on the coast and over-sea was carried on, and, moreover, that there was no satisfactory evidence of any large amount of smuggling. As regarded Madras, he thought that the large class who carried salt in small vessels would be unnecessarily interfered with; and as regarded Bombay, he considered that the contemplated levy of duty before shipment and negotiations with Portugal would do away with smuggling connected with foreign salt, the extent of which, moreover, seemed to him very much exaggerated. As there was then no motion before the Council, no vote took place on Mr. Dalrymple's remarks, and the Bill was republished, as recommended by the Select Committee. But, as in the meantime the negotiations with the Portuguese Government commenced, and as also the general question of the salt-duties came under consideration by the Executive Government, it was thought best that the Bill, having been carried thus far, should not be proceeded with for a time, until it was seen what effect would be produced on it by the settlement of these pending issues. The first solution of the difficulty came with regard to the east coast. In December 1877 the salt-duty in Madras and Bombay was raised, and the Bill which he had had the honour to introduce into this Council (and which was passed as Act XVIII of 1877) made obligatory the prepayment of duty on all salt previous to removal from the works, and, consequently, on all salt removed by sea from any port in Madras to any other port, whether in Madras or elsewhere. It thus cut off all smuggling at the source; and, as the Madras Government now assured us that the Act was fully carried out, all present necessity for legislation regarding the east coast had been removed. The next solution of the difficulty came much more tardily, in the shape of the treaty with Portugal, which will take effect on the 6th proximo. This treaty conferred on the British Government the exclusive privilege of regulating and undertaking the manufacture and sale of salt in Portuguese India, so that such smuggling as would otherwise be likely to arise from manufacturing the salt in Goa would cease. On the other hand, owing to the nature of our arrangements with Travancore and Cochin, the prepayment of duty on salt shipped from Bombay for these States could not be carried out at present as had been expected. Moreover, it would be seen, from Paper No. 6 before the Council, that other places, which for obvious reasons he abstained from mentioning, possessed considerable facilities for the manufacture of salt and the smuggling of it ashore in British India. Under these circumstances, the Bombay Government considered that it was indispensable that the Bill should be applied to the western coast.

As to the Bill itself, the executive sections, Nos. 3 and 7, retained the form in which they were carefully settled by the Committee in Calcutta, of which the Hon'ble Mr. Bullen Smith, one of the mercantile community, was a member.

The application of the Bill would, however, as he had explained, be confined to the western coast of British India north of Cochin, and a section had been added empowering the Governor General in Council to exempt the carriage of salt within any local limits, or in any class of vessels, from the operation of the Act. This had been inserted chiefly with a view to the possibility of exempting the Madras districts of Malabar and South Kanára in the event of satisfactory arrangements being concluded hereafter with Travancore and Cochin. The only other alteration he need mention had been made in accordance with the opinion of the Law Member. "A marine league" from the coast was fixed in section 1 of the Bill as the distance seaward to which the Bill would extend.

The Hon'ble MR. STOKES said that he would make a few remarks in support of the opinion to which the Hon'ble Mover had referred, namely, that the Bill might properly be made to extend to a marine league from the coast of British India. It was clear that, for certain purposes, the jurisdiction of Colonial legislatures extended to some distance seaward from the shore. In an opinion given in 1855 by Sir J. Harding, Sir A. E. Cockburn and Sir R. Bethell, the then law officers of the Crown, and printed at page 24 of Mr. Forsyth's *Cases and Opinions on Constitutional Law*, they said, with reference to British Guiana: "We conceive that the Colonial legislature cannot legally exercise its jurisdiction beyond its territorial limits—three miles from the shore." This was equivalent to saying that within these limits—within what was called territorial water—it might exercise its jurisdiction. Again, in an opinion given by the Queen's Advocate in 1854 on the question within what distance of the coasts of the Falkland Islands foreigners might be legally prevented from whale and seal fishing, he said: "Her Majesty's Government will be legally justified in preventing foreigners from whale and seal fishing within three marine miles (or a marine league) from the coasts, such being the distance to which, according to the modern interpretation and usage of nations, a cannon-shot is supposed to reach." It must be admitted that the authority of the former of these opinions, if taken in its full generality, had been greatly diminished by the decisions of some of the Judges in the celebrated *Franconia* case (*The Queen v. Keyn*, 2 Exch. Div. 63), and that the old doctrine of the three-mile zone forming part of the territory of a littoral state as though it were so much land could hardly now be followed. It must, he thought, be now held by English lawyers that, by the principles of international law, a maritime State had legislative power over the sea beyond low-water mark and within a reasonable distance from its coasts, but that such power was only for certain limited purposes, and did not extend to a general sovereignty over all passing vessels. But Judges such as Sir R. Phillimore and Chief Justice Cockburn, and jurists such as Merlin and

