

Friday, July 9, 1880

**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

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ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of

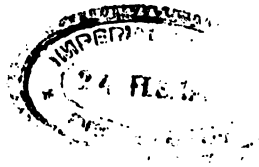
ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1880.

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1881.



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.

The Council met at Government House on Friday, the 9th July, 1880.

PRESENT :

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

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

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

The Hon'ble Sir J. Strachey, G.C.S.I., 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 J. Gibbs, C.S.I.

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

The Hon'ble B. W. Colvin.

The Hon'ble C. Grant.

PETROLEUM BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to regulate the importation, possession and transport of petroleum and other substances of a like nature. He said that for some time past the dangerous nature of the inflammable oils which are being imported into this country had engaged the attention of Government. In November, 1878, the notice of the Governor General in Council was first drawn to the subject by the Government of Bombay, with a view, if necessary, to legislation being resorted to to check the importation of dangerous oils. On a reference being made to the Government of Bengal as to the expediency of such legislation, it was found that the subject had already been for some time before that Government, and that a Committee had been appointed for the purpose of considering the question of these oils in all its bearings. This Committee, which was composed of officials, experts and gentlemen interested in the trade, had presented its report, in which it strongly urged the necessity for legislation, and put forward certain recommendations as to the lines on which, in its opinion, such legislation should proceed.

These recommendations followed, with certain modifications, introduced to meet the special climatic and other circumstances of India, the lines of 34 & 35 Vic., cap. 105 (since amended by 42 & 43 Vic., cap. 47), which was the principal Act governing this subject in the United Kingdom. They appeared well adapted to carry out the object which the Committee had in view, namely, practical security of life and property, with the minimum of restrictions on an important and rapidly developing trade, which had grown, from 211,000 gallons imported in 1875-76, to 1,185,000 gallons imported in about eleven months of 1878-79.

He would now state the general substance of the conclusions of the Committee:—

First, they said that all petroleum should be divided into three classes, namely,—

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|
| <p>(a) first class petroleum with a flashing point at or above
103° F. ;</p> <p>(b) second class petroleum with a flashing point between
83° and 103° F. ;</p> <p>(c) dangerous petroleum with a flashing point below 83° F.</p> | } According to
Abel's close
test. |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|

Secondly, they recommended that all petroleum should be tested by Abel's close test, which had recently been adopted in the United Kingdom (see 42 & 43 Vic., cap. 47, the Petroleum Act, 1879,) for the purposes of the Petroleum Act, 1871, in preference to the old or open test which was fixed by that Act. The necessity for introducing an improved test had been recently shewn by a case which Hon'ble Members might have seen mentioned in the *Englishman* about a fortnight ago. Two American ships, freighted respectively with forty and sixty thousand cases of kerosine oil, were consigned to two firms in Calcutta. Immediately on their arrival the Police boarded the ships and secured samples of their freights which were examined by the Government Analyst, Dr. Warden, by the old or open test. The result of this gentleman's examination was that the oil was found to flash at considerably below 100°. The landing was consequently stopped, with, it was believed, great loss and inconvenience to the consignees. These gentlemen, not being satisfied with the result arrived at by Dr. Warden, placed a sample in the hands of another eminent analyst, Dr. Waldie, who, after careful testing, made out the flashing point to be 105° and, in another experiment with the same sample, 109°. The consignees then applied to the Commissioner of Police to allow the cargo to be discharged. This officer declined to comply with the application, but directed Dr. Warden to make a second analysis, which he did with a result the same as his former one. It was then thought advisable to refer the matter to a third person, Mr. Pedler, the Professor of Chemistry in the Presidency College. The result was that Mr. Pedler came to a different conclusion altogether, and

found that the oil flashed at 101° and, in a second experiment with the same sample, at 103°. The difference of opinion was, however, eventually settled and the cargo passed; but the case showed how absolutely necessary it was to introduce a more scientific system of testing these oils.

