

resolution, as alleged in said bill of complaint; and in this behalf said defendants show the facts to be as follows: Under and by virtue of section 1 of chapter 1 of article 2 of the charter of the city and county of San Francisco, hereinabove referred to, the legislative power of said city and county of San Francisco is vested in a legislative body known and designated as the board of supervisors and as the supervisors; and pursuant to subdivision 1 of section 1 of chapter 2 of said charter said board of supervisors is invested with the power to ordain, make, and enforce within the limits of the city and county of San Francisco all necessary local, police, sanitary, and other laws and regulations. Pursuant to the powers and authority in said board of health vested by law, as hereinabove more fully alleged, said board of health did on May 28, 1900, adopt the following resolution at a special meeting:

"*Resolved*, That it is the sense of this board that, in consequence of the discoveries in the district bounded by Broadway, Stockton, California, and Kearny streets of nine deaths due to bubonic plague, which were verified by microscopical and animal inoculation tests, this board fears that there is still danger of the spread of this disease over a larger area, and therefore requests the board of supervisors to declare said district infected and authorize the board of health to quarantine said district."

Thereafter, on said 28th day of May, 1900, said resolution of said board of health was duly filed in the office of said board of supervisors; and thereupon said board of supervisors ordained, made, adopted, and passed, in due and lawful form and manner, the following ordinance:

"Bill No. 128. Ordinance No. 87. Empowering the board of health to quarantine persons, houses, places, and districts when in its judgment it is deemed necessary to prevent the spreading of contagious or infectious diseases.

"*Be it ordained by the people of the city and county of San Francisco, as follows:*

"SECTION 1. The board of health of this city and county is hereby authorized and empowered to quarantine persons, houses, places, and districts within this city and county when in its judgment it is deemed necessary to prevent the spreading of contagious or infectious diseases.

"SEC. 2. All orders and ordinances and parts of orders and ordinances, in so far as they conflict with the provisions of this ordinance, are hereby repealed.

"SEC. 3. This ordinance shall take effect from and after its passage."

Said ordinance was finally passed by a majority of all the members of the board of supervisors, and was approved by the mayor of said city and county, according to law. Said ordinance was immediately transmitted to said board of health, to wit, on May 29, 1900; and on said May 29, 1900, at a special meeting of said board of health, duly called, pursuant to law, said board of health adopted and passed the following resolution:

"*Resolved*, That whereas the board of supervisors of the city and county of San Francisco, at a meeting of said board held on May 29, 1900, adopted the following resolution:

"Empowering the board of health to quarantine persons, houses, places, and districts when in its judgment it is deemed necessary to prevent the spreading of contagious or infectious diseases.

"*Be it ordained by the people of the city and county of San Francisco, as follows:*

"SECTION 1. The board of health of this city and county is hereby authorized and empowered to quarantine persons, houses, places, and districts within this city and county when in its judgment it is deemed necessary to prevent the spreading of contagious or infectious diseases.

"SEC. 2. All orders and ordinances and parts of orders and ordinances, in so far as they conflict with the provisions of this ordinance, are hereby repealed.

"SEC. 3. This ordinance shall take effect from and after its passage."

"And whereas, after a careful and minute investigation had during a period of three months last past, and from the result of investigation made by Drs. Kellogg, bacteriologist to the board of health; Montgomery, of the University of California; Ophulf, of the Cooper Medical College, and J. J. Kinyoun, of the United States Marine-Hospital Service, each and all of whom have reported to this board that bubonic plague has existed in the district hereafter mentioned, and that nine deaths have occurred within said period within said district from said disease;

"And whereas this board has reason to believe and does believe that danger does exist to the health of the citizens of the city and county of San Francisco by reason of the existence of germs of the said disease remaining in the district hereafter mentioned: Now, therefore, be it

"*Resolved*, That the health officer be, and is hereby, instructed to place in quarantine until further notice that particular district of the city bounded north by Broadway, northeast by Montgomery avenue, east by Kearny, south by California, and west by Stockton streets; and that the chief of police is hereby requested to furnish such assistance as may be necessary to establish and maintain said quarantine.

