

Correspondence

ST. JOHN'S, Sept. 21, 1925.
The Evening Telegram.

Dear Sir.—Enclosed please find all correspondence between myself and His Excellency the Governor, which I think of sufficient interest to publish. The Bill, entitled "An Act respecting Light and Power Co., Ltd." is a large and contains a large number of irrelevant to the subject of the correspondence, you have my permission to omit, if you choose, all the except the title and the following sections, which I think should be printed in extenso:—

Section 4, sub-Section 6.
Section 5, sub-Section 1 (a).
Section 5, sub-Section 7.
Section 5, sub-Section 17.
Section 6, sub-Section 1.
Section 6, sub-Section 2.

All the above sections have been marked on the copy of the Bill sent to you. In justice to His Excellency and his advisers, as well as to myself, I beg to say that there has not, at any time, been a hint or suggestion of compromise with respect to the subject of the Bill.

I have also sent copies of this letter to the Daily News and the Fishermen's Advocate.

Yours faithfully,
J. A. W. W. McNEILY.

St. John's, Aug. 21, 1925.
Sir William Allardice, K.C.M.G., Governor.

I have the honour to submit for your consideration the following Bills, and respectfully to request your special action thereon.

Some time ago I noticed that a large portion of the public navigable waters of the principal part of the harbour of St. John's, at the rear of the premises of W. & G. Rendell and also in front of a public Cove known as Gill's Cove was being appropriated and piled in by persons then unknown to me. Upon making enquiry as to who was doing this work I discovered that it was being done by W. I. Bishop Co., Ltd., or its subsidiary, B. I. Bishop, Ltd., for a company recently formed and known as the Marine Agencies, Ltd.

Knowing that such an enclosure of navigable water could not be made without special authority by Act of the Legislature and being aware that no such act had been passed, I called the attention of the Municipal Council to the obstruction of the public Cove.

As a result of my action the matter was taken up by the Municipal Council with the Executive Council.

It was then discovered that the authority under which the parties doing the work had assumed to act was a permission from the executive Government to use the eastern King's Wharf and to make extension thereof into the waters of the harbour.

No authority whatever for the piling in of a space of about 125 ft. by 40 ft. of the harbour was addressed and the Executive Government, as I understand, disclaimed in a letter to the Municipal Council having given any permit whatever for this, the main portion of the work.

The Municipal Council proceeded against the parties in relation to the obstruction of the public Cove which alone falls within their duty, and I understand that the parties, under the sanction of the Municipal Council, are obstructing the Cove, but they have continued and built over it nevertheless.

Not being satisfied that such a valuable franchise over public property should be given gratis to the Marine Agencies, Ltd., and knowing that in ordinary cases encroachment upon the waters of the harbour has been jealously limited by the Courts and guarded by the harbour authorities I determined not to allow this clear breach of public right to go unchallenged.

Upon looking into the law I found that it was practically impossible for me in virtue of my position as a private citizen to take proceedings of my own mere motion to restrain a continuance of this unlawful act. The usual course in such cases is for the private citizen to ask permission to sue in the name of the Attorney General in a proceeding to prevent a continuance of an invasion of public rights. The person making the request is called the Relator and may be required by the Attorney General to undertake responsibility for all costs occasioned by his action. In such cases the assent of the Attorney General is given as a matter of course and the action is called the Attorney General ex relatione J. A. W. W. McNeily vs. The Marine Agencies, Ltd., or as the case may be.

There followed thereupon between Mr. Dunfield, my solicitor and the Attorney General the following correspondence:—

G.W.V.A. Building.
July 21, 1925.
The Hon. The Attorney General, City.

Dear Sir.—I am instructed by Mr. J. A. W. W. McNeily, Relator, to call your official attention to the following matter, and to make the following statement:—

As a matter of fairness to these parties I have been instructed to send them copies of this correspondence.

An early answer will oblige.

Yours truly,
(Sgd.) BRIAN DUNFIELD.

15 August, 1925.
Dear Sir.—I beg to acknowledge receipt of yours of the 12th inst. I have made enquiries into the matter of the erections complained of, and I find that no work of construction is in evidence other than what has been done with the knowledge and approval of the Government.

I, therefore, can see no reason for any action by this Department.

