

# HAMILTON (J.B.)

## The U. S. Quarantine Laws and Their Scope.

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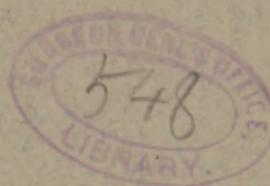
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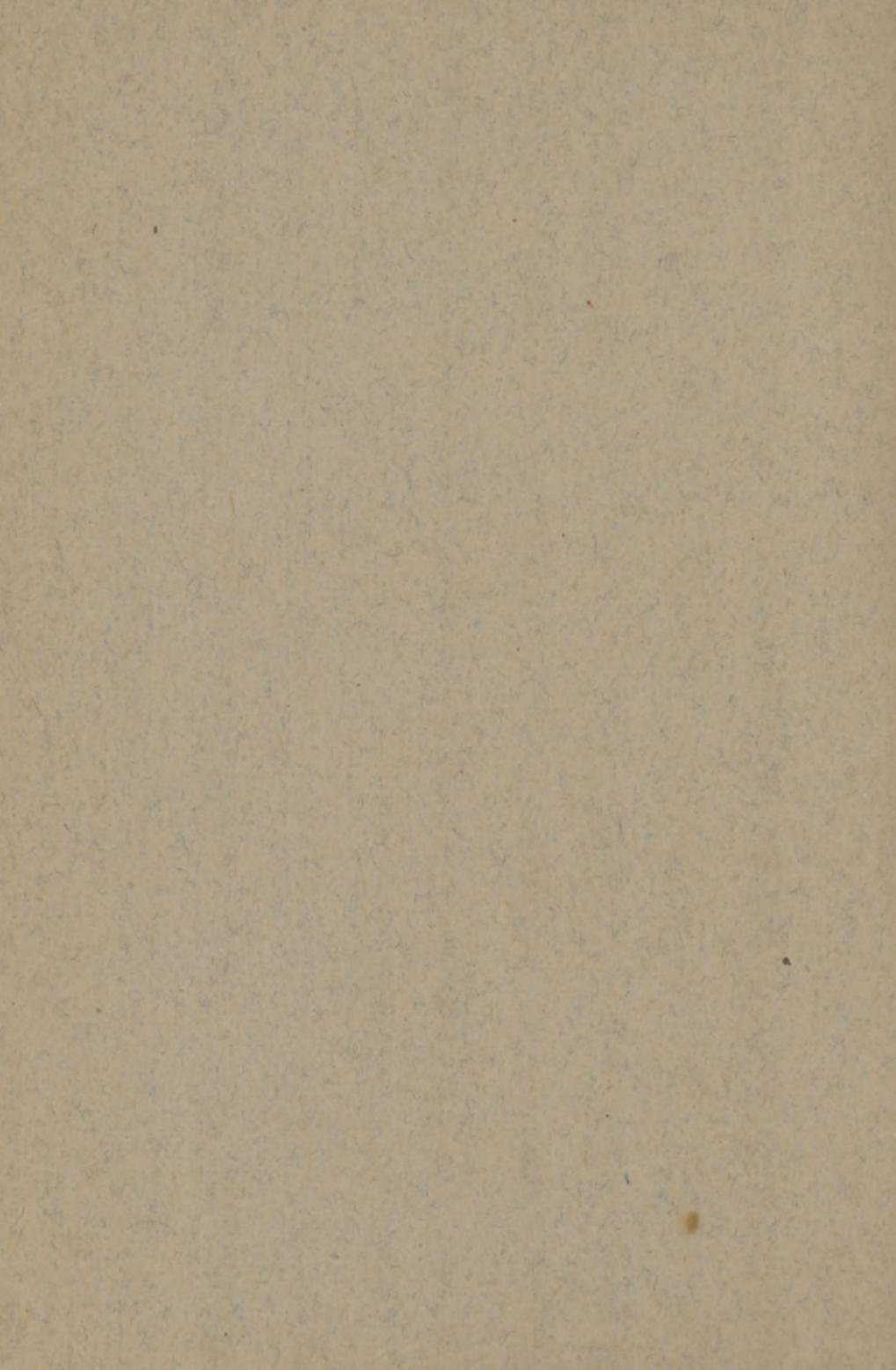
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## THE U. S. QUARANTINE LAWS AND THEIR SCOPE.

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*Mr. President and Gentlemen*,—When our learned Secretary suggested to me the writing of a paper on some subject of mutual interest to the members of the Medico-Legal Society, I could only think of the question which for some years had a practical bearing on my acts as an executive officer, and which to-day is of deep interest to every inhabitant of our country, whether denizen or citizen. That question is: How far are our quarantine laws effective in preventing the inroads of disease? And growing from that another inquiry: Are there defects needing legislative remedy?