Manning, agreed in regarding the prevention of smuggling—in other words, the protection of customs-revenue—as one of those purposes. The others were probably—in the absence of judicial decision it was impossible to speak positively—the regulation of fisheries, the exaction of harbour and lighthouse dues and the protection of the territory from violation in time of war between other States.

The question then was what might be deemed to be a reasonable distance from the coast of British India within which we could exercise this special right of jurisdiction or dominion. Now, France, he believed, subjected all vessels to her customs laws to a distance of five leagues from shore. But Parliament in a recent Act, 39 & 40 Vic., c. 36, for the consolidation of Acts relating to the Customs, had enacted (section 179) that, if a foreign ship were found within one league of the coast of the United Kingdom conveying spirits or tobacco otherwise than in packages of a certain size and kind, the articles in question as well as the ship herself should be liable to forfeiture; and any foreigner found on board any ship so liable to forfeiture within one league of the coast and having on board any spirits or tobacco in such packages was to forfeit a sum not exceeding £100. It would seem, therefore, that Parliament thought one league a reasonable distance from the shores of Great Britain and Ireland within which to take measures for the protection of its customs-revenue against foreign vessels and foreigners; and in the case of this Bill, the object of which was to protect the British Indian salt-revenue, we could not do better than follow the English precedent. That this Council could legally do so was, MR. STOKES thought, reasonably clear. For, even though it should be contended that under the words of the Indian Councils Act of 1861 our legislative authority extended only to the Indian territories then under Her Majesty's dominion, and that the bed of the sea to the extent of three miles from the beach could not now be held to be part of those territories, a statute was always construed as impliedly giving powers absolutely essential to the privilege granted; and jurisdiction to legislate, as the Bill proposed to do, for the protection of the revenue of those territories was a necessary incident to the general power of legislation expressly conferred upon us for the benefit of British India.

The Motion was put and agreed to.

The Hon'ble MR. HOPE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

#### VACCINATION BILL.

The Hon'ble SAYYAD AHMAD KHÁN moved for leave to introduce a Bill for the prohibition of the practice of inoculation and to make the vaccination

of children in certain Municipalities and Cantonments compulsory. At the request of the Hon'ble Member, Mr. Fitzpatrick read to the Council his remarks on the Bill, which were as follows :—

“ My Lord,—In asking leave to introduce a Bill into the Council making vaccination compulsory, I am supported by a sincere conviction that I am suggesting a law consistent with the policy of humanity and toleration which has been the guiding principle of the British Empire in India. The British rule in India has exerted itself in the direction of securing human life from the disorders of rapine and the calamities of famine: sanitary measures have been adopted on a large scale to secure the cleanliness of towns and to check the growth of epidemics: vaccination has been undertaken by the State, and much success has, no doubt, been achieved. But the sad events which come to light every year show that there is much room for improvement, and that vaccination has not yet been sufficiently employed as a protection against the ravages of small-pox. The statistics for the year 1877 show that during the previous five years the number of deaths caused by small-pox in the Panjáb, the North-Western Provinces, Oudh, the Central Provinces and British Burma has been no less than 459,480, thus giving an enormous average of 91,866 deaths every year. And this calculation does not include the deaths caused by the malady in the Native States of the Panjáb.