These lines may be modified by the health officer or the chief of police, health board to be notified of the same. This resolution to take effect immediately."

And thereafter, on May 21, 1900, said board of supervisors in lawful meeting assembled, ordained, made, adopted, and passed in due and lawful form and manner, the following ordinance:

"Bill No. 129. Ordinance No. 85. Providing for the quarantine of the district bounded north by Broadway, northeast by Montgomery avenue, east by Kearny, south by California, and west by Stockton streets, and authorizing and instructing the board of health to enforce said quarantine; also directing the chief of police to furnish such assistance as may be necessary to establish and maintain said quarantine.

"Whereas the following communication from the board of health was filed in the office of the board of supervisors on May 28, 1900, to wit:

"SAN FRANCISCO, May 28, 1900.

"To the honorable the Board of Supervisors, city and county of San Francisco, Cal.

"GENTLEMEN: The inclosed resolution was adopted at a special meeting of the board of health held this evening, and is herewith transmitted to your board with the request that it be passed at once as an emergency measure.

"Resolved, That it is the sense of this board that, in consequence of the discovery in the district bounded by Broadway, Stockton, California, and Kearny streets of nine deaths due to bubonic plague, which were verified by microscopical and animal inoculation tests, this board fears that there is still danger of the spread of this disease over a larger area, and therefore requests the board of supervisors to declare said district infected and authorize the board of health to quarantine said district."

"Therefore,

"Be it ordained by the people of the city and county of San Francisco, as follows:

"SECTION 1. The district bounded north by Broadway, northeast by Montgomery avenue, east by Kearny, south by California, and west by Stockton streets is hereby placed in quarantine, and the board of health is hereby authorized and instructed to enforce said quarantine until the further order of the board of supervisors.

"SEC. 2. The chief of police is hereby directed to furnish such assistance as may be necessary to establish and maintain said quarantine.

"SEC. 3. All orders and ordinances and parts of orders and ordinances in so far as they conflict with the provisions of this ordinance are hereby repealed.

"SEC. 4. This ordinance shall take effect and be in force from and after its passage."

Said ordinance was finally passed by a majority of all the members of said board of supervisors, and was approved by the mayor of said city and county, according to law; and thereafter, on June 2, 1900, said ordinance was transmitted to and received by said board of health.

These defendants, and each of them, respectfully show to the court that it was under and pursuant to the authority just herein alleged, and not otherwise, that the quarantine in question was established, and has since been maintained; and these defendants further show that upon the establishment of said quarantine said board of health adopted reasonable regulations intended to prevent promiscuous communication between persons within said infected district who were exposed to the danger of contagion and persons without said infected district who were free from such danger; and that among such rules and regulations were regulations preventing the former class of persons from leaving said infected district and the latter class of persons from entering therein. These defendants, jointly and severally, deny that they or said board of health have established and maintained, or established or maintained, said quarantine, or said rules or regulations, without any right or authority whatever; but, on the contrary, aver that in establishing and maintaining said quarantine and in prescribing said rules and regulations they, said defendants and said board of health, acted under and by virtue of the power, authority, and jurisdiction in them vested by law. And in this behalf these defendants further show that in establishing and maintaining said quarantine, and in enforcing the same, and in establishing and enforcing said rules and regulations, these defendants and said board of health caused said quarantine and said rules and regulations to apply equally and similarly to all persons whatever, without distinction or discrimination of race, age, or sex, who might come within their purview.

V. These defendants, and each of them, have no knowledge, information, or belief of or concerning the matters and things alleged in the fifth paragraph of complainant's bill of complaint herein; and for that reason and upon that ground said defendants deny said allegations and each and all thereof.

