

RETURN

Of all correspondence between the Provincial Government and the Board of Health of the City of Victoria, in relation to the late Quarantine transactions in British Columbia.

By Command,

JOHN ASH,

Provincial Secretary.

PROVINCIAL SECRETARY'S OFFICE,
27th January, 1873.

The Secretary of the Board of Health to the Provincial Secretary.

CITY COUNCIL CHAMBERS,
21st June, 1872.

SIR,—Having received news, per telegraph, that the Steamship "California" has left San Francisco for this port, or Esquimalt, I am directed by the President, on behalf of the Board of Health, to inquire whether, in the event of the said vessel anchoring in Esquimalt Harbour, and there being any case or cases of contagious disease on board, the Board of Health have power to cause her to be placed in Quarantine.

I have, &c.,
(Signed) WM. LEIGH,
Secretary to the Board.

The Provincial Secretary to the Secretary of the Board of Health.

PROVINCIAL SECRETARY'S OFFICE,
22nd June, 1872.

SIR,—In reply to your letter of the 21st inst., I have the honor to forward you herewith, a copy of the Attorney General's opinion on the subject alluded to by you.

I have, &c.,
(Signed) A. ROCKE ROBERTSON,
Provincial Secretary.

The Attorney General's opinion.

ATTORNEY GENERAL'S OFFICE,
22nd June, 1872.

Since the Proclamation of 18th January, 1860, the Port of Victoria and Esquimalt Harbour have been treated as one by the Legislature, and I think there is good ground for contending that for the purposes of the Health Ordinance, 1869, and the By-Law of the 17th May, 1869, the Port of Victoria must be taken to include the Harbour of Esquimalt, and I should recommend the Mayor to act accordingly.

I have, &c.,
(Signed) J. F. MCCREIGHT,
Attorney General.

(Copy)

The Lieutenant-Governor to Sir John McDonald.

VICTORIA, B. C.,

26th June, 1872.

If Canadian Quarantine Law applies to this Province, pray direct proper officer to enforce Law here immediately. Such action urgently needed as small-pox cases have arrived by steamer

Signed, JOSEPH W. TRUTCH.

The Secretary of the Board of Health to the Provincial Secretary.

BOARD OF HEALTH,

29th June, 1872.

SIR,—I have the honor to inform you that at a meeting of the Board of Health, held on the 28th inst., the following resolution was passed:—

“Moved that the Clerk of this Board be instructed to forward the following resolution to the Honorable Provincial Secretary, for the information of His Excellency the Lieutenant Governor in Council.

“Resolved, That this Board, in view of the legal opinion expressed by the Honorable the Attorney-General at an interview had on the 28th instant, viz: ‘That it would not be safe for the Board to commence legal proceedings against parties for violation of the Health Ordinance and the By-Law relating to Quarantine;’ thereby giving rise to doubts as to the extent of their legal authority, desire to convey to His Excellency the Lieutenant-Governor the feeling of the Board that until they are invested with full legal powers to act, they feel indisposed to take any further action in reference to matters of Quarantine.”

I have, &c.,

(Signed) WM. LEIGH,

*Clerk to the Board of Health.**The Provincial Secretary to the Secretary of the Board of Health.*

PROVINCIAL SECRETARY'S OFFICE,

29th June, 1872.

SIR,—I have the honor to acknowledge the receipt of your letter of this date. Having laid your communication before His Excellency, I am directed to inform you that His Excellency, with a view to assist the Board of Health in the discharge of their arduous and invidious duties, obtained for the Board the advice of the Attorney-General, and that officer expressed an opinion upon a special case which the Board laid before him. The Attorney-General did not give any such general opinion as you express in your resolution. Whatever may be the powers conferred on the Board of Health by the existing Act and the order thereunder, His Excellency is advised that the Quarantine Act of the last Session of the Dominion Parliament precludes His Excellency from enlarging or diminishing this power. As to the Board of Health declining to perform the duties which the law imposes upon them, I may add that the responsibility is theirs and His Excellency cannot advise them to such a course.

I have, &c.,

(Signed) A. ROCKE ROBERTSON,

*Provincial Secretary.**The President of the Board of Health to the Provincial Secretary.*

BOARD OF HEALTH,

2nd July, 1872.

