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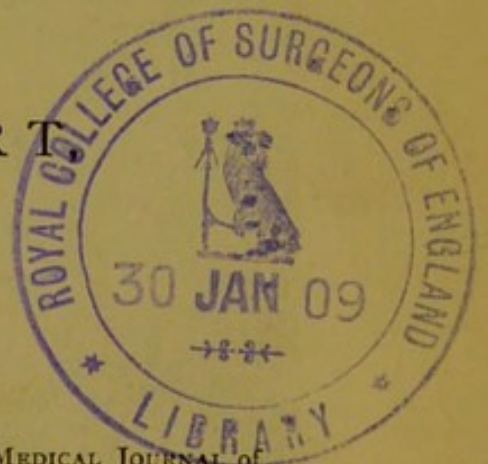
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REPORT
AND
SUPPLEMENTARY REPORT
TO THE
PARLIAMENTARY BILLS COMMITTEE OF THE
BRITISH MEDICAL ASSOCIATION
ON
VACCINATION PENALTIES:
THE PRINCIPAL OF
COMPULSION IN VACCINATION.

BY
ERNEST HART

CHAIRMAN TO THE COMMITTEE.



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—
1880.

REPORT

SUPPLEMENTARY REPORT

PARLIAMENTARY BILL COMMITTEE OF THE
BRITISH MEDICAL ASSOCIATION

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THE PRINCIPAL OF
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Vaccination Acts Amendment Bill, 1880

REPORT

TO THE

PARLIAMENTARY BILLS COMMITTEE OF THE BRITISH MEDICAL ASSOCIATION ON VAC- CINATION PENALTIES: THE PRINCIPLE OF COMPULSION IN VACCINATION.

BY ERNEST HART,

Chairman of the Committee.

The Vaccination Act Amendment Bill of the Present Session.—The introduction into the House of Commons by Mr. Dodson, as representing the Government, of a bill designed to abolish multiple penalties for the non-observance of vaccination, and thus virtually to condone the permanent violation of a most necessary and health-preserving law by the payment of a merely nominal fine, is unquestionably an event deserving the very serious consideration of the Parliamentary Bills Committee. The question is one, moreover, upon which they have a peculiar right to be heard; for nine years ago, when a similar proposal was made in Parliament, and had actually been passed by the House of Commons, they were successful in getting it rejected in the House of Lords, and in securing its omission from the Vaccination Act of 1871. Dr. Stewart's motion, passed at the meeting of the Parliamentary Bills Committee on the 28th June 1871,* "That the purchase of immunity from the operation of the Act provided by Clause 10 of the Vaccination Amendment Bill is vicious in principle, and that such clause should be expunged," seems to me to be in perfect accord with the whole of professional and legislative experience on the subject. I am not oblivious of the fact that reasons of policy may be urged for this new (and entirely gratuitous) proposal of the Government; but I do not think that in a matter of this sort, affecting the life and health of the entire nation, expediency should take precedence of the requirements of the public health. The bill, if passed, will be legislation for the benefit of the few at the expense (the very terrible expense) of the many; and I hope to be able to show that such a bill is not required, and that the principle of compulsory vaccination is one that is accepted by the enormous mass of the people, and has been affirmed with increasing stringency by successive Parliaments. The arguments in favour of compulsory vaccination in the abstract are of much too complex and diffuse a kind to find any place in a report of this nature,† even if the committee needed to be assured of its necessity; but it may not be without profit to trace the gradual growth of the system of compulsion in this country, for the purpose of enlightening those who believe that the vaccination laws

* See BRITISH MEDICAL JOURNAL for July 1st, 1871, page 23.

† In a little pamphlet, however, which I have recently published through Messrs. Smith, Elder, and Co., on *The Truth about Vaccination*, the advantage to the country of compulsory vaccination will be found fully set out.

have been hastily and unthinkingly passed by the Legislature, under the pressure of public fear during epidemics. Our English vaccination law is a system of gradual growth; and, though there are undoubtedly defects in it, it is as excellent a system as such a law can well be. To carelessly sap its foundations, as it is now proposed to do, calls, I think, for the very strongest protest on the part of the profession and of this committee.

Vaccination Laws in Foreign Countries.—Very soon after the discovery of vaccination, most of the European Governments made provision for affording its benefits to the people of their respective countries. Even so early as 1803 an ordinance on the subject was issued in Sweden; and ordinances were issued soon afterwards in Denmark, and in several of the German states. At the date of the death of Jenner (1823) very few of the countries of Europe had not made laws and regulations as to vaccination (making it directly or indirectly compulsory), with the exception of the country of his birth and of the origin of vaccination. At the present time there are but few countries of Europe that have not a vaccination law of one kind or another. It is difficult to get accurate information on this head; but vaccination is compulsory in Germany, under a law of the 8th April, 1874 (*Reichsimpfgesetz*), making vaccination obligatory during the first year of life, and re-vaccination obligatory on every scholar of a public or private school in the course of his twelfth year. Fines up to fifty marks or imprisonment for three days may be imposed for contraventions of this requirement. This imperial law has replaced a number of ordinances that existed in various States now included in the empire, all of which made vaccination compulsory in some form or other. Thus, in Bavaria, which was the first country in which vaccination was made compulsory, every child was, by a decree of 1807, to be vaccinated before the 1st of July in the year following its birth. Fines were imposed on recalcitrants, and the law became a conspicuous success, a very small proportion, indeed, of the children not being vaccinated at the proper time. In Wurtemberg, all children had to be vaccinated within three years of birth, and there was a register of vaccination in each commune. Similar laws were in force in several other of the German States, as Baden, Hanover, and Electoral Hesse, till they were abrogated by the Imperial law of 1874. Indeed, it was only about a dozen years ago that anyone in Baden could marry who had not a vaccination-certificate. Vaccination is stated also to be compulsory in Norway, Sweden, all the cantons of Switzerland except three, Greece (where in times of epidemic the Government has the power to vaccinate all who have not been vaccinated, and to re-vaccinate all who have been vaccinated more than seven years ago) in Roumania, in Turkey (since 1850), etc.* Vaccination is not compulsory in Belgium, Italy, Spain, or France; although the compulsory vaccination of recruits under the conscription laws, and the requirement of vaccination certificates at all the national and free schools, go far in this direction. In France, an attempt is now being made by Dr. Liouville, the deputy for the Meuse, to obtain the assent of the Chamber of Deputies to a bill providing for the compulsory vaccination of infants within six months of birth, and for compulsory re-vaccination every ten years, in the tenth, twentieth, thirtieth, fortieth, and fiftieth year of life. Contraventions of this law are proposed to be punished by a fine of from 1 to 25 francs, and in case of a second

* See Dr. Vallin in the *Revue d'Hygiene* for June 15th, 1880, page 415.

offence by a fine of 25 to 100 francs. I do not feel called upon to offer any observations on this bill at the present moment, but it at least shows that the principle of compulsion and of punishment for neglect to comply with the law of vaccination is thoroughly appreciated elsewhere than in England.*

The first English Vaccination Law: Inquiry of the Provincial Medical and Surgical Association.—The first law with reference to vaccination made in England was passed in 1846; and it behoves us especially to remember that this Act was the immediate outcome of the labours of the Association, which has now grown into the immense and influential body of which we have the honour to be members. So fatal and prevalent was small-pox in the early part of the present reign, and so inadequate was the provision made for vaccination in the country, that the Provincial Medical and Surgical Association, at its annual meeting of 1838, appointed a committee to "inquire into the present state of vaccination in England". In the very able and comprehensive report which this committee drew up, and which may still be read with interest and instruction, the whole subject of vaccination up to that date was reviewed and commented upon. The committee traced the continued prevalence of small-pox partly to the continuance of variolous inoculation, but chiefly to the neglect of vaccination. They showed that no proper provision for the vaccination of the poor existed, and they pointed out the necessity for a public system of vaccination. The Association, adopting the report, drew up a petition to Parliament, which was presented early in 1840, praying the Legislature to take steps to restrict the practice of small-pox inoculation, and to establish a system of public vaccination. They represented "that at this time there is no sufficient provision for the vaccination of the poor in this kingdom; that the practice, as offered to the poor at our public institutions in towns, as well as by private individuals, is by no means adequate to the wants of our greatly increased population"; and they suggested that the State should remedy this evil "by appointing regularly educated vaccinators, with suitable salaries, in districts sufficiently numerous to embrace the whole of the poor population of the country, and who shall offer gratuitous vaccination at stated periods to all within their bounds, keeping accurate registers of their proceedings, and communicating regularly with the National Vaccine Establishment".† These suggestions of the Association show that a medical organisation and supervision of public vaccination were contemplated by them; and considering the pains and care bestowed by the Association upon the subject, it is surprising that these important matters should not have received consideration at the time. But they were entirely lost sight of in the measure which Parliament then adopted for the extension of vaccination, and their full importance was not recognised by the Government for nearly twenty years after.

The Vaccination Act of 1840.—When the petition of the Association was presented to the House of Lords on March 10th, 1840, by the late Marquis of Lansdowne, Lord Ellenborough at once suggested that

* It is stated, on the authority of a German book (*Uffelmann, Darstellung des auf dem Gebiete der öffentlichen Gesundheitspflege*.... Gileisten, Berlin, 1878), that Napoleon the First made a decree as to vaccination, but after his fall it became a dead letter. I have not been able to ascertain for certain whether or not this statement is correct.