If my discourse to-night shall seem to dwell on the legal more than upon the medical side of the questions proposed, it is because, as national health officer, I was in position to note the defects existing, and from time to time to propose legislative remedies. The later laws were therefore intended to remedy a defect in the sanitary defenses which on actual trial had been proved to exist.

Permeated with that extreme fear of paternal government that has from the beginning characterized our country, Congress has long hesitated to enact health laws falling under the “general wel-

fare" clause of the Constitution, and has always rather chosen to enact them under the authority given Congress to regulate commerce. Indeed, there has seemed at times a rather pronounced disposition to evade the duty devolving upon Congress in the matter of the public health. Historical study of the dates of the Acts show that they have always been placed on the statute books shortly after a great epidemic. Thus the Act of February 1, 1799, was passed just after the close of the great yellow fever epidemic in Philadelphia, and the Woodworth bill of 1878 was placed on the statute book while the scourge of that year was threatened.

Let us now summarize the existing law. The Act February 1, 1799, provided for coöperation of all Federal officers in maintaining the State quarantines, and extending assistance to State officers. It harmonized the customs service with the quarantine service of the States so far as practicable, authorized the building of customs warehouses at quarantine stations, and in case of the existence of epidemic, the temporary removal of public offices, the courts and prisoners in confinement, to a place of safety.

It is not apparent, from an examination of the text of the Act, that Congress waived its jurisdiction in the matter, or its right to establish quarantine, but the plain purpose of the statute was to aid the State quarantines then in existence.

It is only fair to assume that the question of expediency was taken into account. The country was in infancy, and the public revenues were then needed for public purposes quite remote from quarantines. But so far from waiving its jurisdiction, it was directly implied in the following words: "But nothing herein shall enable any State to collect a duty of tonnage or import without the consent of Congress."

But this topic will be reverted to further on.

April 29, 1878, the Woodworth bill, known as the National Quarantine Act, became a law. In the interval, public sentiment had crystallized rapidly in favor of a National quarantine service, instead of State quarantines. Annual quarantine conventions, called by the mayors of several cities, were held respectively at Philadelphia, Boston, Baltimore and New York, the last named in 1860, and after full consideration it was agreed that Congress should be requested to establish a uniform quarantine system. The systems in vogue at that time varied with the port. The number of days detention, the methods of quarantine practice, were everywhere different, and the sanitary views widely conflicted. Commercial interests were injuriously affected by this lack of uniform practice at the different ports of entry.

The outbreak of the Civil War placed commercial topics in the background for a period of six years, and as commerce began to revive, we find a renewal of the old quarantine questions, but no definite action was taken until the passage of the Act of 1878.

This Act really established a National Quarantine; and although no direct penalty was fixed for a violation of its provisions, yet the power given the Collectors of Customs to refuse entry operated to fairly enforce its provisions so far as power over vessel, passengers and cargo were concerned. No direct establishment of quarantine stations was authorized by the Act, but they were implied when the power to frame regulations was conferred on the supervising Surgeon General of the Marine-Hospital Service, acting under the direction of the Secretary of the Treasury, subject to the approval of the President. No appropriation was made to carry the Act into effect.

This Act prevents entry of any vessel or vehicle coming from any foreign port or country where contagious disease may exist, except under such rules

and regulations as may be prescribed under the Act.

The law directs all consular officers to immediately notify the Surgeon General in case of an outbreak of an epidemic within their respective districts, and further authorizes and directs that officer to transmit the information thus obtained to National and State Officers concerned with quarantine. A final clause is noticed: "That there shall be no interference in any manner with any quarantine laws and regulations as they now exist or may hereafter be adopted under State laws." This provision was not in the original bill, as it was introduced, nor as it came from the Committee, but was adopted as a Senate Amendment, as a sort of compromise. A certain distinguished Senator from New York, antagonized the bill from its incipiency, and praised the New York quarantine; failing to destroy the bill, he was successful in crippling it in the interest of the accomplished health officer then at the head of the New York quarantine (Dr. Vanderpoel.)

But by whatever means adopted, it has since remained as a limitation on the effectiveness of the Act, and on a recent occasion in which the country was imperiled, this proviso was held to be operative, subsequent legislation notwithstanding.