SIR,—At a meeting of the Board of Health held this day, a resolution was passed that the Chairman be requested to forward for the information of His Excellency the Lieutenant-Governor, a reply to the untruthful statements contained in the communication from Captain Williams, of the Steamship “Prince Alfred,” and addressed to Captain Fitzgerald, H. M. S. “Boxer,” and making every allowance for the acerbity of feeling on the part of Captain Williams at the detention of the “Prince Alfred,” the Board cannot but express their surprise that he should have made such gross misrepresentations.

Captain Williams says, “on my arrival off the Harbor of Victoria, I fired two guns, etc, etc.” “No attention or assistance offering, though I had a yellow flag flying, etc., etc.”

The Health Officer did not hear two guns fired but proceeded to the mouth of the Harbor where, according to regulations, the ship should have anchored. The ship had steamed to Royal Roads; the Health Officer followed as quickly as the rough weather permitted. There was no yellow flag flying on board said vessel, in fact Captain Williams was requested to borrow one from Captain Cator.

Captain Williams says "after some time the Health Officer arrived and ordered two men ashore who, I understand, are now fit for duty."

Was it not the duty of the Health Officer to order the said two men ashore who were suffering from small-pox? and are small-pox patients fit for duty? The men are still under the care of the Health Officer at the small-pox hospital.

Captain Williams says, "since then I have had no official communication from any of the City Fathers of Victoria, etc., etc."

The Quarantine boat had orders to report to the Board of Health each day, but of course the Quarantine regulations prevent any communication with shore except by special order.

Captain Williams says, "No fresh water on board my ship, etc., etc."

Reply to be found in the following note, copy of which was forwarded to Mr. Williams on 24th June, 1872:—

(Copy)

BOARD OF HEALTH, VICTORIA,
June 24th, 1872.

MESSRS. WILLIAMS & ARTHUR, ESQUIMALT.

You are hereby authorized to take fresh water alongside the Steamship "Prince Alfred." You will see that nobody leaves your boat to go on board the "Prince Alfred," or come on board your boat from the Ship.

I have, &c.,
(Signed) W. B. MATTHEWS,
Health Officer, City of Victoria.

(Copy)

VICTORIA, B. C.,
28th June, 1872.

CAPTAIN WILLIAMS, STEAMSHIP "PRINCE ALFRED,"

Sir,—I beg to forward copy of a communication to Messrs. Brodrick & Co., in answer to an application made by them to the Board of Health, in relation to the supply of the Steamship "Prince Alfred" with water, viz.:

MESSRS. BRODRICK & COMPANY,

Gentlemen,—In reply to your communication of this days' date (June 28th) I am directed to inform you that the Captain of the steamer "Prince Alfred" has the permission of the Board of Health to supply his vessel with water from the Lagoon near the entrance of Esquimalt Harbor, on the west side of said entrance, opposite where the said vessel is anchored, and also to procure sand in the same vicinity for the purpose of scrubbing the vessel's decks, &c. This permission is granted on condition that neither the officers or crew shall hold any communication with any persons, or boats in transitu.

I have, &c.,

Signed, WM. LEIGH,
Secretary Board of Health.

The above permission was granted by the Board when it was found that Messrs. Williams & Arthur could not for sundry reasons supply said vessel with water, Captain Cator having prohibited the water boat coming alongside H. M. Ships, if they supplied the "Prince Alfred."

Captain Williams says, "Some two days ago a man brought me off a letter, stating he was an officer, and his orders were not to allow any person ashore or to visit my ship. As the letter is not official, &c., &c."

The man (Peter Eddy) referred to, and sworn in before A. F. Pemberton, Esq., the Stipendiary Magistrate on June 24th last, as a special police officer, and having his baton of office, handed to Captain Williams, a letter of which the following is a copy:—

(Copy)

VICTORIA, June 24th, 1872.

CAPTAIN WILLIAMS, STEAMSHIP "PRINCE ALFRED,"

Sir,—The bearer, Peter Eddy, having this day been sworn in as a special police officer, has been instructed to go on board the said Steamship "Prince Alfred," now in quarantine with instructions not to allow any person or persons either to go on board or depart from said steamer during the period of quarantine, without the special permission of the Health Officer.

We have, &c.,
Signed, JAMES E. McMILLAN,
JOHN G. TAYLOR,
Members of the Board of Health.