† *Transactions of Provincial Medical and Surgical Association*, vol. viii, p. 83 (proceedings of meeting of 1839).

a Bill should be introduced to give effect to the wishes of the petitioners, and two days afterwards he presented such a Bill to the House. With the alterations made in it in its various stages, this Bill became our first vaccination law (3 and 4 Vict., c. 29). Its main features were that it provided the means of vaccination, at the public cost, for every person in England and Wales, by directing guardians of the poor to appoint one or more qualified medical practitioners to vaccinate all persons resident in the district who chose to avail themselves of the privilege. It also provided that any attempt to inoculate or otherwise produce small-pox should be punishable by imprisonment. The Act was not restricted to paupers; all persons had a right to claim vaccination at the public cost; and, with the view of making this intention clearer, an Act was passed in the next Session declaring in express terms that public vaccination was not of the nature of "parochial relief, alms, or charitable allowance", and did not therefore deprive the recipient of any "right or privilege", or subject him "to any disability or disqualification whatsoever" (4 and 5 Vict., c. 32).

Disadvantages of Public Vaccination being under the control of Poor-law Guardians.—The benefits conferred by this Act were very great, the small-pox death-rate being immediately and markedly reduced. But there were certain considerable drawbacks to the method of administering the Act, the chief of which was that it had to be worked by the guardians appointed for the relief of "the poor". Perhaps no other arrangement was at the time possible; but it is certainly remarkable that, during the forty years that have since elapsed—years of the inception and growth of sanitary administration, and the formation of authorities responsible for the sanitary welfare of every corner of the kingdom—the administration of the vaccination laws should still be allowed to remain in the hands of the local destitution authorities. It cannot be doubted that this has had a marked effect upon the imperfect readiness with which the working-classes avail themselves of the gratuitous vaccination of their children offered them by the State. No class of persons has such a horror of arrangements for the relief of the poor as those just above the ranks of pauperism. This is, of course, a proper feeling, and one to be encouraged; but free vaccination is not medical relief, and indeed has been expressly so defined by a special Act of Parliament. Notwithstanding this, and the efforts which the Poor-law Board and Local Government Board have constantly made to impress the fact upon the minds of the public, there has been (especially in the early days of the law, when the new Poor-laws and the Poor-law Commissioners were most unpopular) very great difficulty in securing the proper administration of the Act, because of its being under the control of boards of guardians. I quite think that it is a subject well worthy of consideration whether vaccination should not be removed from the control of Poor-law guardians to that of sanitary authorities, or combinations of sanitary authorities. I see no reason why, so soon as medical officers of health independent of private practice have been appointed throughout the country—a reform which is urgently needed for many reasons—such officers should not be *ex officio* vaccinators for their respective districts. Under such a system, we might hope for a much more perfect performance of the operation than is now witnessed in many parts of the country, because the operators would be highly skilled and their opportunities for vaccination much wider.

With regard to the Act of 1840, it was matter of notoriety that its success was largely hampered by the fact that many of the public, who

were little able to pay a proper fee for vaccination, but were yet far from being paupers, would not avail themselves of the advantages offered by the guardians. Even the Poor-law Board expressed, eight years after the system had been in operation, their regret that people were deterred from seeking public vaccination because of its administration through their department; and, in 1854, the President of that Board openly expressed his doubts in the House of Commons "whether it was the wise course to place vaccination in connection with the Poor-laws in any way". So, however, it has remained up to the present, and doubtless it will be difficult now to disturb an arrangement of such long standing.

Inquiry of the Epidemiological Society.—The effects of the apathy which the public displayed in respect to vaccination, as thus administered, at once attracted the attention of the Epidemiological Society on its foundation in 1850. Though there had been a very considerable reduction in the small-pox mortality of England, the deaths from that cause were still more than five thousand every year. The Epidemiological Society appointed a Committee to investigate the causes of this mortality, and to suggest the remedies. In the course of the long and laborious investigation instituted by this Committee (of which the lamented Dr. Seaton was the honorary secretary and ruling spirit), they corresponded with nearly two thousand medical men engaged in vaccination both at home and in the colonies, and gathered together a vast fund of information as to the practice abroad. The great outcome of the inquiry was that the serious mortality from small-pox was not due to any diminution of the prophylactic power of vaccination, but to a still continuing neglect of it, and to the imperfect way in which vaccination had in many instances been performed. In the Report presented to the Society, and subsequently to Parliament,* the Committee showed that, on the part even of those parents who were glad to avail themselves of public vaccination for their children, there existed an habitual procrastination, which left the children exposed to small-pox at the very period of life when they are most liable to its ravages; and that, while the fatal force of that disease is most felt under one year of age, the rule was not to vaccinate children till they had more than reached that age.

Need for Vaccination being made compulsory.—Amongst the remedies which the Committee suggested were, that it should be made *compulsory by penalty* on every parent to have his child vaccinated, health permitting, within three months of birth; and that the birth-register should be the main basis for ensuring this compulsion, a child whose birth was once inscribed therein being followed up until the vaccination was also registered. I only allow myself one quotation from the Committee's Report, which, being the work of Dr. Seaton, was, like all his work, very careful and exhaustive:—"It is our unanimous conclusion that no measure which does not render vaccination *compulsory*, in some form or other, will be sufficient to ensure the efficient protection of the population of this country from the ravages of small-pox: a conclusion which is fortified by the fact that a very large majority of those medical practitioners who, in their replies to the

* "On the State of Small-pox in England and Wales and other Countries, and on Compulsory Vaccination, with Tables and Appendices, presented to the President and Council of the Epidemiological Society by the Small-Pox and Vaccination Committee, 26th day of March, 1853" (House of Commons Sessional Papers, No. 434 of 1853).

queries issued by the Society, have proposed any remedy for the prevention of small-pox, have urged the necessity of compulsory vaccination. The mode of rendering vaccination compulsory it must be for the Legislature to determine; but, in the event of its being desirable to introduce a system of fines, we would suggest that the commencing fine be a small one, and that it be augmented from time to time until the requirements of the Act are complied with."

The Vaccination Act of 1853.—It so happened that just at this time Lord Lyttleton, having observed in the union of which he was chairman the very imperfect working of the law, had introduced into the House of Lords, without the knowledge of the Society, a Bill to make vaccination compulsory. He was communicated with by the Society, and subsequently modified his Bill considerably in order to carry out their suggestions. The Bill encountered some opposition out of doors with regard to its fundamental principle as well as its details; but that principle received the concurrence and confirmation of the Legislature, and the Act received the Royal assent on August 20th, 1853. By this "Vaccination Extension Act", compulsory vaccination became the law of the land. Mr. Simon described it in 1857 as "a very important measure. Infantine vaccination was at length recognised at its full value. Henceforth it was to be counted among those conditions necessary for the maintenance of life, which a parent should not be entitled to withhold (any more than food or clothing) from his offspring."*

Mr. Simon on Compulsory Vaccination as an Interference with Private Rights.—Discussing the question as to the extent to which compulsory vaccination was an interference with private rights, Mr. Simon said:† "Persons unacquainted with the circumstances under which this law was made have doubted whether it was not an improper restriction of personal freedom. It being assumed, as the liminary principle of human law, that men may be left free to follow every inclination which relates only to themselves, it would certainly seem foreign to the principle of legislation to insist on one's caring for one's own health; and, if a man's having small-pox could affect none but himself, little need be said against his right of having it *ad libitum*. Even in this light, however, it deserves consideration that he who indulges a preference for small-pox does so to the detriment or danger of his neighbours; and, as they often suffer by his infection, so they might reasonably claim to be heard on that question of his privilege. Still the main object of the obligatory law, as I understand it, is not to prevent adults from circulating—if they be so minded—a personal taste for small-pox; its object is to prevent them from *compelling* (for in this case *allowing* amounts to *compelling*) their children to incur the worst perils of that disease. The interference of the law was an interference between parent and child: a kind of interference very sparingly exercised in this country, and the exercise of which on slight grounds would of course be intolerable. The practical justification of any such law depends on the amount of evil which it is designed to correct; and four or five thousand annual deaths by one specific parental omission constituted in this case a strong argument. It was under pressure of this appeal that the Compulsory Vaccination Act was passed. The option which the new law restricted was not that, of a conscious agent deliberately preferring for himself the dangers of small pox to the securities of

* *Papers relating to the History and Practice of Vaccination*, 1857, page 70.

† *Ibid.*

vaccination. The thousands who annually died of non-vaccination had never raised their voices for the privilege of unrestricted small-pox. The so-called 'liberty'—thenceforth to be abridged—was that of exposing unconscious infants to become the prey of a fatal and mutilative disease. It was this *liberty of omission* which the law took courage to check."

Working of the Act of 1853.—By the Act of 1853 (16 and 17 Vic. cap. 100), it was required that every child whose health permitted should be vaccinated within three, or in the case of orphanage, within four months of birth, and that notice of this requirement should be given by the registrar to parents or guardians whenever a birth was registered. Parents or guardians who, without sufficient reason, after having duly received the registrar's notice of the requirement of vaccination, either omitted to have a child duly vaccinated, or the results of the vaccination inspected, were liable to a fine of twenty shillings. The impetus given by this Act to public vaccination was enormous. The year after its enactment the public vaccinations of children under one year of age were more than doubled; thus showing that the apathy felt by parents in bringing their children for vaccination was sufficiently counteracted by the threat of a small fine. But it was soon found that the Act was deficient in certain important respects, only two of which concern my present purpose. Though it was clearly illegal for a parent to neglect the vaccination of his child, and every parent so neglecting was liable to penalty and might be proceeded against by anyone who thought proper to do so, yet there was no officer whose business it was to set the law in motion. This was remedied by the passing of an Act in 1861 (24 and 25 Vic., cap. 59), which gave guardians power to appoint some person to institute and conduct proceedings under the Act, and made provision for meeting the expenses of all proceedings.

