

File No. 7362 Continued.

OPINION.

ever been passed providing for this examination, but that the practice was adopted by him some years ago as a very desirable one.

Dr. Bosley states further that as a matter of fact the practice is of the greatest good and importance and that the School Board is more than satisfied to have it exist.

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Dr. Bosley however, asks this Department as to the legality of his action of refusing admission to the public schools, or of excluding from the public schools, any applicant who is unwilling to submit to the examination.

Cases involving the power to refuse admission to the public schools to applicants who do not consent to a physician's examination have almost always arisen, as far as I can find, in connection with the City's right to vaccinate. It is every where held that vaccination may be made a prerequisite to admission by statute. When no statute exists making vaccination compulsory, some cases hold that neither the Board of Health, nor the School Board can pass a resolution excluding children who refuse to be vaccinated. On the other hand, other cases hold that under the general power to protect the public health, the City authorities may adopt regulations requiring vaccination in cases of emergency, or where there is reasonable ground for fearing the spread of small-pox. These cases seem to me to embody the sounder view. All of the authorities are collected in the Encyclopaedia of Law, Volume 25, page 23.

5560

It will thus be seen that the cases which hold that the City authorities, in the absence of statute, can, under the health power, make vaccination a prerequisite to admission to the public schools, do not allow vaccination to be required indiscriminately, but only when some danger of contagion from small-pox exists; in other words, there must be some reason for it.

Applying these principals to the present case, I think it at least very doubtful, whether in the absence of statute the School Board, or the Health authorities, could pass a resolution prescribing a physical examination as a prerequisite in all cases, to admission to the public schools, in the absence of some specific reason calling for such examination, (such for example, as the existence or prevalence of some disease, or of some reason to believe that the particular applicant has been submitted to