It has before been stated, that no appropriation was made to carry into effect the Act of 1878. The epidemic of the summer of that year decimated the Mississippi Valley, the city of Memphis especially falling in the shadow of the scourge. Congress, roused to energy, passed an Act February 3, 1879, establishing a National Board of Health, and that body recommended the passage of an Act containing all the provisions of the Act of 1878, but substituting the National Board of Health as the executive authority, instead of the Supervising Surgeon General. This Act was limited to a period of four years,

and was clearly experimental. It was approved June 2, 1879.

Before the expiration of the National Board of Health Act by limitation, Congress had grown dissatisfied with that body, and its business methods, and not only refused to appropriate money for its continuance, but made a new appropriation to be used as a contingent fund, in case of epidemic, to be expended by the President of the United States in his discretion in preventing the spread of the disease. While the President might use this fund in his discretion, he was nevertheless bound to use that discretion in accordance with the statutory limitations. He clearly could not use the agency of the National Board of Health, because that body has asked for the money in the regular book of estimates, but Congress had placed the funds in his hands. An examination of the Debates in Congress shows that an amendment offered on the floor of the House to place the contingent appropriation at the disposal of the National Board of Health, had been overwhelmingly defeated. The alternative presented to President Arthur, was to use the existing machinery of the Marine Hospital Bureau, or to donate the money outright in case of need, to local boards of health. He chose to use the government agency, and the yellow fever breaking out on the Texas frontier, the sanitary campaign and the fund was managed by the writer.

The precedent thus set was followed by succeeding Presidents, and in all cases where this contingent fund has been employed, it was directly employed in aid of State and local boards of health, always bearing in mind the limitation of the proviso of the law of 1878. Repeated incursions of yellow fever at some of our Gulf ports, and the measures necessarily taken to prevent the introduction of small-pox from Canada in 1885, induced Congress to take measures for a permanent quarantine establishment, and the

writer was asked by the Chairman of the Epidemic Diseases Committee of the Senate, to prepare an Act based on the extensive experience of the Bureau in the matter, and the writer framed the bill which became a law August 1, 1888, which established eight National quarantine stations, directed the procurement of sites, and appropriated a half million dollars for the purposes of the Act. This Act met with no obstruction in its passage, and became a law exactly as introduced, without amendment. It further operated to revive the Act of 1878 by distinct reference to two of its Sections, and imposed a penalty for the violations of its provisions. It provided for the punishment of trespassers on the quarantine stations, and authorized the prosecution by the nearest U. S. attorney. The Act took jurisdiction at once over the entire Pacific coast, by establishing quarantines at San Diego, San Francisco and Port Townsend. Quarantines were also established at Delaware Breakwater, Cape Charles, Sapelo Sound, and two on the Gulf coast. Three State quarantines were passed over—that of Louisiana at New Orleans, New York, and Boston, and at these ports the principal portion of the work is done on the Atlantic and Gulf seaboard. In the introduction of the bill, it was sought to avoid antagonism with the powerful local organizations, and by complete equipment and good management of the Government Quarantines to so demonstrate their superiority that none would finally question the wisdom of a general transfer.

The matter of land quarantine was up to this time untouched by legislative enactment. Its importance had been made fully apparent in the operations in Pensacola in 1883, and in Jacksonville in 1888.

The writer prepared a bill, which after some verbal changes, was transmitted by the Secretary of the Treasury (the Hon. C. S. Fairchild) to the Speaker of the House of Representatives, with a recommenda-

tion for its passage. It became a law substantially as transmitted March 27, 1890. Its title is: "An Act to prevent the introduction of contagious diseases from one State to another, and for the punishment of certain offenses." The text of the Act is, after the enacting clause: "That whenever it shall be made to appear to the satisfaction of the President, that Cholera, Yellow Fever, Small-pox or Plague exists in any State or Territory, or in the District of Columbia, and that there is danger of the spread of such disease into other States, Territories or the District of Columbia, he is hereby authorized to cause the Secretary of the Treasury to promulgate such rules and regulations as in his judgment may be necessary to prevent the spread of such disease from one State or Territory into another, or from any State or Territory into the District of Columbia, or from the District of Columbia into any State or Territory, and to employ such inspectors and other persons as may be necessary to execute such regulations to prevent the spread of such disease.

"The said rules and regulations shall be prepared by the Supervising Surgeon-General of the Marine-Hospital Service, under the direction of the Secretary of the Treasury.

"And any person who shall wilfully violate any rule and regulation so made and promulgated, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than five hundred dollars, or imprisonment for not more than two years, or both, in the discretion of the court.