Question of Second Prosecutions under Act of 1853.—Another point was that the terms of the section of the Act of 1853, relating to proceedings, were such that it was held by the Court of Queen's Bench that a parent could not be convicted a second time for neglecting to have a child vaccinated. Lord Chief Justice Cockburn, in the case of *Pilcher v. Stafford*, tried on the 27th January, 1864,* said that there was no provision for a second notice by the registrar, and the Act did not meet the case of a continuance of neglect. If any other construction were admissible, a new offence would be repeated every day that the child remained unvaccinated. The continuous omission might be as much within the mischief intended as the failure to have the child vaccinated within the prescribed time, but it was certainly not met by the statute. This, however, could only be remedied by fresh legislation. It is important to note these words, because they bring us to the first hint of the continued prosecutions which are now such a bone of contention. It was not, however, for fourteen years after the Act of 1853 was passed that this defect was remedied, though the principle of compulsion was affirmed by the Legislature on at least three distinct occasions—in 1861, in an "Act to facilitate proceedings before Justices under the Acts relating to Vaccination" in England (24 and 25 Vic., cap. 59); in 1863, in an "Act to further extend and make compulsory the practice of vaccination in Ireland" (26 and 27 Vic., cap. 52); and the same year in an "Act to extend and make compulsory the practice of vaccination in Scotland"† (26 and 27 Vic., cap. 108).

* *Pilcher (appellant) v. Stafford (respondent)*, 33 *L. J.* (N.S.), M. C. 113; 9 *L. T.* (N.S.), 749; 4 *B. & S.* 775.

† As Mr. Dodson's Bill relates to England only, I have not felt it necessary to do

Results of Central Inspection of Vaccination.—Meanwhile, the Vaccination Acts were, before the passing of the Act of 1867, very far short of what the Legislature had intended. Not only was the compulsion imperfect, and, as regards a great part of the kingdom, illusory, “but the condition which assuredly the Legislature intended to be a condition precedent to any enforceability of vaccination—the condition that thoroughly good vaccination, provided at the public expense, under proper and well notified arrangements, should everywhere and gratis be within reach of persons who may choose to avail themselves of it,”* was very imperfectly realised. The results of the central inspection of public vaccination, which had been authorised by the Public Health Act of 1858 (21 and 22 Vic., cap. 97), as reported in the successive Annual Reports of the Medical Officer of the Privy Council, made so evident the defects of the Act of 1853 that in 1866 the Government brought in a Bill to “consolidate and amend the statutes relating to vaccination in England”. This Bill, which was introduced by Mr. Bruce (now Lord Aberdare) as Vice-President of the Council, was read a second time without debate on the 8th March, but was referred on the 11th April, after considerable discussion, to a Select Committee.† The Select Committee reported on the 1st June; but on the 26th June the Ministry resigned, and the new Government withdrew the Bill, on account of the lateness of the session and the opposition it was likely to experience. The Lord President, however (the Duke of Buckingham), promised to consider the subject during the recess; and accordingly, on the 30th April, 1867, Lord Robert Montagu, who was at that time Vice-President of the Council, brought in a Bill similar to that of Mr. Bruce. After undergoing certain alterations in both Houses, this bill received the Royal Assent on the 12th August, and is still in force as the Vaccination Act of 1867 (30 and 37 Vic., cap. 84).

The Vaccination Act of 1867.—By this Act the obligation is imposed upon the parents of all children in England of having them duly vaccinated within three months of birth (section 16); or, in scattered districts, where public vaccination is performed at intervals of more than three months, when the opportunity of procuring public vaccination has been afforded (section 12). Neglect to take the child for vaccination within this period is an “offence” for which the parent can be proceeded against summarily, and for which he is liable to a penalty not exceeding twenty shillings (section 29). It will be observed that this offence is complete at the end of the three months or other period, and as therefore it can only be committed once, only one penalty can be inflicted on account of it.‡

Repeated Prosecutions Sanctioned by Parliament.—Under section 31 of the same Act, however, an order for the vaccination of a child under fourteen years of age may be made by a Justice of the Peace if he see fit, upon the application of the registrar [now vaccination officer], and such order may be renewed or repeated again and again, as often as may be requisite, until the vaccination of the child is effected. This is not, it is true, said in so many words in the section, but it is the view of the clause which has been invariably held, and it has been distinctly confirmed by the Court of Queen’s Bench. It was held by Lord Chief

more than incidentally allude to the Scotch and Irish Acts, which differ in certain important respects from those in force in England.

* *Fifth Annual Report of the Medical Officer of the Privy Council*, page 8.

† *Hansard’s Debates*, third series, vol. clxxxii, 1093-1113.

‡ See the case of *Pilcher v. Stafford*, before referred to.

Justice Cockburn, in the case of *Allen v. Worthy*,* that a person was rightly convicted for disobeying a second order, requiring him to have his child vaccinated, notwithstanding that he had been already convicted of disobedience to a previous order. He said: "It is clear that if the 31st section had not been introduced, the decision in *Pilcher v. Stafford* would have applied; but I think that that section makes all the difference as regards what may now be done with respect to a second offence and a second penalty. I think, therefore, that the power given by section 31 is not confined to one notice, one order, and one conviction, but that the whole proceeding may be instituted *toties quoties*, so long as the disobedience continues."

Proposals for Limitation of Penalties. Appointment of Select Committee of 1871.—It appears to have been after the passing of the Act of 1867 that the league of anti-vaccinators began to make themselves heard; and so early as 1870 a bill was introduced in the House of Commons by Mr. Candlish and Mr. Serjeant Simon, proposing to enact that no more than two orders should be made under section 31 of the Vaccination Act of 1867 for the vaccination of any one child. Though this Bill was not pressed, it was judged expedient by the Government of the day to propose to the House of Commons in the session of 1871 the appointment of a Select Committee "to inquire into the operation of the Vaccination Act (1867), and to report whether such Act should be amended." The labours of this committee, as is well known, were most thorough and complete. Their report,† with the appended evidence, is a document from which no one can rise without feeling that compulsory vaccination needs to be maintained if the nation would escape the horrors of unrestricted small-pox.

Views of Witnesses as to Repeated Prosecutions.—It would be foreign to my present purpose to deal with the Committee's report, except in so far as it relates to the question of penalties. A good deal was said by different witnesses on the subject, and much variety of opinion was expressed. Mr. Candlish, M.P., thought that the penalties should be gentle, and should be limited to twenty shillings in respect of each fine, the repetition of penalties being abolished (Q. 58, 60, 69, 72). On this proposal Mr. Simon, in his official capacity of Medical Officer of the Privy Council, observed that he thought it would fully answer the purpose as regards the masses of the population (Q. 3386). Asked if he thought much harm would come from a few crotchety people being allowed to pay the fine rather than have their children vaccinated, Mr. Simon said (Q. 3390) that on the general population, very little effect would be in that way produced. The number of persons who really object to vaccination and would resist it, he believed not to be large, though there were plenty of people who required the compulsory law to make them have the vaccination performed in due time. But the number of persons who really object to vaccination, apart from those who, at a particular moment, are alarmed by the absurd falsehoods that have been propagated by agitators about the country, he believed to be very small. Later on, Mr. Simon said (Q. 3505) that if the parent, in spite of a *bonâ fide* penalty, will not have his child vaccinated, and the State, for reasons of its own, prefers not to press indefinitely for successive penalties, then it seemed to him that at this stage of the case must be substituted a new view of the parent's responsi-

* 39 *L. J.* (N.S.), M.C. 36; 21 *L. T.* (N.S.), 665; *L. R.* 5 Q. B. 163.

† Report from the Select Committee on the Vaccination Act (1867); ordered by the House of Commons to be printed, 23rd May, 1871. Session paper 246 of 1871.

bility, and that he must be deemed to have accepted, instead of his former obligations, a special responsibility for otherwise guarding his child against small-pox. If he failed in this duty, and the child contracted small-pox, he should, without fail, be imprisoned for that failure of duty to protect his child.*

Mr. Simon and Mr. Fry on "Conscientious Objections".—Speaking of so-called "conscientious objections", Mr. Simon rightly said that when individuals set themselves up to struggle against the law, to see which should conquer, there was in such cases often "a strong dash of conceit, which makes the martyrdom less severe than it might seem to outsiders" (Q. 3504). To meet such cases, which is really what the Government are now trying to do, Mr. Fry, the present legal adviser of the Local Government Board, thought (Q. 3805) that a man might be exempted from penalty who took an oath or made an affirmation that he had conscientious objections to the vaccination of his child. I agree with the Select Committee, that if Mr. Fry's proposal was carried into effect as it stands, the law "would become a dead letter"; but I am not sure that if the conscientious objection was tested by making the affirmer pay something for it, and compelling him to appear publicly before a court of justice to testify to his conscientious objection, such a plan might not have its advantages over the proposed system of fines for the rare cases to which it would be applicable. The late Sir Dominic Corrigan proposed, with much insistence, that, in lieu of repeated penalties, unvaccinated children should be ineligible for admission to public schools, or to factories, or to the various public establishments in which young people are employed (Q. 4006, *et seq.*). I do not feel called upon necessarily to discuss this proposal; but I may point out that, in Spain and France, unvaccinated children are refused admission to the public schools and some other establishments. A somewhat similar prohibition prevails in parts of Germany and other countries. Certain other suggestions were made in the course of the inquiry with reference to this question of penalties, but I need not detain the Parliamentary Bills Committee with them.