Yours sincerely,
(Sgd.) W. J. HIGGINS, Attorney General, Barrister & Solicitor, City.

A firm of contractors, The W. I. Bishop Company whether the parent company or the subsidiary company recently incorporated in Newfoundland is not known to my client, acting as my client understands, on behalf of the Marine Agencies Limited, a local shipping company recently incorporated, is building a wharf in the neighbourhood of Gill's Cove, St. John's East.

This wharf is unquestionably a public nuisance in the legal sense of those words. It involves the appropriation of a substantial area of public waters, which constitute the approach from the eastward to Gill's Cove, and also a serious obstruction of the said Cove, which is and has been a public means of access to the waters of the harbour from the earliest times.

I have to point out to you, what is familiar to every lawyer and doubtless well known to you, that it is Common Law, well established as such, that appropriation of public waters is a public nuisance; and this principle has been carried out in several decisions of our local Supreme Court relating to the waters of the harbour. There are, as you are aware, various remedies for this state of affairs, the principal being criminal indictment and civil action by the Attorney General of his own motion or similar proceedings in his name but upon the relation of some private complainant. The proper remedy applicable in this case seems to be a civil action in the name of the Attorney General ex relatione of the complainant. I refer you to the case of the Attorney General vs. Shrewsbury Kingsland Bridge Co. 1882 21 C.D. 752 as illustrating this type of proceedings.

My client desires to take steps to protect the public interest in this matter; and he therefore instructs me to request your concurrence in the taking by him of an action in the name of the Attorney General, for the purpose of putting a stop to the state of affairs above mentioned.

Yours truly,
(Sgd.) BRIAN DUNFIELD.

August 4, 1925.
Dear Sir.—I beg to acknowledge receipt of your communication of the 31st, ultimo, respecting the wharf being erected by the Marine Agencies, Limited.

The claim made in your letter that this wharf is a public nuisance will receive the immediate consideration of this Department; and, if I am satisfied that such is the case the necessary steps will at once be taken on behalf of the public.

Yours sincerely,
(Sgd.) W. J. HIGGINS, Attorney General, Barrister & Solicitor, City.

G.W.V.A.
August 8, 1925.
The Hon. The Attorney General, City.

Re Wharf etc., at Gill's Cove.

Dear Sir.—I thank you for your letter of August 4th, on the above matter, and note that if you are satisfied that the wharf is a public nuisance the necessary steps will at once be taken on behalf of the public.

I have of course to point out that encroachment upon public waters or public rights of way is, by its very existence, a public nuisance, and there is not in the present case any question as to whether such encroachment has taken place; it is obvious. Even if it could be argued that an encroachment were actually beneficial to the public as well as those creating it, it would still be a public nuisance in the legal sense of being a thing which must not be done without legislative authority. It is evident that if such were not the rule, many things might be done for private benefit under the claim that they were of public advantage.

I have to point out that my client has requested that he be given authorization to proceed in the Attorney General's name; and that it is usual in such cases for this authorization to be given, so that the person, desiring to stop the nuisance, who is known as the Relator, has the conduct of the proceedings, and conducts them at his own expense, instead of at the public's expense and risk. This old and sound practice has the result that the party objecting, having conduct of the proceedings, can adduce all the evidence and all the arguments he pleases, his objection if not confirmed by the Courts is disposed of once for all, whereas if a Government Department has the conduct of the proceedings, objectors will seldom or never be satisfied that the nuisance was attacked as effectively as it would have been by themselves. On the other hand, if the Relator's action is not sufficiently thorough, the Attorney General, in whose name the action is, can always intervene in the public interest to supplement it.

While thanking you therefore for your conditional undertaking to act, I am instructed to repeat the request that my client be authorized to proceed.

I need hardly point out to you the necessity of promptitude. The parties concerned are pushing their operations rapidly ahead, and the sooner they are stopped the less expense they will be at in removing the structures that have been erected.

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J. J. ROSSITER

Agent

Box 337

Phones 549, 2094

contracts which have been entered into by the Governments and given statutory authority within recent years. I have afforded the Attorney General the opportunity of knowing that my present course would be taken unless he acceded to my request made in the correspondence.

I have now to ask your Excellency's official answer and action in the matter.

I have the honour to be,
Your Excellency's obedient servant,
(Sgd.) J. A. W. W. McNEILY.

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