“ My Lord, there was a time when the people of this country had prejudices, to which superstition and ignorance had given birth, against the practice of vaccination. But the time has now arrived when such notions no longer find place in the minds of the gentry of India. Education and experience have opened the eyes of the people; and I have no hesitation in saying that it is extremely rare to find men among the gentry of the land who look upon vaccination in any other light than as a safe and salutary practice. This is proved by the fact that vaccination has already become common, and has met with no resistance in those provinces in India (like Kumáon) where the power of the executive authorities has been duly exerted in favour of vaccination, and where the proportion of deaths caused by small-pox is much less than in other parts of India. I therefore think that, considering the circumstances of the country and the acknowledged efficacy of vaccination, there exist sufficient reasons to justify the State in making that sanitary measure compulsory by law.

“ My Lord, I am one of those who look upon all compulsory legislative measures as justifiable only in cases of extreme necessity. Personal liberty of the subject is one of the greatest and dearest privileges which have been conferred upon this country by the British rule; and, in common with millions of my

countrymen, I hold them sacred. But the exigencies of the case which I have the honour to bring to the Council's notice demand the introduction of compulsory measures of legislation for the security of human life. Small-pox is a disease not confined to individuals or localities. It attacks persons of all classes, usually at a period of life when its victim is still in his cradle and his intellect still in its infancy. Its ravages extend chiefly to innocent children too young to take care of their lives, too young to have adopted any preventive remedies which science has provided. Nor are the effects of the disease confined to those whom it first attacks. The infection carries it from neighbour to neighbour, and those who suffer from the calamity may be said to be instrumental in inflicting it upon others. My Lord, if this view is supported by the undeniable results of science, the question no longer remains one of only personal liberty. Even if it be granted that a man has a right, if he chooses, to die of small-pox, no respect for personal liberty would justify the harm which he does to his neighbours by conveying infection. Compulsory vaccination is thus a measure for the protection of the lives of innocent children from the results of the folly of their parents and for the security of grown-up persons from the sanitary evils which arise from the ignorance or apathy of their neighbours. This argument, apparent to every intelligent mind, justifies the introduction of a law making vaccination compulsory in India. My Lord, I have carefully considered the difficulties which exist in putting such a law into practice; and I am aware that there are some parts of India which have not yet reached the stage when the enforcement of such measures would be advisable. The proposed Bill will, therefore, not be generally compulsory. It is not meant to be applicable to those parts of India which possess local legislatures, and its operation will be confined to such municipalities and military cantonments in British India as the Local Governments in their discretion deem fit to place under the proposed law. The extension of the proposed law to British military cantonments situate in Native States will be left to the power of the Governor General in Council. The object therefore of the proposed Bill is to provide a law to enable the Local Governments of those provinces which do not possess their own legislatures to make vaccination compulsory in such places as they consider fit for the promulgation of such a law.

“My Lord, so far as my experience extends, I have no hesitation in saying that compulsory vaccination would meet with the approval of the gentry of India. Indeed, one of my Hindú friends—a gentleman of good birth and good influence at Benares, the source of Hindú law and religion—impressed upon me the advisability of such a measure, and asked me to do what lay in my humble power to induce your Excellency's Government to adopt measures making vaccination compulsory by law. I have also received, of late, another communication from a respectable Muhammadan gentleman of

one of the districts of the Panjáb; the substance of its paragraph relating to the subject of vaccination I beg leave to bring to the Council's notice.

“He says that he has come to know from certain newspapers that I intend to move in the Legislative Council for the enactment of a law making the vaccination of children compulsory in the North-Western Provinces; and he asks me whether I do not recognize the necessity for such a legislation for the Panjáb also, and whether thousands of innocent children do not succumb to the fatal effects of small-pox every year. He suggests the advisability of extending the proposed legislation to the Panjáb also, and asserts that, though the municipal and district committees in the Panjáb have exerted themselves to the utmost for giving deserved popularity to the practice of vaccination and have even succeeded to a great degree, yet the public are not likely to care much for its benefits unless compelled by law. To expect that people will gradually come to the knowledge of benefits derivable from vaccination and will of their own accord resort to it without necessitating the application of any legal pressure is, he says, a hard-hearted cruelty; and that it reminds one of the old proverb, ‘By the time the antidote is fetched from Irak (Mesopotamia), the snake-bitten is no more.’”