Report of Select Committee.—I may pass at once to the very important report of the Select Committee, which, for reasons that will be sufficiently obvious, expressed the unanimous opinion of the Committee "that it is the duty of the State to endeavour to secure the careful vaccination of the whole population". On the question of the compulsory performance of vaccination, the Committee reported: "As it is almost impossible to enforce re-vaccination, it is most important that all children should be vaccinated, both for their own sakes and that of the community, to prevent their catching and spreading disease. There are three classes of children who being, by the conduct of their parents, left unvaccinated, are themselves in great danger, and may become centres of infection to others. 1. There are the children who are utterly neglected by their parents. 2. There is the much larger number of children of parents who, while not denying their duty or desiring to disregard it, postpone its fulfilment, and who, from carelessness or forgetfulness, delay to protect their children until driven to the vaccine station by the panic fear of an epidemic. 3. There are the children of those parents, very few in proportion to the whole population, who assert that vaccination will do harm. With regard to the

* At one time (I am unaware whether the law is still in force), the parents of unvaccinated Prussian children were prosecuted if their children took small-pox.

first and second of these classes, there can hardly be any objection to the principle of a compulsory law, though there may be practical difficulties in its application; but, in dealing with the third class, it becomes necessary to weigh the claims of the parent to control, as he thinks fit, the medical treatment of an infant child, as against the duty of the State to protect the health of the community, and to save the child itself from a dreadful disease. While weighing these conflicting claims, your Committee have had to consider the effect of the change in the law introduced by the Act of 1867, which, contrary to the provisions of the previous English or present Irish Acts, makes the parent liable to repeated convictions and penalties for not allowing his child to be vaccinated. There appear to have been several cases of infliction of more than one fine or imprisonment in regard to the same child; and your Committee, though by no means admitting the right of the parent to expose his child or his neighbours to the risk of small-pox, must express great doubt whether the object of the law is gained by continuing a long contest with the convictions of the parent. The public opinion of the neighbourhood may sympathise with a person thus prosecuted, and may in consequence be excited against the law; and after all, though the parent be fined or imprisoned, the child may remain unvaccinated. In such a case the law can only triumph by the forcible vaccination of the child. In enactments of this nature, when the State, in attempting to fulfil the duty, finds it necessary to disregard the wish of the parent, it is most important to secure the support of public opinion; and, as your Committee cannot recommend that a policeman should be empowered to take a baby from its mother to the vaccine station, a measure which could only be justified by an extreme necessity, they would recommend that whenever in any case two penalties, or one full penalty, have been imposed upon a parent, the magistrate should not impose any further penalty in respect of the same child. It has been suggested that the parent's declaration of belief that vaccination is injurious might be pleaded against any penalty; but your Committee believe that, if the law were thus changed, it would become a dead letter. Prosecutions would soon cease, and the children of the many apathetic and neglectful parents would be left unvaccinated, as well as the children of the few opponents of vaccination."

Proposal in Bill of 1871 to Limit Number of Penalties.—I do not feel it needful on the present occasion to attack the logic of a report which, while considering it to be "the duty of the State to endeavour to secure the careful vaccination of the whole population", would give a not inconsiderable proportion of indolent and apathetic people the opportunity of escaping this requirement by paying a nominal fine. I pass on at once to state that, in accordance with the recommendation of the Committee, a clause was inserted in the Bill to the following effect. "10. After the commencement of this Act, no parent of a child shall be liable to be convicted for neglecting to take or cause to be taken such child to be vaccinated, or for disobedience to any order directing such child to be vaccinated, if either (a) he has been previously adjudged to pay the full penalty of twenty shillings for any of such offences with respect to such child; or (b) he has been previously twice adjudged to pay any penalty for any of such offences in respect of such child." This clause, which is identical with the clause now proposed by Mr. Dodson, was passed in the House of Commons by a majority of fifty seven to twelve, but was fortunately thrown out in the

House of Lords. Though an effort was made to resuscitate it in 1872 by a Bill bearing the names of Mr. Pease, Mr. Leeman, and Sir Thomas Chambers, this was withdrawn, and since then the subject has not again been raised in the House until the recent sudden proposal of the Government.

The Vaccination Act of 1874.—So far, indeed, has the House of Commons been from accepting the principle that Mr. Dodson now proposes, that in 1874 a further Act (37 and 38 Vic., c. 75) was passed to give power to the Local Government Board to make regulations prescribing the duties of guardians and their officers in relation to the institution and conduct of the proceedings to be taken for enforcing the provision of the Vaccination Acts (the Act of 1871 having left the law in a somewhat unsatisfactory position in this regard). Article 16 of the Order issued by the Local Government Board on October 31st, 1874, in pursuance of this Act, was as follows. "The guardians shall, in all cases in which the provisions of the Vaccination Acts for enforcing vaccination have been neglected, cause proceedings to be taken against the persons in default, and for this purpose shall give directions, authorising the vaccination officer to institute and conduct such proceedings; but no such directions shall authorise the vaccination officer to take further proceedings under Section 31 of the Vaccination Act of 1867 in any case in which an order has already been obtained, and summary proceedings taken under that section, until he shall have brought the circumstances of the case under the notice of the guardians, and received their special directions thereon."

View of the Local Government Boards on Repeated Prosecutions.—It seems to me that this is the right solution of the question, and I am quite in accord with the letter* which the Local Government Board addressed to the guardians of the Evesham Union on the subject of these prosecutions.† It is distinctly contemplated by Article 16 of the General Order of October 31st, 1874, that, independently of any proceedings which may be taken against the person in default, under Section 29 of the Vaccination Act, 1867, the vaccination officer shall be authorised to take proceedings against him if he continues contumacious, at least once also under Section 31 of that Act. Until, therefore, proceedings under the latter section have been taken in a case and a conviction obtained, the several means which the law provides with a view to ensure the vaccination of a child have clearly not been used. By Article 16 of the Order, it is provided that, in any case in which a magistrate's order has been obtained, and summary proceedings have been taken under Section 31 of the Vaccination Act, 1867, no further proceeding shall be taken by the vaccination officer without the express instructions of the guardians. The intention of this provision is that the guardians should carefully consider, with regard to each individual case, the effect which a continuance of proceedings is likely to have in procuring the vaccination of the individual child, and in insuring the observance of the law in the Union generally. It is, on the other hand, undeniable that a repetition of legal proceedings has, in numerous cases, resulted in the vaccination of a child, when such vaccination has not

* Parliamentary Paper, No. 110 of session 1876.

† The Irish Local Government Board hold even stronger views on this subject than their English colleagues. In a circular, dated 14th January, 1879, they observe: "Each case of default should be diligently and closely followed, until the child has been vaccinated, or the non-performance of vaccination has been satisfactorily accounted for."

been procured by the previous proceedings; and it is therefore important, with the view of securing a proper observance of the law, that parents should be well assured that proceedings in case of non-compliance with its requirements will not be lightly discontinued. On the other hand, the Local Government Board admitted (and I agree with them) that, when in a particular case repeated prosecutions have failed in their object, it becomes necessary to carefully consider the question whether the continuance of a fruitless contest with the parent may not have a tendency to produce mischievous results, by exciting sympathy with the person prosecuted, and thus creating a more extended opposition to the law.

Mischief caused by Anti-vaccination Agitators, unless Prosecuted.—I must confess to entertaining the views of the Local Government Board (as enunciated in their Evesham letter) upon the particular question under discussion. The Board have guarded against an unduly zealous discharge of his duties by the vaccination officer, by providing that he is not to take more than one proceeding under each of Sections 29 and 31 of the Act of 1867, without the further directions of the guardians; and experience has certainly shown that guardians have generally erred on the side of over indulgence. Those persons who would appear from a casual view of the case, to have been prosecuted to the point of persecution for non-compliance with the Vaccination Acts, are almost invariably found to be those who go about the country, or about their district, spreading fabrications about the harm done by vaccination, and frightening mothers into thinking that their children will die or be permanently injured if they are taken to the vaccinator. It is absolutely necessary to prosecute such people, in order to secure due respect to the law; and it will be impossible to tell the mischief that will be caused if they are allowed to ride off triumphant against vaccination after the payment of a single fine of twenty shillings, or two fines which may be of nominal amount.

Parliamentary Return of Vaccination Prosecutions.—I have before me a return, made by order of the House of Commons, on the motion of Mr. James, of the proceedings taken against defaulters under the Vaccination Acts during the years 1872, 1873, and 1874.* I regret that I have been unable to obtain the figures for later years, as, although these were ordered by the House of Commons on the 29th July last, on the motion of Mr. Barran, the return has not yet been published. But the return for the three former years will afford a sufficiently good index of the extent to which these repeated prosecutions have been instituted. In England, at the present time, at least 95 per cent. of the births of every year are finally accounted for as regards vaccination, and the small percentage not accounted for contains cases postponed because of unfitness for vaccination, and cases which, though actually vaccinated, had not been so registered at the time the return was made. But the great majority of cases are those of children who, from removal of the parents or other cause, cannot be found. It can hardly be a matter of doubt that, if there were anything like the widespread feeling of opposition to vaccination that the anti-vaccinators aver, such results as these could not have been attained. It has, as a matter of fact, been found that, in the great majority of unions, the compulsory clauses of the Acts have not had to be put in force. Where such proceedings have

* Parliamentary Return "Vaccination Act, 1867", ordered by the House of Commons to be printed August 6th, 1875 (Sessional Paper 400 of 1875).

been found necessary, it has not usually been on account of positive opposition (except in certain head-quarters of the league), but generally on account of the apathy and indolence of parents. Although there are between eight and nine hundred thousand births every year in England and Wales, I find on analysis that, during the years 1872, 1873, and 1874, there were only 637, 514, and 521 persons prosecuted under Section 29 of the Act; and 144, 199, and 228 prosecuted under Section 31. Of this number, only about 77 were prosecuted more than once. In 1874, the latest year for which we have information, whilst nearly three quarters of a million vaccinations were performed, only 749 persons were summoned for non-compliance with the law—521 being under Section 29 and 228 under Section 31. Under Section 29, as already stated, no second prosecutions are possible; and of the prosecutions under Section 31 the great majority were little more than nominal. In only about 50 cases out of the whole number had proceedings been pressed beyond the extent expressly laid down in Article 16 of the Orders of the Local Government Board.