"SECTION 2. That any officer, or person, acting as an officer or agent of the United States at any quarantine station, or other person employed to aid in the preventing the spread of such disease, who shall wilfully violate any of the quarantine laws of the United States, or any of the rules and regulations

made and promulgated by the Secretary of the Treasury as provided for in Section one of this Act, or any lawful order of his superior officer or officers, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than three hundred dollars, or imprisonment for not more than one year, or both, in the discretion of the court.

"SECTION 3. That when any Common Carrier or Officer or Agent or Employé of any Common Carrier shall wilfully violate any of the quarantine laws of the United States, or the rules and regulations made and promulgated for in Section one of this Act, such common carrier, officer, agent or employé, shall be deemed guilty of a misdemeanor, and shall upon conviction be punished by a fine of not more than five hundred dollars or imprisonment for not more than two years, or both, in the discretion of the court."

It is curious that this Act of 1890 should have been completely ignored in the rather animated discussion of last summer, concerning the powers of the President in the matter of the New York quarantine and its deficiencies. It will be seen on examination that the Act is more than an inter-State quarantine Act; it provides for the enforcement of discipline at the quarantine stations and for the punishment of violations of *any* of the quarantine laws. When attention was called to this Act, the opinion was given verbally, that it was not operative, that it only contemplated inter-State quarantine, and could not be used to supplant a local quarantine, and that it could be used only at a State line.

My contention is that it does give just that authority.

There is now general agreement, I believe, that the original jurisdiction over quarantine rests with Congress; that matter having been settled by the Supreme Court in many cases.

*Peete v. Morgan*, 19 Wallace, 581; *Cannon v. New Orleans*, 20 Wallace, 577; *State of Pennsylvania v. Wheeling and Belmont Bridge Co.*, 18 Howard, 421; *Henderson v. Mayor of New York*, 92 U. S., 259. *Chy Lung v. Freeman, et al*, 92 U. S., 275; *Railroad Company v. Husen*, 95 U. S., 465; *Hall v. DeCuir*, 95 U. S., 485; *Telegraph Co. v. Texas*, 105 U. S., 460; *Morgan v. Louisiana*, 118 U. S., 455.

The uniform conclusion being that as the grant of power to regulate commerce is exclusive, "the States cannot exercise that power without the assent of Congress."

*Leisy v. Hardin*, 121 U. S., 119.

Let us inquire what is necessary to set the machinery of the Act of 1890 in operation. The necessary condition is set forth in the Act.

"Whenever it shall be made to appear to the satisfaction of the President that Cholera, Yellow Fever, Small-pox or Plague exists in any State or Territory, or in the District of Columbia, and there is danger of the spread of such disease into other States, Territories or the District of Columbia."

He must be satisfied that the disease exists and that there is danger of its spread. That is the sole condition. Having thus become satisfied, the President can then

"Cause the Secretary of the Treasury to promulgate such rules and regulations as in his judgment may be necessary to prevent the spread of the disease."

There is here no limitation, except that the next succeeding clause provides for the exercise of medical opinion in the framing of the regulations. The Secretary, after having the rules and regulations prepared, can clearly direct their execution. If these regulations should interfere with a State quarantine, that quarantine can no longer operate in conflict with the Na-

tional regulation. It will be remembered that in the case of *Morgan v. Louisiana*, the principle was affirmed, that *in the absence of legislation* by Congress on this subject, the State legislation is valid. In the execution of the Act of 1890, there is an example of the enforcement of positive legislation on the subject. As the State quarantine law is only operative in the absence of congressional action, it is, therefore, invalid and need not be considered, and the National quarantine authorities are paramount. Any other construction of the Act of 1890 renders it of no effect and meaningless. It must be assumed that the legislative intent in the passage of this law, was that it should accomplish a certain purpose. That purpose was to prevent the spread of disease, and to make it clear that the power thus conferred upon the Executive Department should not be unnecessarily or uselessly exercised, the operation of the law was made contingent upon disease being present, and in danger of spreading.

The conditions last summer when the health officer of New York sent an impertinent letter to the President of the United States, (if we may believe the current reports in the daily press), were such as to have fully justified such action under the law of 1890, as would have placed the Government in full control of the New York quarantine. Cholera existed at the New York quarantine, and it was afterwards conveyed to the city of New York, necessarily from some defect in the administration of the New York quarantine. Asiatic cholera is known to be naturally foreign to the soil of New York City, and the only place from which it could have come was the quarantine. However, on the question being submitted it was asserted by a high authority, that action could only be taken at a State line. That our citizens might die on the Normannia, but the Government must not directly interfere. The last Section

of the Act of 1878 was relied on to sustain that view. But in case of conflict the subsequent statute must govern, and the Act of 1890 was clearly intended to meet just such conditions.