VI. Further answering, these defendants, and each of them, deny that the resolution referred to in said bill of complaint, and in Paragraph VI thereof, or any resolution whatever, is by said defendants, their agents, servants, inspectors, employees,

and other subordinates, or by any one or more of said defendants, or their agent or agents, or servant or servants, or inspector or inspectors, or employee or employees, or other subordinate or subordinates, or otherwise or at all, enforced against persons of the Chinese race and nationality only; and deny that said or any resolution whatever is now enforced against persons of other races; but on the contrary show to the court that the rules and regulations adopted by the said board in the matter of said quarantine have been and are enforced equally and similarly against all persons whatever equally and similarly situated who come within the purview, without distinction of race, age, sex, or nationality. And in this behalf these defendants show to the court and jointly and severally deny that all stores, residences, and other buildings on the north side of California street, between Kearny and Stockton streets, are within the quarantine district established as herein above related; and deny that any of said stores or residence or other buildings are within said quarantine district or subject to any of the restrictions or limitations of quarantine provided or enforced by said board of health; and deny that all stores, residences, and other buildings, or any store or residence or other building whatever on the west side of Kearny street, between California and Montgomery, is or are within said quarantine district established as hereinabove related, or subject to any of the aforesaid restrictions or limitations of quarantine; and deny that all stores, residences, or other buildings, or any store or residence or other building whatever, on the southwest side of Montgomery avenue, between Kearny street and Broadway, is or are within said quarantine district or subject to any of the aforesaid quarantine restrictions or limitations; and deny that all those stores, residences, or other buildings or any store or residence or other building whatever on the south side of Broadway, between Montgomery avenue and Stockton street, is or are within said quarantine district, or subject to any of the aforesaid quarantine restrictions or limitations; and deny that all the stores, residences, or other buildings, or any store, or residence or other building whatever on the east side of Stockton street, between Broadway and California street, is or are within said quarantine district, or subject to any of the aforesaid quarantine restrictions or limitations; and deny that any store, or residence, or house, or other building whatever, within said quarantine district, or subject to any of the aforesaid quarantine restrictions or limitations, whether occupied by Chinese persons or by persons of any other race whatever, is or are avowedly and notoriously, or avowedly or notoriously exempted by said board, or by these defendants, or by any one of them, or by their or any of their agents, servants, inspectors, employees, or other subordinates, from all or any of the restrictions or limitations of said quarantine. And in this behalf these defendants, and each of them, denies that the premises at Nos. 908, 910, 920, and 922 Stockton street are within the boundaries of said quarantine district, or subject to any of the aforesaid quarantine restrictions or limitations; and deny that they, in the enforcement of said quarantine, similarly, or otherwise, or at all, discriminate against all or any Chinese residents, or all or any occupants of any store, or residence, or other building whatever, on said east side of Stockton street, between California and Broadway streets; and deny that they similarly or at all discriminated or discriminate in favor of any store, or residence, or other building on said east side of Stockton street, between California and Broadway streets, or at any other place, or in any other manner, or at all, and deny that they, in the enforcement of said quarantine, or otherwise, or at all, either avowedly and notoriously, or avowedly, or notoriously, or at all, exempt and relieve, or exempt or relieve, from all or any of the restrictions or limitations of quarantine herein referred to, all or any store, or residence, or other building whatever, within said quarantine district, whether occupied by Chinese persons or not; and deny that they, or either of them, whether personally or through any of their agents, or servants, or inspectors, or employees, or other subordinates, discriminated in favor of, or avowedly, or notoriously, or otherwise, or at all, exempted or relieved from any of said quarantine restrictions any store, or residence, or other building on either side of Adler street, between Montgomery avenue and Dupont street, or any store, or residence, or other building on either side of Stark street (a cul de sac running easterly from the east line of Stockton street, between Pacific and Broadway streets, to about the middle of said block), or any store or stores, residence or residences, or other building or buildings on Pacific street, between Montgomery avenue and Stockton street, numbered 615, 617, 619, 621, 623, 625, 626, 628, 630, 738, 739, 740, 740½, 741, or 742, or any other number whatever, or any store or stores, residence or residences, or other building or buildings on Dupont street, between Pacific and Broadway streets, from the north side of Adler to the south side of Broadway, or at any other place or places whatever within said quarantine district; and deny that any store or stores, or residence or residences, or building or buildings, claimed by said complainant to be relieved from quarantine restrictions, constitute about one-fifth or any other proportion whatever of all or any of the buildings within said quarantine district.