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PART V.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

The following Extract from the Proceedings of the Governor of Bombay, in the Legislative Department, is published for general information :—

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Bombay on Tuesday the 11th February 1879, at noon.

PRESENT:

- The Honourable J. GIBBS, C.S.I., *President.*
- The Honourable L. R. ASHBURNER, C.S.I.
- The Honourable the ADVOCATE GENERAL.
- The Honourable E. W. RAVENSCROFT, C.S.I.
- The Honourable DOSABHOY FRAMJEE, C.S.I.
- The Honourable M. BALFOUR.
- The Honourable Colonel C. J. MERRIMAN, C.S.I., R.E.
- The Honourable MORARJEE GOCULDASS, C.I.E.

Papers presented to the Council. I.—The following Papers were presented to the Council :—

1. Report of the Select Committee on the Bill to prohibit the practice of Inoculation and to make the Vaccination of Children in the Town of Kurrachee compulsory.
2. Ditto ditto on the Bill to further amend Act XIII. of 1856.
3. Ditto ditto on the Bill to facilitate the introduction of the Bombay District Municipal Act into Sind.

Bill (No. 3 of 1878) to provide for the levy of fees for the use of Government Landing-places in Port of Kurrachee, considered in detail.

The Honourable the PRESIDENT said :—The first business before the Council was to consider Bill No. 3 of 1878 in detail. The object of this Bill was to provide for the levy of fees for the use of Government Landing-places in the Port of Kurrachee.

The Bill having been considered in detail, the Honourable Mr. ASHBURNER moved that it be read a third time and passed.

The Bill read a third time and passed.

The Bill was accordingly read a third time and passed.

The Honourable the PRESIDENT moved that Bill No. 5 of 1878 ("A Bill to prohibit the practice of Inoculation and to make the Vaccination of Children in the town of Kurrachee compulsory") be read a second time. The Honourable Mr. GIBBS said :—There

have been no petitions received from Kurrachee on the subject of this Bill. The Select Committee, in their Report, approve of the Bill as drafted, and consider that there is no necessity for making any alteration except as regards section 26, as to the cognisance by Magistrates of offences under the Act, and that of course affects in a very material degree the Penal clauses of the Act, especially section 22, providing for the case of the non-production of a child to be vaccinated. One of our colleagues, Mr. Morarjee Goculdass, considered that the penalty of imprisonment included in section 22 was not advisable. The Select Committee, however, did not agree with him on that point. The same question was very fully discussed when the Compulsory Vaccination Bill for Bombay was before the Legislative Council. On that occasion, one member objected, but he was out-voted by the other members. It should be borne in mind that the very heavy penalty of Rs. 1,000, or six months' imprisonment, or both, is necessary to meet extraordinary cases, but it appeared to the Select Committee that with such a penal section in the Act, it was not advisable to allow Magistrates of the lower classes to adjudicate in these cases, and in consequence the Select Committee have agreed upon the alteration of section 26 in the present Bill, so as to make offences under this Act cognizable by Magistrates of the first class only. In Bombay, of course, such offences are cognisable by the Presidency Magistrates, who are men of great experience and knowledge of law, whose discretion the Council considered might be trusted to exercise these very important powers; and in order to provide a similar tribunal for such cases in Sind, section 26 has been altered so as to make them cognisable only by Magistrates of the first class. The principle of the Bill, which is the real question to be considered at the second reading, has already been recognised in Bombay; and as the Bill has been asked for by the authorities of Kurrachee, and the principle has been approved by the Government of India and the Secretary of State, I do not think it necessary to trouble the Council with any further observations, but will simply move that the Bill be read a second time.

Mr. Gibbs moves the second reading of the Kurrachee Vaccination Bill (No. 5) of 1878.

The Bill read a second time and considered in detail.

The Bill was then read a second time, and the Council proceeded to consider it in detail.

With regard to section 22, the Honourable MORARJEE GOCULDASS said :—I shall be very brief in my remarks on the objection I have taken to the penalty of imprisonment set down in this section. I can understand the necessity of legal pressure in regard to vaccination in this country and also the principle underlying this section. But the punishment of a fine of Rs. 1,000 is, I think, more than enough for the offence mentioned in it; and the additional penalty of imprisonment seems to me unnecessarily harsh. People in India, in the mofussil especially, are generally ignorant and not enlightened enough to appreciate the benefits of vaccination, so that over-harsh penalties can only create disaffection amongst them. Another ground of my objection is that the people of this country are law-abiding, and the penalty of fine will be a sufficient deterrent. Even in England, where people are more enlightened, and where the lower classes are less submissive to law than here, the legislature have not thought proper to add the penalty of imprisonment. The Bombay Act does, of course, contain the additional penalty of imprisonment, but even here I consider it objectionable. I therefore hope the Council will see the propriety of striking out the penalty of imprisonment from section 22.