Objections to Mr. Dodson's Bill.—It is beyond doubt inexpedient to excite opposition to the law by continued prosecutions against people who do not intend to have their children vaccinated, and who are, by such action on the part of the local authority, elevated to the dignity of martyrs. But I do not see how the State is to interfere in the matter if the vaccination of the country is not to suffer. It seems to me that, whether a parent is or is not to be prosecuted again must be a matter on which local knowledge is essential. The man may, by setting the law at defiance, be exercising a very injurious influence on his neighbours, and may by his individual action be seriously hampering the efficiency of the vaccination laws in his district. I do not think, therefore, that the limitation of penalties proposed by Mr. Dodson is a principle which this Association ought to approve. By it a man, if fined once in the sum of twenty shillings, is to be allowed to leave his child unprotected against small-pox, and to be a source of danger to the community. Translated into plain language, it means that for a sovereign he may buy exemption from the law of the land; it is a sale of indulgences. Equally objectionable is the proposal that, if a parent has been fined twice in any amount, he is similarly exempt. Under this clause, a man may pay two sixpenny or shilling fines, and remove his children from the operation of the vaccination law for ever after.

It must not be forgotten that, even if a prosecution be instituted by the local authority, it is quite within the competence of the justices to refuse to make the order asked for, if they think fit. I would, therefore, most earnestly deprecate the sanction of this Committee being given to any such change in the law as Mr. Dodson would propose. The very large majority of defaulters are persons who are indolent and apathetic on the subject of vaccination; and these, sooner than take the trouble to bring their children for vaccination, will pay the bribe for being excused from it which Mr. Dodson's Bill would appoint. I trust, therefore, that the Committee, which was so successful in 1871 in securing the rejection of a similar clause, will use its influence against this proposed crippling of the law, which has been not improperly described as "the practical abolition of compulsory vaccination".

June 24th, 1880.

SUPPLEMENTAL REPORT
TO THE
PARLIAMENTARY BILLS COMMITTEE OF
THE BRITISH MEDICAL ASSOCIATION
ON THE
COMPULSORY CLAUSES IN THE VACCINATION LAWS
OF THE OTHER PARTS OF THE UNITED KINGDOM
BESIDES ENGLAND AND WALES.

BY ERNEST HART,
Chairman of the Committee.

Cumulative Penalties sanctioned by the Scotch, Irish, and Manx Laws.—In a report dated the 24th ultimo, which I have had the honour of submitting to the Parliamentary Bills Committee on the subject of the proposal made in the Government Bill now before Parliament to abolish cumulative penalties for non-compliance with the vaccination law, I purposely drew my arguments as to the inexpediency of such a proposal from the experience of England only, because it is only to that part of the kingdom that Mr. Dodson's Bill refers. It has been contended, however, as an argument in favour of the Government, that Scotland and Ireland have no continuing penalties, and have got on very well without them. At the request of the Committee, I have put together facts which I think will be amply sufficient to show that such a supposition is an entirely erroneous one. Both in the Scotch and Irish laws there exist clauses providing for proceedings being taken against defaulters until the law is complied with; and a similar provision is in force in the Isle of Man, under the provisions of the insular Vaccination Act of 1878. It will be my aim in what follows to set out the provisions of these Acts which relate to the compulsory performance of vaccination, in such a way as to show that the principle that we are striving to uphold—viz., that the offence of non-compliance is not purged until after the vaccination of the child—has been amply recognised and acted upon in each of the three kingdoms.

I.—SCOTLAND.

The Scotch Compulsory Vaccination Law.—Only one Act has been passed on the subject of vaccination for Scotland, and I may say at once that the reports both of the Board of Supervision and of the Scotch Registrar-General show the Act to have worked with exceptional success. How far this has arisen from the system pursued I am unable to say; but the fact remains, that in Scotland the very large proportion of the cases get vaccinated, and the number of defaulters is extremely small. The pestilence of antivaccination agitation does not seem to have affected Scotland, and I have discovered no traces of any such organised system of opposition to vaccination as we unfortunately have to meet in England. That so excellent results as the Registrar-General records should have been achieved in Scotland with a minimum of compulsion, reflects great credit upon the nation; and we could wish that such ready compliance were observed in England. It is a great mistake, however, to suppose that repeated prosecutions for non-vaccination may not be enforced in Scotland. To attempt to argue from the experience of that country in favour of the limitation of penalties is, therefore, completely fallacious.

Compulsory vaccination in Scotland dates only from the year 1863. In 1860, when small-pox was very prevalent in Scotland, Dr. Alexander Wood published a pamphlet entitled *Small-pox as it was, is, and ought to be*, in which he urged some legislative measure to render vaccination compulsory in Scotland. Subsequently, the Royal College of Physicians of Edinburgh appointed a Committee to consider the question; and they drew up a report, which was transmitted to the Lord Advocate. This had no apparent effect; but in 1863 the Town Council of Edinburgh were so alarmed at the prevalence of small-pox that they called a meeting, attended by delegates from their own body, by the Presidents of the College of Physicians and College of Surgeons, and by the managers of the three parochial districts into which Edinburgh is divided. The result of this consultation was that the town clerk and the officer of health were requested to prepare the heads of a Bill dealing with the subject. These heads were afterwards sent to the Lord Advocate, and were the foundation of the Bill which received the assent of Parliament in that year.*

The Vaccination (Scotland) Act of 1863.—The Bill, as originally introduced by the Lord Advocate, was almost an exact copy of Lord Lyttleton's English Act of 1853; but it created a good deal of opposition, chiefly among medical men. The College of Physicians took the matter up, and Dr. Alexander Wood and the late Dr. Burt were sent up to London to see the Lord Advocate on the subject. They did not succeed in getting him at first to adopt their views; but, after a subsequent interview with Sir George Grey, who was then Home Secretary, effect was given to a certain extent to the views of the College of Physicians, and the Bill, as amended, became law on the 28th July, 1863 (26 and 27 Vict., cap. cviii). There are essential differences between this Act and the English Acts. In the first place, no public vaccinators, in our English sense of the word, are appointed, and gratuitous vaccination for all comers is not offered, as in England. In this respect, I feel bound to express my concurrence with the views of the late Dr. Seaton, who, before the Select Committee of 1871, described the Scotch Act as "rather a hard one" (Q. 5445). The only persons for whom gratuitous vaccination is afforded are paupers and the recalcitrants to be afterwards described. Thus, the poor who are not actual paupers must pay to have their children vaccinated; and, of course, unless they pay a fair fee, the medical practitioners do not go to them. Constant allusions are made in the reports of local registrars to the Registrar-General of Scotland of the difficulty which arises from this circumstance; and in the large towns, such as Glasgow and Edinburgh, the disadvantage would be very serious indeed were it not for the benevolence of public institutions.

Method of Procedure under Scotch Act.—On the registration of the birth of every child, the registrar gives the parent a notice of the requirement of vaccination (Section 11 of the Act); and within six months† of the birth the parent is bound to cause the child to be vaccinated, and to deliver a certificate (which the medical practitioner will give him) to the registrar within three days of the date of the certificate (Section 8).

* See Dr. Alexander Wood's evidence before the Select Committee of the House of Commons on the Vaccination Act of 1867, pages 249 and 250 of Blue Book No. 246 of session 1871.

† In any reconsideration of the law, it would seem worthy of consideration whether this period is not too long for the large towns. In Glasgow, for example, the presence of a multitude of unvaccinated children of six months of age would constitute a very serious danger if small-pox should break out there. I understand this point has often been urged by local registrars; and I quite think that it would be well, for the larger towns at least, to lower the limit of age to three months, as in England.

In every case where a certificate of successful vaccination, or of postponement (Section 9), or of insusceptibility (Section 10), has not been received by the registrar, he is to intimate such failure to the parent; and if, after that, a certificate be not sent to the registrar within ten days from the despatch of such notice, the parent forfeits a sum of twenty shillings, and a further sum of a shilling to the registrar. Failing the payment of either of these sums, the parent is liable to be imprisoned for a period not exceeding ten days (Section 17). Every half-year, the registrar is to transmit to the local inspector of the poor a list of the names and addresses of such persons as have failed to transmit a certificate of vaccination; and, on the receipt of this list, the inspector is to lay it before the parochial board (corresponding to our English guardians of the poor), who will thereupon issue an order to their appointed vaccinator to vaccinate the persons named in the list. Notice in writing of such order is to be given to the persons in default; and, in pursuance of the order, the vaccinator is required to vaccinate the persons named therein, or any of them, at any time not less than ten nor more than twenty days afterwards, unless the children have previously been vaccinated (Section 18).