I may remark, in passing, that we see much in the public prints about the President's "proclamation." The President never made a proclamation on the subject. He simply approved a Treasury department regulation made in pursuance of law. The duty of inquiring into the need of the issue of the regulation and the essence of the regulation itself, was one that naturally devolved on the Treasury Department, and in event of an injudicious regulation having been adopted, the person who gives the advice which led to its adoption is generally held to be responsible by the public, notwithstanding the maxim that "Who does it by another, does it himself."

The issue of a general quarantine regulation under the Act of 1878, necessarily caused adherence to the non-interference Section of that Act. Had the regulations been issued under the Act of 1890, the question of interference with State quarantine could not have been successfully raised. The true interpretation of the Act of 1890 must be found as in the interpretation of all other statutes, that it should be construed according to its plain and obvious import. It is not conceivable that the plain and obvious import of the Statute is to require that any operative measures under it must be taken at the line of an adjoining State; thus, for example, in case the cholera at New York had extended to Jersey City, the measures to prevent the spread of the disease would have to be taken at the Pennsylvania line. Such a course would render the Act absolutely useless, as no intelligent measures could be taken by the Government under such restrictions. There is no circumlocution or ambiguity about the Act; its intent was clear, namely,

to prevent the extension or spread of certain contagious diseases. It authorized the adoption of regulations and the employment of the force necessary to carry them into effect. The prevention of the spread of a contagious disease from its existing location, or its suppression at that initial point, is in effect the prevention of its spread from one State to another.

Let us suppose that in Sleepy Hollow, on an island in the State of New York, cholera exists. It would surely be a compliance with the requirement to prevent its spread to the State of New Jersey, if the disease were stamped out or suppressed in Sleepy Hollow. It would simply render subsequent operations useless if we were forced to wait until the disease had spread throughout New York, or if the medical inspector armed with a copy of the Statute of 1890, should calmly proceed to the New Jersey line, and there await the coming of the pestilence. The King who placed his chair on the seashore and commanded the tide to recede from the English coast showed exemplary wisdom compared with such an inspector.

A forced construction of a statute, by which it is reduced to absurdity, is not usually tolerated.

But now that neither cholera, small-pox, yellow fever or plague exists in any part of the United States, the Act of 1890 must remain in abeyance and new legislation must be had if Congress intends to establish uniform quarantine at all ports. In practice it has been found, that wherever the quarantine was a source of revenue, the States have usually desired to retain its control, and it is apparent that should Congress forbid the collection of the fees from shipping by any State or municipality, for quarantine purposes, and provide for their care by the Government, the motive for their retention would disappear. It is proposed at this coming session to introduce a bill that will provide that the President shall by proclamation designate at what ports and places

quarantine shall be maintained by the Government, to forbid the collection of any fee for quarantine services—except for board of detained immigrants—and to provide for the extension of existing laws to such quarantines as may be so established. The quarantine inspections are maintained for the public good, their value is to the population in the interior not less than to that of the seaboard. Why should the state be burdened with the necessary expenses of protecting the interior?

The Government alone can protect the whole country. Of what avail is it, said Judge Hornblower in a recent paper, to have a well equipped quarantine at New York, while the one at Philadelphia is inefficient, and there is none at all at New Haven?

Besides the question of efficiency, there is the question of the duty of the Government. The Government is obliged to protect the interior, if protection be demanded. It has no moral right to delegate this plain duty to the State of New Jersey or the State of New York. Congress has not hesitated to pass laws concerning immigration, and establish a harbor patrol in New York to regulate the anchorage grounds in New York Bay. Why should it longer hesitate in the matter of quarantine?

The following is the proposed bill:

An Act to amend an Act entitled an Act to Perfect the Quarantine Service of the United States:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled :*

That the second Section of the Act entitled an Act to Perfect the Quarantine Service of the United States, approved August 1st, 1888, be and the same is hereby amended so as to insert after the words "at the entrance to Puget Sound" the following:

The President of the United States is hereby authorized to designate from time to time such additional places on the coast of the United States for the establishment of quarantines as are in his judgment necessary to maintain a uniform quarantine service in accordance with existing

laws, and that the necessary expense of establishing such additional quarantine stations shall be borne from the contingent appropriation for preventing the spread of epidemic diseases, for the first year, after which such expenses shall be paid from the annual appropriation for the quarantine service; and be it further provided, that it shall hereafter be unlawful for any State or municipal authority to assess upon any vessel of any nationality whatever, any fee whatever for quarantine purposes.