Thirdly, the Committee said that, as second class petroleum flashed only at a temperature of 83°, or 10° higher than the temperature (73°) at which petroleum was considered safe enough to be exempted from the provisions of the English Petroleum Act (see 42 & 43 Vic., cap. 47), and might therefore be regarded as at all events fairly safe, the importation, storage and transport of such petroleum, as well as of first class petroleum, should be left reasonably free, while the importation, storage and transport of dangerous petroleum should be subjected to such severe restrictions as practically to be prohibited for purposes of ordinary use. The importation of the last-mentioned oil might of course be wholly prohibited by notification under the Sea-customs Act, section 19; but as petroleum of this class might be required for certain legitimate purposes, it was thought better to adopt the Committee's recommendation. The necessity of taking some such precautions would appear from an event which had occurred, not very long ago, in the Hugli. Six cargo-boats were conveying kerosine oil, from two American ships, *through the port*, to godowns near the Chitpore canal. On board of two of these boats an explosion and fire took place. The fire was a most serious one, lasting three or four hours; and had it not been for the fortunate concurrence of a southerly wind with an ebb tide, the consequences might have been disastrous. As it was, the sheet of flame was driven down the river and to the north shore. The ghâts and buildings of the Botanical gardens were in great danger. The jetty at the Superintendent's house was thrice on fire, and he only saved his office by bringing all his men to keep down the blaze. Two of the boatmen were missing, and two or three others were badly burnt.

The Government of India had considered this report, and was disposed to concur generally in its conclusions, and in the scheme of legislation contained in the Committee's recommendations. As the Government of Madras and the Chief Commissioner of Burma, as well as the Governments of Bombay and Bengal, were in favour of legislation, the Government of India was willing to accept the recommendation of the Committee that the legislation to be undertaken should be in the Council of the Governor General, and accordingly the present Bill, which embodied generally the recommendations of the Committee, had been prepared.

As it seemed desirable to check at once, and generally, the trade in dangerous petroleum, and it would be unfair if all ports were not put on the same footing as to the importation of first class and second class petroleum, the

provisions of the Bill relating to dangerous petroleum and the importation of first class and second class petroleum extended to the whole of India; but the other provisions of the Bill were only applicable at the discretion of the Local Government.

The details of the measure had been left in a great measure to rules to be framed by the Local Government, with the sanction of the Governor General in Council, as this seemed the most convenient course in a case of this sort, where the local circumstances and peculiar features of the trade of various places had to be considered.

The Motion was put and agreed to.

KÁZÍ BILL.

The Hon'ble SAYYAD AHMAD KHÁN moved that the Report of the Select Committee on the Bill for the appointment of persons to the office of Kází be taken into consideration.

The Motion was put and agreed to.

His Excellency THE PRESIDENT said he should like to make an observation regarding one word in the Bill. The Bill was, very properly, of a permissive character, and it conferred no official, administrative or judicial powers upon the Kázís, but it was stated in clause (a), section 4, of the Bill, that it was not to confer any judicial or other powers on any Kází or Náib Kází appointed thereunder. He thought it rather singular to enact that a man who was appointed should have no kind of power whatever.

The Hon'ble MR. STOKES remarked that the Bill would really only give religious or social powers.

His Excellency THE PRESIDENT supposed that, as the Kází was to be appointed by the Government, he was to have some sort of powers, social or other. He did not know whether it was worth while taking any notice of the matter, but the point struck him on looking at the clause, which seemed to imply that no power of any kind was to be conferred.

The Hon'ble MR. STOKES thought that the substitution of the words "judicial, administrative or other legal powers" would meet the objection taken by His Excellency.

His Excellency THE COMMANDER-IN-CHIEF doubted the advisability of giving legal powers under the Bill.

His Excellency THE PRESIDENT remarked that he had no objection to the adoption of Mr. Stokes' amendment, but he agreed with the Commander-in-Chief that the Bill should not confer legal powers.

The Hon'ble MR. STOKES thought that the words "judicial or administrative powers" would cover the whole ground.

His Honour THE LIEUTENANT-GOVERNOR believed that it was the intention of the Bill not to confer any powers.

The Hon'ble MR. STOKES remarked that the effect of his amendment would be to carry out that intention. Every officer in India was supposed to be either judicial or administrative, and the substitution in the clause of the word "administrative" for "other" would, he thought, quite meet the case.

After some further discussion as to whether resignation by a Kází was an administrative act, the Hon'ble MR. STOKES moved that, in clause (a), section 4, for the word "other" the word "administrative" be substituted.

The amendment was put and agreed to.

The Hon'ble MR. GIBBS said he might mention, with regard to this Bill, that the inconveniences of not having Kázís had been experienced on the Bombay side. In former years, before the Act, No. XI of 1864, had been passed, there were Government Kázís appointed in all the principal places in Bombay, and they were often of great use in settling small disputes which might otherwise have troubled the Magistrates or Courts. He had never been able to make out why, in that Act, there was a clean sweep made of all Kázís in the country; but it had done harm in leaving the Muhammadans without any sort of head to whom they might refer their little domestic difficulties, and this want had been much felt; and had led often to their taking the law into their own hands, and committing breaches of it. He was therefore glad to see that the present Bill had been brought in.