Penalties for Non-Compliance with the Act.—If any parent refuse to allow the vaccinator to perform the operation, “he shall, *for every such offence*, be liable to a penalty not exceeding twenty shillings, and, failing payment, to be imprisoned for any period not exceeding ten days” (Section 18). Section 25 specifies the manner in which penalties may be recovered under the Act, and empowers the sheriff, upon proof of the offence, to convict the offender, and, upon such conviction, to adjudge him to pay the penalty incurred, as well as expenses, “and to grant warrant for imprisoning the offender until such penalty and expenses shall be paid; provided always that such warrant shall specify the amount of such penalty and expenses, and shall also specify a period at the expiration of which the party shall be discharged, notwithstanding such penalty or expenses shall not have been paid, and shall in no case exceed two months”. A law that regards two months’ imprisonment as a reasonable penalty for non-compliance with the requirement of vaccination, hardly affords a good argument for those who object to the maintenance of the system of compulsion. Section 26 of the Act carries on the same idea of prosecution till the offence is purged. It provides that it shall be competent to raise such proceedings for enforcing any penalties incurred in contravention of the Act *at any time* during which the person against whom such proceedings are taken is in default; and Section 27 contains an important provision (not included either in the English or Irish Acts), that the Board of Supervision may themselves enforce vaccination if a parochial board fail to do it (a clause analogous to Section 299 of our English Public Health Act).

Continuing Penalties contemplated by Scotch Act and by Board of Supervision.—I desire to draw particular attention to the words which I have placed in italics in my quotation from Section 18 of the Act. If they mean anything, the words “*for every such offence*” evidently mean that continuing penalties are contemplated by the Act. They would hardly have been used if a single refusal to have a child vaccinated, and a single penalty, were regarded as sufficient to exonerate the person from further prosecution; and this view is upheld by the language of a circular issued by the Board of Supervision on March 31st, 1879, with regard to vaccination defaulters. It is to be noted that there is, in the Scotch Act, no such definition of child (*i.e.*, a person under the age of fourteen years) as exists in Section 31 of the English Act, but it would

seem clear, from the circular of the Board of Supervision, that it is intended that the English definition should be observed. In a circular addressed, on March 14th, 1879, by the Registrar-General of Scotland, to the local registrars after communications with the Board of Supervision respecting the defaulters under the Scotch Vaccination Act, attention was drawn to the "considerable variety of practice which prevails in filling up the half-yearly list of defaulters." Whilst some registrars embraced the names of all defaulters since January 1st, 1864 (when the Act came into operation), others merely inserted the names of those who had failed to transmit certificates when they first became due under the provisions of the Statute, thus practically confining each list to a period of six months, and never repeating the name of a defaulter after he had been once reported. The Registrar-General accordingly gave instructions for the next half-yearly list of the registrars to include the names of all defaulters in the district since January 1st, 1864, specifying how this should be done, and saying that he would consider what uniform course ought henceforth to be followed in the matter. The Board of Supervision, in forwarding a copy of this circular to the local inspectors of the poor, said, "When the list of defaulters is received by you, it will be your duty to make all necessary inquiries regarding the persons named in the list, and to call an early meeting of the parochial board, with the view of their carefully revising the list, and giving such instructions as may be requisite..... You will observe that this is probably the last occasion on which the names of the whole number of defaulters since 1864 will be sent to the parochial board" [meaning, doubtless, that the children over fourteen years of age that had escaped vaccination ever since their birth in the year 1864, would, after 1878, be absolved from further proceedings]; "and it is important that the parochial board and its officers should carefully revise this list, so as to bring the number of defaulters on the Registrar's books within the narrowest possible limits, and thereby diminish their labours for the future."

I hardly see how this (when considered in connection with the terms of Section 18 of the Act) can be regarded in any other light than that the Board of Supervision expect that every defaulter is to be brought up again and again in each half-yearly return, and the proceedings required by the law gone through each time with regard to the case, until the vaccination has been effected. It may be quite true that no second proceedings have been required to be taken;* but clearly they are permissible under the terms of the Act, and are regarded as permissible by the Scotch central authorities. The latter have been so fortunate as not to meet with the organised system of opposition that their English colleagues have had to combat, and, therefore, there has been no occasion for any more definite expression of their views than is contained in the circular I have quoted; but I think it is clear that they do contemplate repeated prosecutions in cases where such may prove to be necessary.

Success of the Act.—The Scotch Act has undoubtedly been a conspicuous success. To say nothing of the marked decrease of small-pox

* During Dr. Alexander Wood's examination before the Select Committee of 1871, the following questions were asked him by Dr. Lyon Playfair:—Q. 4386: "Do you know of any case of a second penalty having been exacted under the Scotch Act?" "I do not." Q. 4387: "Is not the clause in the Scotch Act much more distinctive in power for a second penalty than the clause in the English Act?" "I think so. It is not nearly such a hardship to a parent to be fined for resisting vaccination as to be fined for the neglect of it." See also Dr. Wood's answers to the questions of Mr. Candlish (4432-4441), which lead to the same conclusion.

which has accompanied it, authorities on the subject (including the late Dr. Seaton) agree that it has worked remarkably well. The system is not one that could be adopted in England, with its much larger aggregations of population, and where the leaving of the independent poor to their own devices in procuring the vaccination of their children would undoubtedly result in their getting the worst kind of vaccination instead of the best, as at present. Of course, the sparseness of the population in Scotland would have made stational vaccination very difficult; but it is, I think, a mistake to limit free vaccination to actual paupers, and to defaulters. I do not feel called upon now to discuss this question at any length, but may point out that, under the Scotch Public Health Act, an endeavour has been made to meet the difficulty by giving to *sanitary authorities* the power to offer vaccination at the public expense. I have already expressed, in my former report, the opinion that sanitary authorities ought to have the control of vaccination, as an important department of their work in preventive medicine. Dr. Russell of Glasgow, in a recent very able report,* has strongly pointed to the need for the change which I have advocated. More than a quarter of a large number of persons living in Glasgow who had been given up by the vaccination authorities as undiscoverable, were successfully followed up and discovered by Dr. Russell's inspectors, who "found themselves among their ordinary clients, and in the streets and closes to which their ordinary work led them." The moral of this is too obvious to need comment.

Vaccination by Sanitary Authorities.—In a minute issued by the Board of Supervision on December 7th, 1876,† when the recent epidemic of small-pox had commenced, the attention of local sanitary authorities was directed to the fact that, by the fifty-seventh section of the Scotch Public Health Act of 1867, "the local authority are authorised to defray the cost of vaccinating all such persons as to them may seem expedient, other than paupers, or the children of paupers, or defaulters under Section 18 of the Vaccination Act. The obligation to vaccinate paupers, children of paupers, and defaulters, rests upon the parochial board; but that board cannot legally defray out of the poor-rates the cost of vaccinating any other persons. The local authority, under the Public Health Act, however, are empowered to defray, out of the assessment levied in terms of that Act, the cost of vaccinating all persons except those whom the parochial board are bound to vaccinate, to whom it may seem expedient to the local authority to apply the provisions of the enactment referred to." The Board made a series of recommendations, based upon those offered in 1871 by Dr. Husband, the Superintendent of the Central Vaccine Institution for Scotland, amongst which was one that "the unvaccinated should be searched for, especially among the unsettled and migratory portion of the population, among whom chiefly the disease is likely to appear in the first instance. All this shows clearly the evils of two authorities working over the same field, and is a strong argument in favour of the transfer to sanitary authorities of the whole of the duties, for the prevention of small-pox."‡ It shows, also, the anxiety of the Board of Supervision to secure

* See BRITISH MEDICAL JOURNAL, vol. ii, 1879, page 877.

† Thirty-second Annual Report of the Board of Supervision, App. A, p. 14.

‡ On this question, Mr. Sheriff Spens, who has taken much interest in the subject of sanitary legislation, writes as follows, in his work on the *Sanitary System of Scotland*, under the heading "Evasion of Vaccination Act." "In all districts, but in mining districts more especially, there is constant flitting from one locality into another. The result of this not unfrequently is, that children under six months of

the vaccination of the entire population by the exercise of every possible means which the law allows.

Effect of the Compulsory Clauses of the Act.—Leaving this, and the other equally interesting question of the merits of the Scotch system of fining a man for refusal rather than for neglect, I proceed to consider the effect of the compulsory clauses of the Act. It would appear, both from Dr. Alexander Wood's evidence before the Select Committee in 1871, and from other sources, that there has been hardly any serious opposition to vaccination in Scotland. Dr. Wood stated (Q. 4379), that there was "scarcely any irritation of the population against the Vaccination Act"; that the number of persons unvaccinated was very few; and that it was the opinion of those in authority that there would not be an unvaccinated child in Scotland if there were the means of overtaking the migratory population (Q. 4399). Asked by Mr. Peter Taylor (Q. 4493), whether the "only objection which you have had to overcome on the part of the people has been a sort of *vis inertiae*, apathy, and carelessness", Dr. Wood answered: "I think it arises more from carelessness than from any disapproval of vaccination. In fact, I find the greatest anxiety on the part of parents in all ranks of life to have their children vaccinated." This would appear, indeed, to be self-evident from the figures given in successive reports of the Board of Supervision. It would be both tedious and unnecessary to give the actual figures as to defaulters which appear in the successive reports of that Board. The number of such defaulters has been always very small, and it will be sufficient to give the figures for the three most recent years for which returns have been published. In the three years ended June 30th, 1877, 1878, and 1879, there were 5,166, 5,179, and 10,333* defaulters respectively reported by the registrar to the parochial board under Section 18 of the Act. The number of persons vaccinated under the terms of the eighteenth section of the Act (*i.e.*, by the vaccinators going to the homes of the parents under the orders of the parochial board) was 1,951, 1,090, and 1,791 respectively; and, out of these cases, only 34 prosecutions had to be instituted. The number of vaccinations performed by the appointed vaccinators bears a quite insignificant proportion to the births. Thus, though there is an average of about 44,000 births per year in Scotland, only 3,306, 3,235, and 3,337 persons were officially vaccinated by the vaccinator during the three years ended June 30th, 1877-8-9; and, of these, 2,361, 2,044, and 1,468 were persons not in receipt of parochial relief.