The said officer, in addition to the authority derived from the Stipendiary Magistrate, holds a copy of the above, which was subsequently forwarded to him, under the authority of the Board of Health, and with the Corporate Seal attached. A glance at the enclosed communication received from the Quarantine Officer, will further illustrate the motives and animus by which the said Captain Williams appears to have been actuated. I have, &c.,

Signed, RICHARD LEWIS,
President of the Board of Health.

Copy of Letter from the Quarantine Officer on board Steamship "Prince Alfred" to the Board of Health.

STEAMSHIP "PRINCE ALFRED,"
1st July, 1872.

GENTLEMEN,—I have the honor to transmit to your honorable body some circumstances in connection with my duties on board this ship, under your instructions. In the first place—I have to inform you, from the moment of my boarding, I was subjected to all the insults towards myself, as well as your honorable body, that could be uttered by any animal in the shape of a man, from the Captain of this ship, and I am happy to say from him alone. I should have reported immediately under ordinary circumstances, but for obvious reasons, namely, I intended to suffer with it until the ship came out of Quarantine, knowing the vilest tongues get tired, their owners ashamed, and seldom mean all they say. Secondly—It was impossible on my part to resign and leave it to come on shore free until the ship is out of Quarantine; to send for special assistance from you would not only give trouble to you, but entail a great public expense, and to accept the kind offer from the Police Magistrate to draw from the general force would be very unpleasant to them, therefore I reserved my report in regard to his sending his boat and crew to the side of the "Boxer," "complaining of the city officers keeping him without water, inquiring how long this farce would last, &c., &c."

According to the Captain's own statement, his insults and interference with my duties, even to an assault, I reserve until the proper time.

I take this opportunity of informing your honorable body that early on Saturday morning last, the 29th inst., the ship's boats were sent on shore for water. On returning about 9 o'clock, I discovered all the ship's dirty linen, accumulated from the voyage, in the boat, and had been secretly put in the boat without my knowledge. The waiters on returning with it stated some reason why they could not wash it, but with a severe reprimand they were ordered on shore again to wash them, and not to return until they had washed them all. I immediately told the Captain that such could not be permitted with public safety, and I ordered he should neither send the waiters nor the clothing on shore, and he might consider himself very fortunate that it returned unwashed, as in appearance it was nothing short of a wilful act to transplant the disease from the ship to the shore, and then he would possibly realize his wishes that every son-of-a-b—— on shore might have the small-pox; his reply in this case in language and conduct was milder than previously since my being on board. He declared and swore he would send them on shore.

The clothes remained alongside in the boat for about two hours. I repeated, for humanity's sake he ought to be ashamed of it, and it was more than him and his ship was worth to dare and send them on shore. Such a cart load of linen used in time of the loathsome disease on board, and packed away in the bulk, dirt, and infection. The place where he intended to wash was in front of the factory; he finally took them on board again and sent for water only.

Yesterday, Sunday the 30th, the waiters had to amuse themselves by airing all the dirty clothes on the lines, which reached about four lengths of the ship. I am unable to inform your honorable body whether the clothes are intended to be washed on board or not during the Quarantine, therefore I submit the foregoing for your consideration, whether you may deem proper to allow the same to be landed and washed in the city laundries after the ship is out of Quarantine.

The ship has not been fumigated, neither do I hear anything of its being done.

I have this morning learned by accident that the boat's crew, after water on Saturday, were driven off by the settlers, who threatened prosecution against the ship.

9 A. M. The Captain is just gone on shore, for what purpose I am not informed.

I have, &c.,

Signed, P. EDDY,
Officer on board "Prince Alfred."

The Secretary of the Board of Health to the Provincial Secretary.

BOARD OF HEALTH,
5th July, 1872.

SIR,—I have the honor to forward for the consideration of His Excellency, a resolution passed at the last meeting of the Board of Health, viz.: “*Resolved*, That a respectful communication be addressed to the Honorable the Provincial Secretary, for the information of His Excellency the Lieutenant-Governor, stating that the Board of Health having no premises suitable for the accommodation of small-pox patients, other than those temporarily placed at their disposal at Beacon Hill, and which the Board understand are in possession of the Cemetery Board, earnestly request that the Government will take such steps as are necessary to provide a suitable building and premises, for the reception of patients afflicted with small-pox, or other contagious disease.”