The Hon'ble SAYYAD AHMAD KHÁN moved that the Bill as amended be passed.

The Motion was put and agreed to.

VACCINATION BILL.

The Hon'ble SAYYAD AHMAD KHÁN moved that the Report of the Select Committee on the Bill for giving powers to prohibit the practice of inoculation, and to make the vaccination of children compulsory, in certain municipalities and cantonments, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. GRANT said that, as he had opposed the Bill when it was first brought before the Council, he should, perhaps, now explain why he found himself able to withdraw that opposition. He thought then, and was still of

opinion, that the preferable course, both in the interests of vaccination itself and for other weighty reasons, would have been to trust to the constant and gradual exercise of executive influence and the spread of education for removing the obstacles which impeded the progress of vaccination, rather than to risk exciting the ignorant prejudices which were always set on the alert by any attempt at compulsory legislation; and he was then able to refer to the opinions of all the Local Governments, except Burma, in support of his apprehension. He imagined, however, that any opposition which might have been anticipated from the desire to legislate had been already aroused, and that the modifications which the Select Committee had introduced into the Bill would go far to allay it.

The Select Committee had proposed three very important safeguards against any abuse of the powers which the Bill conferred. In the first place those powers could not be evoked at all except at the instance of the municipality which represented the town. Then if it happened—as it sometimes did happen—that the municipality was not strictly representative in its character, or that it was perhaps inclined to lean too much on authority, a full opportunity was afforded to the town population to send in, within a period of six weeks from the date of publication of the Bill, any objections which they might have to urge against its introduction. As the Local Governments which the Bill would affect evidently realized to the full the responsibility which would be imposed upon them, we had every reason to be assured that those preliminary safeguards would not be allowed to sink into mere formalities. And lastly, when the Bill had been formally brought into operation, a further precaution was provided against its being injudiciously worked, in the section which entrusted mainly to Native Honorary Magistrates the powers and responsibilities necessary for enforcing the Bill. The Honorary Magistracies were generally held by leading and respectable members of the town-communities, and he thought we might fairly look to them to introduce into the proceedings taken under the Act the sympathy which naturally flowed from minute local knowledge and acquaintance with the wants and feelings of the people. Perhaps, too, when by means of practical experience they had thus become alive to the advantages of the Bill, they would convey their impressions to their more ignorant neighbours, and in course of time the municipalities of Upper India would follow the enlightened example of Calcutta and Bombay. At first, perhaps, we should not be too hopeful of rapid progress, but should content ourselves with the knowledge that we had made an important advance, and should allow time to the people to follow in our footsteps.

HIS HONOUR THE LIEUTENANT-GOVERNOR said that the Bill as amended by the Select Committee had been modified to an extent which enabled him to

withdraw the opposition to it expressed by him when the measure was introduced. He had not changed his opinion that the time was not yet come for the introduction of compulsory vaccination into the Panjáb, but as the extension of the provisions of the Act would rest with the Local Governments, it seemed to him that it might be safely allowed to pass and to come into operation in places where its action was expected to be beneficial. He did not wish to extend it to any place in the Panjáb, but as it was an Act of general application he did not wish to oppose its being passed, and he trusted to its provisions to enable him to prevent its being introduced into any part of the Province over which he had the honour to preside until such time as the public mind was more fully prepared to receive such a measure.

The Hon'ble MR. GIBBS said that he had had this subject before him for some years and had introduced and passed two similar Bills while a Member of the Bombay Government. The observations which had fallen from his hon'ble friends, the Lieutenant-Governor and Mr. Grant, had been based chiefly on the alterations made by the Select Committee in the Bill, by which its introduction became optional, and also by which were provided considerable safeguards for preventing the Bill being introduced into any municipality where the people, in contradistinction to the municipality itself, were not anxious to have it. He might mention that, with regard to the city of Bombay, the matter had been taken up some ten years ago by the Bombay Association, which was composed of the principal Native gentlemen of Bombay, who met for the purpose of communicating from time to time to the Government their views on different political questions. The then President was the late Hon'ble Jagannáth Sankarset, also a Member of the Legislative Council of Bombay and a leading man among the Natives, though a very strict, indeed bigotted, Hindú; but from what he had read of the progress of vaccination in other countries he was led to suggest to the Association the propriety of considering whether compulsory vaccination would not be beneficial in Bombay, where every year large and increasing numbers of the population were cut off by small-pox. The Association asked the Government to assist them by appointing some officer, who had made vaccination his study, to advise them, and the present Sanitary Commissioner was asked by Government to undertake the task. He prepared a very able report on the subject, which was duly laid before the Association, and the result was that they passed an unanimous resolution that it was advisable that the Government should introduce a Bill for compulsory vaccination in the city of Bombay. Communication was then made to the Bombay Municipality, who unanimously approved of the proposal of the Bombay Association, and expressed their readiness to find the means for putting it into effect. This Bill was then introduced and discussed by the Bombay Council, but the then Viceroy considered