“I feel sure that the causes which have hitherto prevented vaccination from becoming a universal practice in this country consist chiefly in the apathy and want of foresight of the people, and the absence of a system providing facilities for procuring vaccination. I can confidently say that no reasons of a more serious nature exist in this country against compulsory vaccination, and those to which I have referred are insignificant, and can without difficulty be removed by legislation.

“My Lord, I would not have ventured to suggest an Act such as the one I ask the Council's leave to introduce if I did not feel sure that, whilst its objects are humane, they will also be properly understood by the people of India. In the figurative language of the East, small-pox is called the inevitable bridge which every child has to cross before entering into life; and recovery from the disease is considered second birth. The most anxious moments of the Native parent's care are bestowed on the child suffering from the malady, and the most earnest prayers are offered for the safety of the child. Other diseases are looked upon as accidental; but small-pox is regarded, as indeed it is, almost universal. It touches the keenest of human susceptibilities; for there are thousands in this country who, though spared by it from death, still have traces of its violence in the deep marks on the face or the loss of an eye. A law having for its object the security of the

future generations of India from a calamity so universal and severe would, if properly put into operation, far from being unpopular, be welcomed by the people of this country."

His Honour THE LIEUTENANT-GOVERNOR said that the Bill which it was proposed to introduce and which was referred to in the list of business was not before the Council. He was therefore unable to offer any opinion as to how far the provisions of it would be suitable, or otherwise, for the Panjáb. But, inasmuch as the Hon'ble Member had referred to the Panjáb as a place where vaccination ought, in his opinion, to be made compulsory, and had adduced the opinions of influential inhabitants of the province in support of applying the provisions of the Bill to the Panjáb, he wished to say that the Government of the Panjáb had always kept in view the desirability of introducing vaccination as largely as possible in the province, and had fully recognized its benefits; and it was entirely on that account, and from his desire that the benefits of vaccination should be extended and should not be checked, that he demurred to making such a provision as he understood the Act to contemplate, namely, that vaccination should be made compulsory. He believed that a measure of this kind, however carefully guarded, would have an effect directly the reverse of what it was intended to produce. Gradually, year by year, the prejudices of the people regarding vaccination had been lessened. Every care was taken in carrying out vaccination to enlist their sympathies and their intelligence in carrying on the operation, and for this reason, no doubt, the practice was meeting with less opposition than it met with at first. He felt certain, however, that to make it compulsory would at once raise a large amount of opposition, and it was solely on account of this opinion that he was averse to compulsory vaccination being introduced into the Panjáb. The province was one which had been comparatively recently annexed to British India; and, although we had made considerable progress in civilizing the people and advancing their condition, yet he thought it would be a mistake, while vaccination was making the progress which it now did, to render it compulsory in any part of the province.

The Hon'ble MR. COLVIN said that, with reference to the speech of His Honour the Lieutenant-Governor, the Hon'ble SAYYAD AHMAD begged that the motion standing in his name, which had just been put to the Council, might be altered as follows:—"The Hon'ble SAYYAD AHMAD KHÁN to move for leave to introduce a Bill for enabling Local Governments to prohibit the practice of inoculation and to make the vaccination of children in certain Municipalities and Cantonments compulsory."

The Hon'ble SIR ALEXANDER ARBUTHNOT said that he intended to make one remark with reference to the Bill, but he had proposed to defer making it until