These results show sufficiently well the excellent way in which the Scotch Vaccination Act is working. Fortunately, no proposal is being made to modify its stringency, as is the case with the English law; and it cannot be doubted that, were any such attempt made, it would

age are removed from one registration district to another without the registrar knowing where they have gone to. This may lead either to unintentional or wilful evasion of the Vaccination Act. Possibly it should be made a provision of the Vaccination Act that all parents leaving a registration district, with children unvaccinated under six months old, should be liable, under a penalty, to report their leaving the district, and the place to which they were going, to the registrar of the district they were leaving, who would then acquaint the registrar of the district to which they were going. If such provision were made, it should be a part of the sanitary inspector's duty to see to its enforcement; while, if no such provision be adopted, he should be instructed to keep a watch over the young infants brought into his district, and see that they have been vaccinated—a thing easily done by simply looking at the arms of the children."

* This exceptionally large figure is doubtless owing to the issue of the circular of the Registrar-General already referred to.

be attended with disastrous results. The wholesome fear which is now felt for the law would soon give place to neglect and carelessness, and the consequence would be a vast aggregation of arrears on which small-pox would spend its full force in the fashion that it was accustomed to spend it in Scotland a generation ago.

II.—IRELAND.

Progress of Legislation.—Before vaccination was made compulsory in Ireland, the neglect of infantile vaccination in that country had been extreme. At the time that the Epidemiological Society made its report in 1853, 79 per cent. of the small-pox mortality in Ireland occurred in children under five years of age, and although there had been, under the Acts immediately to be referred to, an increase since then in the number of vaccinations performed, this had not been sufficient to reduce the proportion of small-pox deaths under five years of age below 75 per cent. up to the time when the Compulsory Act of 1863 came into operation. The English Vaccination Act of 1840 (3 and 4 Vict., c. 29), directing the appointment of public vaccinators by Poor-law guardians, had applied also to Ireland. It seems, however, to have been virtually a dead letter, and was in effect repealed by an Act of 1851 (14 and 15 Vict., c. 68), under which the medical officer of every district was required to vaccinate all persons coming to him for that purpose. By a subsequent Act (21 and 22 Vict., c. 64), it was provided that the committee of management of every dispensary district should divide such dispensary districts into as many vaccination districts as they deemed proper, and should appoint vaccination stations. It was not, however, until 1863 (the year that vaccination was made compulsory in Scotland), that a compulsory law for Ireland was also passed. Under the Act of 1863 (26 and 27 Vict., c. 52), which is still in force, every child born after January 1st, 1864, was to be brought, within six calendar months of birth, for vaccination by the medical officer of the dispensary district, unless vaccinated previously by some other medical practitioner (Section 1).^{*} At the registration of every birth, the registrar was to give a notice of the requirement of vaccination; and if, after such notice, the parent "shall not cause such child to be vaccinated.....without any reasonable excuse for such failure or omission, then such father or mother, or person having the care, nurture, or custody of such child as aforesaid, so offending, shall forfeit a sum not exceeding ten shillings" (Section 8). Section 13 enabled the guardians to direct proceedings for the purpose of enforcing obedience to the Act; "and such proceedings on account of neglect to have a child vaccinated may be taken at any time during the continuance of the neglect."[†] By another Act passed in 1868 (31 and 32 Vict., c. 87), it was provided that public vaccination was not to be considered as of the nature of parochial relief, alms, or charitable allowance.

Repeated Penalties Sanctioned by Parliament for Ireland.—No further "vaccination" legislation was made for Ireland until last year, but a very important alteration was made with regard to the particular subject of penalties now under our consideration, by the Public Health (Ireland) Act of 1874 (37 and 38 Vict., c. 93). It is a curious specimen of the haphazard method of our existing legislation, that a clause affecting very importantly the vaccination laws of the country should have strayed into a Public Health Act, containing nothing whatever else

^{*} Vaccination is now (under the Act of 1879) made compulsory in Ireland within three months of birth (see *postea*).

[†] This section has now been repealed by Section 10 of the Act of 1879.

about vaccination, which is indeed a matter not coming within the cognizance of the authorities who have to work the Act. Section 58, however, of this Act of 1874 virtually repeated the exact wording of Section 31 of our English Vaccination Act of 1867, in providing that, upon information given by a registrar or officer appointed by the guardians to enforce the Vaccination Acts, a justice might order a child under the age of fourteen years to be vaccinated within a given time, and in imposing penalties on the parent for omission to comply with such order. It is under Section 31 of the Act of 1867, as detailed in my previous report, that repeated proceedings can be taken against the parent; and Section 58 of the Irish Act of 1874, therefore, introduced into Ireland the principle of cumulative penalties for neglect of vaccination. The Act of 1874 was repealed by the Consolidated Public Health Act of 1878, but this particular clause was reproduced in Section 147 of the new Act.

The Vaccination (Ireland) Act of 1879.—Meanwhile, the attention of the Irish Medical Association had been drawn to the inefficiency, in certain of its aspects, of the Act of 1863; and, so long ago as February 1877, the Association addressed Sir Michael Hicks-Beach, the then Irish Secretary, on the unsatisfactory state of the law. Two draft Bills were prepared by the Council of the Association, and were presented to the Government, accompanied by a series of observations most carefully drawn up by Dr. Speedy.* In 1879, the Government introduced a Bill dealing with the subject, and this, with alterations made through the exertions of Mr. Meldon and Mr. Mitchell Henry, was passed into law last session as the Vaccination Amendment (Ireland) Act, 1879 (43 and 44 Vict., ch. 70). By Section 2 of this Act, the maximum limit of age at which vaccination becomes compulsory was altered from six months (as prescribed by Section 1 of the Act of 1863) to three months, and provision was made for the cases of children born elsewhere than in Ireland, but brought into it after the passing of the Act without being vaccinated. It will be observed that the law of Ireland is, as regards the limit of age, more stringent than that of England, where the parents of children living in districts where public vaccination is appointed at intervals of more than three months do not become liable until the opportunity of public vaccination has been afforded to them. Section 7 enacts that, when any parent or other person having the custody of a child fails to produce such child when required so to do by any summons under the Vaccination Acts, such parent or other person shall be liable, on summary conviction, to a penalty not exceeding twenty shillings. Every parent or person having the custody of a child who neglects to take such child or cause it to be taken to be vaccinated, or after vaccination to be inspected, and does not render a reasonable excuse for his neglect, is guilty of an offence, and is liable to be proceeded against in a summary manner, and, upon conviction, to pay a penalty not exceeding twenty shillings.

By Section 10, the guardians of any union in Ireland may direct proceedings to be instituted for the purpose of enforcing obedience to the Acts, "and such proceedings, on account of neglect to have a child vaccinated, may be taken at any time during the continuance of the neglect". Other sections of interest are No. 5, which provides that the vaccinator is to give a certificate of successful vaccination to the parent (apparently contemplating that this shall be permanently kept by him), and to send a duplicate of it to the registrar; and No. 10, which enacts that the registrar is to transmit to the dispensary medical officer, at least once a month, a return of all births and deaths of infants under twelve

* See BRITISH MEDICAL JOURNAL, vol. i, 1879, page 751.

months of age which have been registered in the district of the dispensary medical officer to whom the return is sent.*

Law of Ireland as to Penalties.—It will be observed that this particular Act does not materially alter the procedure as regards prosecutions which was laid down in the Act of 1863. The law of Ireland as regards penalties seems to me, therefore, to be, that any parent who, after the notice of requirement has been sent to him by the registrar, neglects to have his child vaccinated within the statutory period, is guilty of an offence for which he may be proceeded against and fined twenty shillings (Section 8 of Act of 1863, and Section 7 of Act of 1879). This offence is complete at the end of three months, and only one penalty can be inflicted on account of it.† But, under Section 147 of the Public Health Act of 1878, an order for the vaccination of a child under fourteen years age may be made by a justice of the peace, if he think fit, upon the application of the registrar, and such order may be renewed or repeated, again and again, as often as may be necessary, until the vaccination of the child is effected. I have already given Lord Chief Justice Cockburn's decision upon this point in the case of *Allen v. Worthy*. I would add, as showing that this clause of the Act of 1878 must be regarded in Ireland as sanctioning repeated prosecutions, that in the *BRITISH MEDICAL JOURNAL* for January 10th, 1880 (p. 63), is the report of the case of a man at Limerick who was fined for the fifth time for refusing to have his child vaccinated. The proceedings against this man can only have been legally taken under Section 147 of the Act of 1878.

General Assent of the Irish Nation to Vaccination.—Notwithstanding the defects of the Act of 1863, it seems to have worked extremely well. This may be partly accounted for by the general assent of the population to vaccination, very little opposition to the performance of the operation being experienced. The late Sir Dominic Corrigan, M.D., in his evidence before the Select Committee of 1871, said (Q. 4002) that in Ireland "the people are most favourably disposed to vaccination". Asked (Q. 4003) whether "there is any agitation against vaccination, or any large number of people who object to vaccination being carried out", he replied "No; the feeling of the whole country is in favour of it". Mr. Meldon, M.P., speaking in the House of Commons on the occasion of the second reading of the Bill of last year, stated that "it was a fact that all the antivaccination leaguers in England, however much they had tried, had never been able to stir up the slightest feeling in Ireland against vaccination". He said that he knew no one in Ireland against the Bill, "for in that country the popular feeling was decidedly in favour of vaccination; and he did not think they would be able to get one person in Ireland to corroborate any of the statements" made by Mr. Hopwood, in his usual reckless fashion, against vaccination. Mr. Mitchell Henry "could not support the second reading of the Bill without congratulating the country that there was no prejudice in Ireland against vaccination". "To his own certain knowledge, in the western part of Ireland, the people had flocked in hundreds of thousands from all parts to be revaccinated. Their enthusiasm for the operation was extraordinary. The epidemic in the West of Ireland had been stamped out, he believed, entirely by the enthusiasm of the people in favour of vaccination."‡

As to the use to be made of these lists, see the circulars of the Local Government Board of the 20th August, 1878, and 14th January, 1879, subsequently referred to.