that the Council were going too far ahead, and further reports were called for. Much correspondence ensued, and it ended, in his (MR. GIBBS) having, in the year 1876-77, to re-introduce the measure into the Council; and he might mention that the only question raised at the time was as to whether the vaccination should be from arm to arm, or from animal-lymph. The Select Committee heard everything that could be said on the subject, and the result was that compulsory vaccination was to be conducted in the city of Bombay from animal-lymph. Up to the present time there had been no failure of animal-lymph, and from the latest accounts from Bombay it appeared that the Act had been working very well.

The next occasion on which he (MR. GIBBS) had to deal with the subject was that in which a petition was presented from Karáchi, in Sindh, requesting that a similar measure might be passed for the town of Karáchi, where also the deaths from small-pox were every year becoming more alarming. A Bill was accordingly introduced into the Council by him, which received the assent of the Viceroy and became law.

He mentioned those instances to show that compulsory vaccination had been introduced into large places with the perfect consent of the people concerned, and that it was in consequence of his having urged that fact very strongly in the Select Committee that some of the alterations had been made in the present Bill. Those alterations, so far as the introduction of the Act was concerned, left it wholly and solely at the will of the people affected, and he thought that, with such a safeguard, the Bill might safely be passed. He trusted that the result of its introduction into a large city like Bombay and more especially into Karáchi, which was comparatively a small place, might lead other municipalities and towns by degrees to see the advantages of this system, and to apply for the Act to be put into force.

With regard to the Note of one of our hon'ble colleagues, not here to-day—the Rájá of Jhínd—he seemed to have overlooked or forgotten that vaccination from animal-lymph was compulsory in many European countries, where compulsion as regards this matter was not regarded in the same light as it would be in regard to other important matters.

His Excellency THE PRESIDENT remarked that what Mr. Gibbs had said afforded very satisfactory evidence that a similar measure to that now proposed had been introduced into a large city and into very small places with success, and with the approval of the people concerned. He was glad to see that the Bill had been amended and put into the shape in which it now stood. He thought that in legislation of this kind, particularly in India, it was very desirable to proceed in a cautious and tentative manner. In England we had had for a

considerable time a Vaccination Act. There was a certain and rather increasing movement against it, and cases were cropping up from time to time in which even persons in a respectable position in life absolutely refused to comply with its provisions. He might mention a case in point which occurred within his own knowledge, that of the organist of Ripon Cathedral, who had positively refused to allow his children to be vaccinated; had been fined from time to time, had regularly paid the fines, but continued to refuse compliance with the provisions of the Act on the ground that one of his children had died, and he attributed its death to vaccination. Cases of this kind, where such feelings were evoked, required to be very carefully dealt with, and, of course, if in this country any religious feelings were aroused, there again was a very delicate matter which we should touch with a very light hand. It seemed, however, to HIS EXCELLENCY that the Bill as it now stood was so entirely of a permissive character, and gave such a complete opportunity to the inhabitants of each locality to state their objections, if they entertained any, that the measure itself being extremely desirable might be safely passed into law; and he thought that the Council was very much indebted to the Hon'ble Sayyad Ahmad for having taken up the question and brought to notice that in generally extending vaccination we would be conferring the greatest possible benefit upon the people of India. HIS EXCELLENCY was inclined to think that when the Bill was passed it might be advisable to consider, as an executive measure, whether a circular should not be issued to the Local Governments impressing upon them the necessity of proceeding very cautiously and tentatively, of strictly conforming to the intentions of the Act, and seeing that not merely the views of the municipalities, but the feelings of the populations concerned, should be carefully considered.