The Honourable the PRESIDENT :—In reference to the observations of the Honourable Morarjee Goculdass, I may mention that although it is true that the penalty provided in this 22nd section does not occur in the English Acts, yet from several proceedings at home, I think it is not improbable that an addition may be made to the penalties in

England by introducing a term of imprisonment. Several cases have lately occurred in which persons of considerable status and respectability have refused time after time to have their children vaccinated, and have been fined time after time, but with no effect. They simply pay the fine and take no notice of the vaccination officer. This section providing for imprisonment was expressly included in the Bombay Act to meet such cases, where gentlemen well-to-do, and with plenty of means, might have, what the law would consider, very wrong notions with regard to vaccination, and might persist in keeping their children from participating in the benefits derived from it. There might be cases where imprisonment—it is only simple imprisonment—would bring a person to his senses, who could not be brought to his senses by any amount of fines. Under those circumstances, it was considered advisable that provision should be made for imprisonment being enforced in extreme cases. It is not to be supposed that this penalty will be enforced under ordinary circumstances, or that ignorant persons and poor people, who do not bring their children to be vaccinated, will be sent to gaol, but this is a power given in the Act to meet special cases, which have been found in England to arise constantly—or rather, not unfrequently,—and which require some stronger deterrent than the English law provides.

The Honourable Mr. BALFOUR:—May I ask what has been the result under the Bombay Act? Has any body been imprisoned under that Act?

The Honourable the PRESIDENT:—No body has been imprisoned under the Bombay Act.

On the motion of the Honourable the PRESIDENT it was resolved that section 22 be passed.

The remainder of the Bill was gone through in detail without any further objection being raised.

The Honourable the PRESIDENT then moved that the Bill be read a third time and passed.

The Bill read a third time and passed.

The Bill was accordingly read a third time and passed.

The Honourable Mr. ASHBURNER moved the second reading of Bill No. 8 of 1878 ("A Bill to further amend Act XIII. of 1856"). Mr. ASHBURNER said:—The subject matter of this Bill is so simple, and it has been passed by the Select Committee with such unanimity, that it appears to call for no remark whatever.

The Bill read a second time and considered in detail.

The Bill was read a second time and, on the motion of the Honourable Mr. Ashburner, was considered in detail.

The Bill read a third time and passed.

The Honourable Mr. ASHBURNER next moved that the Bill be read a third time and passed.

The Bill was accordingly read a third time and passed.

The Honourable the PRESIDENT:—I have the honour to move the second reading of Bill No. 10 of 1878 ("A Bill to facilitate the introduction of the Bombay District Municipal Act into Sind"). It will be noticed that the Select Committee have considered the Bill and can suggest no improvement in it, but recommend that it should be passed as it stands. The authorities in Sind are anxious that the Bill should be passed as soon as possible, otherwise the period of six months mentioned in the Bombay District Municipal Act may expire, which may lead to some further complications and to some further necessity for special legislation. Under those circumstances I have no other observations to make, but will move that the Bill be read a second time.

The Bill read a second time and considered in detail.

The Bill was then read a second time and considered in detail, and on the motion of the Honourable the President, read a third time and passed.

Bill read a third time and passed.

The Honourable the PRESIDENT:—The next business before the Council is a notice of motion to extend the time fixed for receiving the report of the Select Committee on the Bombay Port Trust Bill (No. 12 of 1878). Honourable Members are aware that the Select Committee appointed to consider this Bill are

Extension of time for Select Committee to report on the Bombay Port Trust Bill.

still sitting, and have been unable, owing to references which it has been necessary to make to the Government of India and the Secretary of State, to conclude their labours. I therefore move that the time for the presentation of the report be extended to the 1st of April. This will not prevent the Select Committee presenting their report as soon as it is ready.

The motion was adopted.

The Council was then adjourned *sine die*.

By order of His Excellency the Honourable the Governor in Council,

JOHN NUGENT,

Under Secretary to Government.

Bombay Castle, 11th February 1879.