Feeling assured that this application will receive immediate attention, and such steps adopted as may be commensurate with the great importance of the subject, and requesting an early answer for the information of the Board.

I have, &c.,
Signed, WM. LEIGH,
Secretary to the Board.

Copy of a Report of a Committee of the Honorable the Executive Council, approved by His Excellency the Lieutenant-Governor on the 14th July, 1872.

The Committee of Council have had under consideration the report from the Provincial Secretary on the letter of the Municipal Council, Victoria, dated 5th July, applying for a suitable building for a small-pox hospital.

On the recommendation of the Provincial Secretary, the Committee advise that the Council be acquainted that the Government are not in a position to provide any other than the present building on Beacon Hill.

Certified,

*Executive Council Chambers,
19th July, 1872.*

JAS. JUDSON YOUNG,
Clerk to the Municipal Council.

The Provincial Secretary to the Secretary of the Board of Health.

PROVINCIAL SECRETARY'S OFFICE,
23rd July, 1872.

SIR.—With reference to your letter of the 5th instant, making application at the direction of the Victoria Board of Health for a suitable building to be provided to receive patients affected with small-pox, I am directed by the Lieutenant-Governor to acquaint you that the Government is not in a position to provide any other building for this purpose than the one now in use situated on Beacon Hill.

I have, &c.,
Signed, A. ROCKE ROBERTSON,
Provincial Secretary.

The President of the Board of Health to the Provincial Secretary.

BOARD OF HEALTH, VICTORIA,
September 19th, 1872.

SIR,—I have the honor to forward, for the consideration of His Excellency the Governor, a statement of the Accounts and Liabilities incurred by the Board of Health in connection with the late Quarantine, extending over a period from June 13th to August 10th, 1872.

In rendering the above statement, the Board of Health trusts that His Excellency may be pleased to take into his favorable consideration, the necessity of the Board being placed in a position of liquidating the said Accounts at the very earliest possible date.

I have, &c.,
Signed, RICHARD LEWIS,
Chairman of the Board.

The Attorney-General's opinion.

I think the Provincial Government are in no way liable to pay the Quarantine Bills, not only because they never authorized the incurring of such expenses, but because “The Health Ordinance, 1869,” prescribes that they should be paid, in such cases as the present, by the City

Council. Nor is this construction of the 4th Section of that Ordinance, as applied to this case, affected by the words "provide for any expenses incurred within their respective limits." for, if the expenses had been actually incurred in the City, the Council would have been liable, and they cannot have exonerated themselves by wrongfully incurring the expenditure beyond their limits, where the transaction should have been conducted within them.

This expenditure should, I think, be met, under the 5th Section of the Terms of Union, by the Dominion Government; and, I have no doubt, as since July, 1871, they have assumed and defrayed the charges for the Postal and Telegraphic Services, for the keep of Penitentiary Prisoners, &c., they will also assume the Quarantine expenses; but that Government should be informed thereof at an early date, especially whilst their Financial Agents are in the Province. Ought not those Agents be written to by the City Council, at once?

Attorney-General's Office,
24th September, 1872.

Signed, J. F. McCREIGHT,
Attorney-General.

The Provincial Secretary to the President of the Board of Health.

PROVINCIAL SECRETARY'S OFFICE,
24th September, 1872.

SIR,—I have the honor to acknowledge the receipt of your letter of the 19th September, enclosing a statement of the Liabilities incurred by the Board of Health, in connection with the late Quarantine, and expressing a hope that His Excellency will be pleased to take into his favorable consideration the necessity of the Board being placed in a position to liquidate the accounts at an early period.

In reply, I have it under command to acquaint you that your application must be made to the Dominion Government, who have now a Financial Agent in the Province.

Under the terms of the British North America Act, and those of the Union of this Province with the rest of the Dominion, Canada assumes all expenditure connected with Quarantine.

The Vouchers forwarded, are herewith returned.

I have, &c.,
Signed, A. ROCKE ROBERTSON,
Provincial Secretary.

The President of the Board of Health to the Lieutenant-Governor.

VICTORIA, October 19th, 1872.

SIR,—Under the advice of the Acting Provincial Secretary, in a letter under date Sept. 24th ultimo, I forwarded all the Accounts having reference to the late Quarantine, to Thos. D. Tims, Esquire, Financial Inspector of the Dominion of Canada, and stated that I should have much pleasure in furnishing that gentleman with any further information he might deem necessary, as to the action of the Board of Health.