There was one point to which he would wish to draw the attention of the Council, namely, the amount of penalty which it was proposed to inflict for continued non-compliance with the order for vaccination. Under section 22, sub-section (d), of the Bill, it was provided that whoever—

“(d) neglects without just cause to obey an order made under section eighteen after having been previously convicted of so neglecting to obey a similar order made in respect of the same child, shall be punished as follows (that is to say) :—

* * * * *

“in the case of the offence mentioned in clause (d), with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

HIS EXCELLENCY was not sufficiently acquainted with Indian legislation to know what was regarded as ordinary severity in this country; but he certainly thought a punishment of six months' imprisonment rather severe, and, if his memory served him right, there was no similar power taken in the

English law. You could prosecute from time to time for continued disobedience, but there was no power that he was aware of for imprisonment.

The Hon'ble MR. GIBBS explained that the section in question had been taken from the Bombay Act. It had been found necessary to put in the provision to meet some cases that had occurred, of people who did not take the trouble to observe the requirements of the law; and of others who, without any just cause, religious scruples, or any other reason, refused to obey the orders. There was a good deal of discussion on the section at the time, and it was unanimously agreed, both by the Native members of the Council and by everybody else, that the best way of meeting the difficulty was by providing for it in this way. It had been proposed that when the Magistrate gave the order, the child should be vaccinated, but no one could see how that could be done.

The Hon'ble SIR EDWIN JOHNSON was inclined to agree with the remarks of His Excellency the President, and thought that we ought not to go beyond the maximum punishment allowed by the English law.

His Excellency THE PRESIDENT remarked that his only doubt was whether six months was not a very severe punishment.

The Hon'ble MR. STOKES said that the provision in the Indian law most analogous to that now under discussion was section 291 of the Penal Code, which provided against the continuance of a nuisance after an injunction had been made to discontinue it. In that case the penalty was simple imprisonment for a term which might extend to six months, or fine, or both. Under the Bill, however, as the General Clauses Act, No. 1 of 1868, section 2, clause 18, would apply, the "imprisonment" would be either simple or rigorous.

His Excellency THE PRESIDENT thought that simple imprisonment as provided for under clause (a) of the section was of itself a very serious matter; but the penalty under clause (d), now that Mr. Stokes had pointed it out, became more severe.

The Hon'ble MR. STOKES suggested the insertion of the word "simple" before "imprisonment" in the last clause of section 22 of the Bill. That, he thought, would remove His Excellency's objection on the ground of extreme severity.

His Excellency THE PRESIDENT and the Hon'ble SAYYAD AHMAD KHÁN having agreed to the proposed amendment,—

The Hon'ble MR. STOKES moved that, in the last clause of section 22 of the Bill, the word "simple" be inserted before the word "imprisonment."

The Motion was put and agreed to.

The Hon'ble SAYYAD AHMAD KHÁN moved that the Bill as amended be passed.

The Motion was put and agreed to.

BOMBAY REVENUE JURISDICTION BILL.

The Hon'ble MR. COLVIN introduced the Bill to amend the Bombay Revenue Jurisdiction Act, 1876, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes and Gibbs and the Mover.

The Motion was put and agreed to.

He also moved that the Bill be published in the *Bombay Government Gazette* in English, and in such other languages as the Local Government thought fit.

The Motion was put and agreed to.

ADMINISTRATOR GENERAL'S BILL.

The Hon'ble MR. STOKES introduced the Bill to exempt Pársís from certain provisions of the Administrator General's Act, 1874, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Colvin and Grant and the Mover.

The Hon'ble MR. GIBBS was not aware whether this was the proper time for him to offer an observation regarding the Bill, but he might perhaps be allowed to state, with regard to what his hon'ble friend Mr. Stokes had said when he asked for leave to introduce the Bill, that one difficulty which had arisen—and it was the principal one which brought the matter up—was this. It was the custom, when a Pársí died in the mufassal, for the Administrator General to move through the Police, and it was found that in one or two cases the Police had entered a house where a Pársí had died and had taken inventories of the property much to the distress of the family in the house. It was a case that took place in the Surát district which had led first of all to steps being taken for the present measure. He did not know if his hon'ble friend Mr. Stokes was aware of that circumstance.

The Hon'ble MR. STOKES said he had now heard it for the first time. It was only another illustration of what he had often found to be the case, that much of the unpopularity of the Legislative Department and its measures was due to the action of the Executive.

The Motion was put and agreed to.

The Hon'ble MR. STOKES moved that the Bill be published in the local official Gazettes in English, and in such other languages as the Local Governments thought fit.

The Motion was put and agreed to.

The Council adjourned till Friday, the 23rd July, 1880.

SIMLA;	}	D. FITZPATRICK,
<i>The 9th July, 1880.</i>		<i>Secretary to the Government of India, Legislative Department.</i>