

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1760	Press ~~Mis.~~
Dated	7-11-19	1866

21-7/18

5/6

Not to be folded or roughly handled

14

*Proceedings of the Madras Government, Judicial Department,
7th November 1866.*

No. 71. Read the following Proceedings of Government in the Public Department, dated 7th November 1866, No. 1146.
Passing orders on the opinion of the Advocate General as to whether the act of inoculation is punishable under the Penal Code. (Vide Proceedings, Public Department, dated 7th November 1866, Nos. 46—48.)

No. 71 A. To E. C. BAYLEY, Esq., Secretary to the Government of India, Home Department, dated Fort Saint George, 7th November 1866, No. 1760.

I am directed by the Governor in Council to forward to you copies of the papers noted in the margin, having reference to the conflicting views entertained by the Magistrates of two Districts in this Presidency, on the question as to whether Small-pox inoculation is an offence punishable by law.

2. The question, as affecting the Indian Penal Code, is submitted to the Government of India, with reference to the instructions conveyed at the conclusion of your letter of the 10th September last, No. 4381, and I am to request the favor of an early reply.

(Signed) J. D. SIM,
Secretary to Government.

*Proceedings of the Madras Government, Public Department,
7th November 1866.*

Read the following papers:—

No. 46. From the Principal Inspector General, Medical Department, to the Chief Secretary to Government, Fort Saint George; dated Fort Saint George, 16th August 1866, No. 300.

I have the honor to forward a letter from the General Superintendent of Vaccination in which he points out, that one Magistrate awarded a man for practising inoculation a month's imprisonment,

No. 447, dated 13th August 1866.

under Section 269 of the Penal Code, whilst another Magistrate, in a similar case, gives his opinion that proceedings could not be taken against the man as there was no law prohibiting the practice of inoculation.

2. I hope Government will be good enough to submit the point to their Law Officers for an authoritative opinion.

From the General Superintendent of Vaccination, Madras, to the Secretary to the Principal Inspector General, Medical Department, Fort Saint George; dated Madras, 13th August 1866, No. 447.

I have the honor to bring to the notice of the Principal Inspector General, Medical Department, the existence of Small-pox inoculation in the Kistna Circle. The practice is also common in other Circles, more especially the Godavery and Cuddapah.

2. The Deputy Superintendent of Vaccination, Kistna Circle, brings to notice the prevalence of this practice among some of the Vaccinators in Government employ, previous to the new organization, and the Deputy Superintendent, who had placed his Vaccinators at some distance from himself during the last recess period with a view of keeping up lymph, being dissatisfied with their reports, finds, on inspection, that one of the Vaccinators, assisted by his father, had been practising Small-pox inoculation instead of Vaccination, and several deaths were traced to this practice.

3. This charge having been fully established the Deputy Superintendent was directed to prosecute the Vaccinator before the Magistrate of Guntoor, but that Officer was of opinion that Criminal proceedings could not be taken against the man, as there was no law prohibiting the practice of inoculation, neither was the offence punishable in any manner; whilst in a similar instance which occurred in June last, in the Godavery Circle, the Magistrate of Vizagapatam, on conviction, sentenced a Small-pox Inoculator to a month's imprisonment, under Section 269 of the Penal Code.

4. In consequence of the view taken by the Magistrate of Guntoor, the Criminal proceedings had to be abandoned, and the Vaccinator dismissed from the service, with loss of pay, and forfeiture of all claims to past services.

5. Thus it will be seen that there is a difference of opinion among the Magistrates themselves, on the subject of Small-pox inoculation.

6. Under these circumstances, I think it imperative to obtain the views of Government on the subject, as I consider the punishment of the Vaccinator alluded to above, by dismissal, inadequate to the offence, the more so, as there is now nothing to deter the men from carrying on Small-pox inoculation.

Referred to the Government Solicitor, for the Opinion of the Advocate General.
FORT SAINT GEORGE, (Signed) A. J. ARBUTHNOT,
18th October 1866.

Chief Secretary.

Conveyed

Proceedings of the Madras Government, Public Department,
7th November 1866.

No. 47. From the Acting Government Solicitor, Madras, to the Acting Under Secretary to Government, Fort Saint George; dated Madras, 20th October 1866, No. 604.

I have the honor to acknowledge the Order of Government noted in the margin, with its enclosure, requesting the Acting Advocate General's Opinion as to whether a Small-pox inoculation is an offence punishable under the Indian Penal Code.

2. I have submitted the matter for the consideration of the Acting Advocate General; and,
3. I now forward a copy of his Opinion, and return the enclosure above noted.

OPINION.

I am of opinion that the act of inoculation, if done *bona fide*, though injudiciously, as a preventive measure, is not indictable under Section 269. The words 'unlawfully or negligently' indicate an act designed or calculated to do unmixd harm. Sections 81 and 87 to 92 would be complete answer to such a charge.

(Signed) J. D. MAYNE,
Acting Advocate General.

19th October 1866.

(A true Copy).

(Signed) H. J. BROCKMAN,
Acting Government Solicitor.

No. 48. ORDER THEREON, 7th November 1866, No. 1146.

Copies of the Acting Advocate General's Opinion will be furnished to the Magistrate of Vizagapatam.

2. The question, as affecting the Indian Penal Code, will be submitted to the Government of India, through the Judicial Department, with reference to their instructions conveyed in Mr. Secretary Bayley's letter of the 10th September last, No. 4381.

(True Extract).

(Signed) J. D. Mayne
Secretary to Government.

To the Principal Inspector General, Medical Department.

„ Magistrate of Vizagapatam.
„ Judicial Department.

Exd. T. Carledge.

31
Judicial Department.
No. 1760.

To E. C. Bayley Esq.
Secretary to the Government
of India,
Home Department.

Sir,

I am directed by the Governor in Council to forward to you copies of the papers noted in the margin, having reference to the conflicting views entertained by the Magistrates of two contiguous Districts in the Presidency on the question as to whether Small-Pox inoculation is an offence punishable by ~~under any~~ law.

2 The question, as affecting the Indian Penal Code, is submitted to the Government of India, with reference to the instructions

Conveyed

Mr. from P. C. Esq. 1866 No. 1146
of 10th Sept 1866
Acting Advocate General
Pro: Pub. Dept. 7 Nov
1866 No. 46 to 48

JP

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42
Conveyed at the conclusion
of your letter of the 10th
September last. No. 4381,
and I am to request
the favor of an early
reply.

L. S.
1886

Fort St. George
7 Nov 1886

Judicial 1866 Dep't
N.Y.

To the Dep't of the East
of India

Oct 28 1869.

Sailed 24 November 1869.

71-718.