I have this day received a communication from Thos. D. Tims, Esquire, a copy of which I have the honor to enclose.

As the highest authority in this Province, I beg now, most respectfully, to appeal to you for your advice and assistance in relation to this matter.

I have, &c.,
Signed RICHARD LEWIS,
President, Board of Health.

The Financial Inspector to the President of the Board of Health.

(Copy)

VICTORIA, 18th October, 1872.

SIR,—I have the honor to inform you that, since my letter to you of the 7th instant was written, the Provincial Secretary has, in compliance with my request, communicated to me copies of correspondence between the Local Government and the Board of Health, in reference to the recent Quarantine case.

This correspondence clearly shows that the liabilities referred to me for liquidation, were incurred by the Board, without authority from the Dominion Government.

I beg to add, that I have looked over the Colonial Ordinance, under which the Board of Health of Victoria has been constituted, and find that whatever expenses the Board may incur, in carrying out the law, must be borne by the City of Victoria.

In view of these facts, it is very evident that the Dominion Government have nothing whatever to do with the liquidation of liability incurred without their sanction, by the Board of

Health, acting under Municipal regulations. Should the Board, however, desire it, I shall be happy to forward the Accounts to Ottawa, for the decision of the Privy Council.

I have, &c.,
Signed, THOMAS D. TIMS,
Financial Inspector.

The Attorney General's opinion.

ATTORNEY GENERAL'S OFFICE,
22nd October, 1872

I think, under the Terms of Union, that the Dominion Government are liable to pay these charges. The question depends on the "Health Ordinance, 1869," and the Terms of Union, Section 5, G.

By the latter, Canada is to assume and defray the charges for the following services: Light-houses, Buoys, Quarantine, and Marine Hospitals, including a Marine Hospital at Victoria; and by the 146th Section of the "British North America Act, 1867," this provision has the same effect as if enacted by the Imperial Parliament.

By Section 10 of the Terms, coupled with Section 129 of the British North America Act, our local laws, the Health Ordinance included, continue in force till repealed; and by that Act the Local Boards of Health are to do as the Local Board of Victoria did in this instance, i. e.: carry out Quarantine Regulations and By-laws made by the Governor in Council.

It seems incorrect to say, that the Board of Health was acting under mere Municipal Regulations. In truth, if it is material to inquire into the point, they seem to have acted under an Order in Council, made under Section 1, b., and Section 2, 17th May, 1869; and it seems that the circumstance that the Local Board of Health happened, in this instance, to be the Corporation of Victoria, is unimportant. They were appointed as such by the Local Act, whilst other Boards are appointed by the Governor; in which last case it is conceived the liability would not be disputed.

Mr. Tims urges, that the Act says that—"Whatever expense the Board may incur in carrying out the Law must be borne by the City of Victoria."

Section 4 is not as clear as it might be, for it speaks of providing for the expenses out of the general city, town, or district taxes, as they may deem fit, and perhaps contemplates a partial advance of Provincial funds; but admitting that the meaning is that the Municipal funds alone are to be charged with the liability, so is the General Revenue to be charged with the expense in the case of ordinary Local Boards; and, in both instances, Section 5, G., of the Terms of Union, contemplates reimbursement by the Dominion Government.

The Local and Imperial provisions may well stand together; and, in any event, full effect must be given to the Terms, as the Dominion Government have properly done since Union, in the instances A, B, C, D, H, I.

It may be added, that if Canada had provided a Quarantine Hospital immediately after Union, the liability would have been undisputed, and the circumstance of her omitting so to do cannot relieve her.

I have assumed throughout, for the purpose of discussion, that the charges are moderate and proper; if they are excessive, a point which is not presented, other considerations may arise.

A Telegram seems to have been sent to the Dominion Government, requesting them to direct a proper Officer to enforce the law.

The message was transmitted the day after the arrival of the Lieutenant-Governor in Victoria, after an absence on the Mainland; but, as far as I am aware, no answer was returned.

Immediate action was required on the part of the Board of Health, or the expense to the Dominion would have been still greater, independently of the consideration of the terrible nature of the disease, progress of which was arrested.

I have, &c.,
(Signed) J. F. McCREIGHT,
Attorney General.