the Bill was actually introduced, having observed from the notice paper that the Hon'ble Member was about to introduce the Bill at the present meeting. He had seen a copy of the Bill which was sent to the Executive Department of the Government the business of which was under his immediate charge, and while it was passing through that Department a suggestion had been made by the Sanitary Commissioner with the Government of India, which suggestion, like every suggestion on sanitary matters emanating from Dr. Cuninghame, appeared to him to be deserving of the careful consideration of the Council. Before he proceeded to notice that suggestion, he would say a few words with reference to the observations made by the Hon'ble Member who had moved for leave to introduce the Bill and by his hon'ble colleague the Lieutenant-Governor of the Panjáb. He gathered from the remarks of the Hon'ble Member in charge of the Bill that he considered that, throughout the greater part of India, vaccination might at once be made generally compulsory; but he observed that in the Bill which the Hon'ble Member had framed, he had for the present confined its application to municipalities and cantonments, in fact, to the large towns in the several provinces to which it was proposed to apply it. He thought that in making this limitation the Hon'ble Member had acted wisely. We had just heard from His Honour the Lieutenant-Governor that, in his opinion, any sort of compulsion would be out of place in the province of which he was the Governor. Speaking of the Presidency with which he had been connected during the greater part of his Indian life, he thought he might say that the opinions of the intelligent members of the Native community throughout the Madras Presidency were entirely in accordance with the opinions which had been expressed by their hon'ble colleague Sayyad Ahmad. Not very long before he left Madras—some seven years ago—the question of making vaccination compulsory in municipalities was strongly pressed upon his attention by one of the ablest Native officials in the Madras Presidency, indeed, he might say one of the ablest officials in India. That gentleman assured him that the importance of the measure was widely and increasingly recognized, and that, while he was not prepared to advocate the extension of such a measure at that moment in the villages throughout the country, he thought that in large towns it would be perfectly safe and wise to introduce it.

The suggestion which Dr. Cuninghame had made was in the direction of further limiting the application of the Bill, in fact, of making its application still more tentative. He advised that, before the Bill was put in force in any municipality, an application requiring it to be put in force should emanate from the Municipal Body, in which, as the Council were aware, there was invariably a considerable proportion of Native members.

It appeared to him that this was a wise and safe suggestion for dealing, as the proposed Bill did, with prejudices which, certainly up to a recent date,

were very deeply rooted, which were of long standing and which had only of late begun to give way to the force of enlightened opinion; and he thought it was very desirable that, as far as possible, we should carry the people with us, and that, at all events, we should carry with us the opinions of their more enlightened representatives.

He hoped, therefore, that, if the Bill was introduced and referred to a Select Committee, this question of limiting the operation of the Bill, for a time at all events, in the manner suggested by the Sanitary Commissioner, would receive the careful consideration of the Committee.

The Hon'ble MR. COLVIN said that he wished to make a few remarks with reference to the observations which had fallen from his hon'ble friend the Lieutenant-Governor of the Panjáb. Like His Honour he had not yet seen the Bill which it was now proposed to introduce; but he understood from the notice relating to it in the list of business which was upon the table that the measure was only intended to apply to certain municipalities and cantonments. He had gathered also from the remarks which had been made by his hon'ble friend the promoter of the Bill that it was only meant to be applicable to those parts of India which possess no local legislatures, and that its operation would only be extended to any town or cantonment where the Local Government, or in the case of cantonments situated in Native States, where the Government of India, was satisfied that it could properly be so extended.

MR. COLVIN understood, therefore, that the Bill was only a permissive Bill. It would not apply at all to those provinces which had legislatures of their own. In the rest of India it would only take effect where the Local Government in its discretion thought fit to introduce it. And in no case could it have any operation beyond certain limited areas. If it had been proposed to make vaccination generally compulsory throughout any province of British India, he for one would have regarded the measure as one of the most doubtful expediency, and he had no doubt that this opinion would have been entertained by many others. Looking at the Bill, however, as a purely permissive measure, of which no Local Government need make any use unless it pleased, he saw no objection to it, and he thought that possibly this consideration might also remove the objections of his hon'ble friend the Lieutenant-Governor.

The Hon'ble SAYYAD AHMAD KHÁN stated that, if leave was given to introduce the Bill, the suggestion made by Dr. Cuninghame would be one which would properly be considered in the Select Committee to which he would propose to refer the Bill.

The Motion as amended by the Hon'ble Mover was then put and agreed to.

The Hon'ble SAYYAD AHMAD KHÁN then introduced the Bill.

The Council adjourned to Tuesday, the 14th October, 1879.

SIMLA;  
*The 30th September, 1879.* }

D. FITZPATRICK,  
*Secretary to the Government of India,*  
*Legislative Department.*

NOTE.—The meeting, which was originally fixed for Thursday, the 25th September, 1879, was adjourned to Tuesday, the 30th September, 1879.