† See the case of *Pilcher v. Stafford*, referred to in my previous report.

‡ See a special report of this debate in the *BRITISH MEDICAL JOURNAL* for April 12th, 1879, p. 571.

Defects of the Irish Act: Action of the Poor-law Commissioners.—Whilst making all due allowance, however, for the enthusiasm of the people, it cannot be doubted that a large share of the successful result has been due to the energy of the Irish Poor-law Commissioners. Had these gentlemen been content, like their English colleagues, to let the law drift on without taking any steps to insure its effectual working, the manifold defects of the Act would have proved fatal to its success. But by the issue of circulars and the exercise of supervision, the Commissioners succeeded in getting the Act very energetically administered. The Irish Act of 1863 (which, it must be remembered, is still the "principal" Vaccination Act for Ireland, only a few of its sections having been repealed), is virtually the same as the English Act of 1853, supplemented by the Act of 1861, which gave powers to guardians to prosecute. It is open, therefore, to the same objections as I have already pointed out in my previous report, as attaching to the Act of 1853. Whilst it imposes upon all parents the obligation of having their children vaccinated, it does not specifically impose upon any authority the duty of seeing that this obligation is complied with. The guardians are empowered, indeed, to take proceedings, but no more. The Act makes provision in a very imperfect way for a registration of vaccination by providing that the registrar shall keep "a register of the persons of whose successful vaccination a certificate shall have been transmitted to him" (Section 7); but it makes no provision for systematically reporting defaulters, as in England and Scotland. The Irish Poor-law Commissioners have clearly recognised the mischief thence arising in permitting of escape from the requirements of the law. Commenting on the number of cases which of necessity evaded the administrative machinery appointed by the Act, they observed, in their Annual Report for 1870: "To prevent the addition of successive cases year by year to the fuel thus provided for small-pox.....affords a powerful motive to use every effort to render the vaccination of all liable to the Compulsory Vaccination Act as complete as possible." Further, when in some parts of Ireland the magistrates were inclined to deal with the offenders brought before them by imposing penalties that were nothing more than nominal, the Commissioners thought it their duty to make a representation on the subject to the Lord Lieutenant, who thereupon sent out a circular to the magistrates throughout Ireland, calling their attention to the extremely small penalties, sometimes not exceeding a penny, occasionally inflicted by the magistrates at petty sessions on defaulting parents prosecuted by the Irish boards of guardians, whereby the people were led, he said, to believe that the authorities were indifferent to the enforcement of the law. The circular contained the following passage: "I am directed by his Excellency to draw your particular attention to this subject, as the Government attach great importance to the necessity of the statute being fully enforced, and that every means should be taken to oblige people to take advantage of the legislative enactments as to vaccination gratuitously provided for the protection of young people."*

Returns of Defaulters to Boards of Guardians.—With the view of surmounting the difficulty (to which I have just referred) arising from the absence of any periodical list of defaulters, the Local Government Board for Ireland (who had meanwhile succeeded the old Poor-law Commissioners) required, by Paragraph XI of the twenty-first article of

* See the evidence of the late Dr. Seaton on page 303 of the Report of Select Committee of 1871.

† Seventh Annual Report of the Local Government Board of Ireland, pp. 103 and 105.

their Rules and Regulations for the management of dispensary districts, that the medical officer should forward to the board of guardians, on June 30th and December 31st in each year, a report containing the names of all children registered as born in the district who were over six months of age and who did not appear to be vaccinated. This return was introduced by the Local Government Board "to enable the board of guardians to exercise a more effectual control in regard to the provisions of the Compulsory Vaccination Act, by taking proceedings against any person responsible for having a child vaccinated who shall be found to have wilfully neglected to do so". In circulars dated August 20th, 1878, and January 14th, 1879,† the Local Government Board drew attention to this requirement, and asked for a summary of the particulars in the returns, and of the results of the relieving officers, inquiries (which they suggested should be made) in the cases of default—with a view to the necessary steps being taken to obtain, or, when required, to compel, compliance with the provisions of the Vaccination Acts. The Board added: "Each case of default should be closely and systematically followed up until the child has been vaccinated, or the non-performance of vaccination has been satisfactorily accounted for;" with the further addition, in their second circular, that "the clerk of the union should report on the subject every week to the board of guardians. By regular and systematic proceedings in this way, the board of guardians will be kept duly informed of what is going on, and readily enabled to see that the law is obeyed in their union." Only one return in response to this circular has as yet been published. It shows that, out of a total of 16,489 "defaulters" returned in the whole of Ireland for the half-year ended June 30th, 1878, 11,230 were found vaccinated, 2,341 had left or could not be found, 1,148 were unfit, and 2,918 were still unvaccinated (which would represent about 4 per cent. of the births: a very low percentage, in view of all the circumstances).

Conclusions.—I think, therefore, that from the experience of Ireland, as well as that from Scotland, we may learn the unwisdom of a Government sale of indulgences from vaccination. The efficiency of vaccination is sustained in both of those countries by the knowledge that there is a power behind that will compel, when other means for securing obedience to the law have failed. That this power has not needed to be called into requisition to any great extent in either of those countries is no argument at all against pulling down the buttress of our English law. In Scotland and Ireland, obedience to the law is ready and willing. In England it would be the same, but for the mischievous agitation and widely spread misstatements of the Antivaccination League. To abolish the power of compelling a citizen to do his duty to his children, to the State, and to his neighbours, when other means have failed, is virtually to invite a man to neglect his legal obligations and to set the law at defiance. The principle of cumulative penalties has been amply recognised in successive Public Health Acts as punishment for the perpetuation of nuisances in no respect worse than an unvaccinated child; and it is a principle that has been, as regards vaccination, affirmed and reaffirmed by the Legislature on many occasions. The adoption of the Government proposal would, therefore, be fraught with great danger to the health of communities and to the public welfare.

III.—ISLE OF MAN.

Small-Pox Epidemic of 1877.—I deem it important, in conclusion, to refer briefly to the Manx law on the subject of vaccination, with the view

of showing how universally the need is felt for penalties of sufficient stringency to secure the due enforcement of that operation. In 1877, there was no system of compulsory vaccination in the Isle of Man. A case of small-pox was imported from Manchester to Douglas, and was sent to the hospital. The wife of the patient was allowed to attend him, and, despite all endeavours, went into the town on several occasions. The disease spread very rapidly, especially in the filthy purlieus of the old town, until, between July 8th, 1877, and March 11th, 1878, no less than 257 cases occurred. The epidemic caused such panic that a sanitary commission was appointed by the Lieutenant-Governor to decide, amongst other things, whether vaccination ought not to be made compulsory in the island. In the report of this commission, the decided opinion was expressed that this should be done. Facts brought to the notice of the commissioners seemed to them to "point plainly in this direction, and are only confirmatory of the experience of medical men in England and elsewhere. The deaths from small-pox during the present epidemic here have been only 7 per cent. among the vaccinated patients, whereas among the unvaccinated there have been more than 40 per cent.; while it may be mentioned that there has not been a single case among those brought under the notice of the house-surgeon [of the hospital] where a revaccinated person has been attacked."

The Manx Vaccination Act of 1878.—Acting upon this report, the Lieutenant-Governor (Mr. H. B. Loch, C.B.) had no difficulty in procuring the passing by the House of Keys of an Act of Tynwald making vaccination compulsory within three months of birth. The method of procedure seems to be modelled upon the English Act, and need not therefore be particularly described. A notice of the requirement of vaccination is given to each parent, public vaccinators are appointed at fees per case to perform vaccination gratuitously at least every three months, and in other respects the English Act is closely followed. Section 19 of the Act is similar to Section 27 of the English Act of 1867, in imposing a penalty of a pound on persons who neglect to take their children for vaccination; and Section 21 of the Act reproduces Section 31 of the English Act, under which repeated proceedings may be taken.* The Manx Legislature, has, therefore affirmed the principle which it is now desired to upset in England. I should not wish to make too much of this; but, in a small community like the Isle of Man, where local and class prejudices must necessarily be much more potent in their influence on the Legislature than in England, I think this acceptance of the principle of repeated penalties is not without its significance.†

The experience, therefore, not only of England, but of Scotland, Ireland, and the Isle of Man, is quite opposed to the view that the Government are now taking; and I sincerely hope that they may see fit to reconsider what cannot but be considered as a hasty and rash proposal.

* See the case of *Allen v. Worthy*, referred to in my previous report.

† It is interesting in another connection to note that, under the Manx Vaccination Act, a beginning has been made with regard to the registration of disease in the island. Section 25 of the Act provides that "it shall be the duty of any householder in whose house any person shall be infected with small-pox, and of every medical practitioner who shall professionally attend any person infected with small-pox, as soon as may be to give notice at the nearest police-station of such person being so infected. Any person acting in contravention of this section shall be liable, on conviction, to a penalty not exceeding five pounds."