

Lancaster Nov 2nd 1889.

A Special Meeting of the Council was held on Saturday November 2nd 1889, for the purpose of considering the Reports of Hon. Mr Justice Wade on the Police Investigations Report. His Worship, the Mayor, and Aldermen Brewer, Brighouse, Clark, Costello, McConnell, Apperheimer and Whetham.

The following Reports were read.

1. On the Chief of Police.

On the 10th of October 1889, and 11 following days I held an inquiry into certain charges brought against John Malcolm Stewart, Chief of Police in pursuance of a resolution of the Council of the Corporation of the City of Lancaster, under Section 212 of the Lancaster Incorporation Act.

The charges were 45 in number, of these charges 10, 12, 17, 19, 20, 20A, 21, 24 & 25 were not proceeded with and charges 1, 6, 14, 19, 22, 26, 29, 32, 33, 36 & 40 were explained and arose apparently from want of accuracy in keeping the books which were produced on this inquiry, while charges 38, 39, 42 & 43 were explained by Mr Blake, the City Solicitor, stating that Stewart acted under his instructions and advice.

With regard to charges 4, 5, 7, 8, 9, 11, 18, 30, 31, 37, & 44 in which Stewart is charged with receiving monies of the Corporation in respect of fines and costs imposed by the Police Magistrate and not paying them over I do not find any fraudulent intent on the part of Stewart. The monies appear to have been entered into his books as received by him and this book was placed in the Auditor's hands. The monies ought to have been paid over to the City Treasury, as soon as

received but the total want of System and Management conspicuous in the whole of this inquiry is accountable for this apparent dereliction of duty.

The following are the sums I find received by Stewart and not yet paid over:-

Charge #1.	Thomas.	\$8 ⁰⁰	
"	8. Harry Ardell.	8 ⁰⁰	✓
"	9. James Rossell.	8 ⁰⁰	
"	18. C. G. Johnston.	8 ⁰⁰	✓
"	30. Sweeney.	5 ⁰⁰	
"	31. Chd Johnston.	2 ⁰⁰	✓
"	37. D. H. Cameron.	55 ⁰⁰	✓
"	44. Kepler.	20	
"	5. Ah Park.	20	
"	7. Ah Sing	3 ⁰⁰	ordered for food

was paid to the interpreter by Stewart. With respect to charges 2, 16, & 23, they all arose under the Indian Act and fines were imposed by the Police Magistrate, and one half of the fines were retained by Stewart as prose autor.

It appears that the Corporation entered into a contract with Stewart, and the Police Officers parsing their pay on condition that all emoluments received by them in the performance of their duties should be paid into the City Treasury. It is not necessary to decide whether the Corporation can legally make such a contract in the face of the Statute but the officers having voluntarily entered into the agreement and received the benefit of the increased pay they ought to perform their share of the contract. Stewart in order to avoid the effect of the agreement employed one John Olong to lay information, he not being an officer of the Police Force would be entitled to whatever portion of the penalty the Indian Act gave him, but all he received was a sum not exceeding \$2⁰⁰ in any case.

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the remainder of the moiety of the penalty went into Stewart's hands and was retained by him. There was evidence of great irregularity in all three cases. John Blough in charge 2 (John Morgan) denied having signed the information although his name is attached to the one produced and in charge 23, (John Ferre) an information was produced with receipt endorsed, signed with John Blough's ^{name}, but he denied all knowledge of it. No evidence was adduced to satisfy me, that Blough did lay the information in charge 2 and in charge 23, no evidence was adduced to prove he signed the alleged receipt.

It is to be regretted that none of the records of the Court in any of these cases were produced and I was informed by the Police Magistrate that it was not the custom to take down the testimony of witnesses in these or any other cases coming before him except in the case of indictable offences, and the Magistrate's book does not show who laid the information or what (if any) witnesses were called. I therefore am driven to the conclusion that Stewart received received the moiety in these cases less the small sums paid to Blough.

The Indian Act allows the moiety of fines in all cases of this character to be paid to the prosecutor or informant, and if it was not for the contract put in evidence, it might be a nice question to decide who would be entitled to the moiety the person who prosecutes or the person first giving the information to the Police authorities.

With respect to charge 3, I find the Police Magistrate, ordered certain Spirits to be destroyed and it is so entered in his book as well as Stewart's book but Stewart contrary to the order of the Magistrate sold the Spirits and realized \$47⁰⁰ \$25⁰⁰ of which he alleges he paid out for the hiring of a tug and \$20⁰⁰ to the 2 Police Officers who assisted him in the capture.

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I now come to charges 13, 15, 34 & 41 in each of these cases the persons charged were sentenced to imprisonment - for varying terms and were committed to the lock-up but were each discharged before the expiration of their sentence. No explanation was afforded to me of the reasons of their discharge or by whose authority it was done, the records kept by the gaoler do not show anything beyond the bare fact that these persons only served a portion of their sentence and Stewart professed entire ignorance of any one of the cases brought forward.

As regards charges 25, 27 & 28 each of these cases arose from a want of care in Stewart not taking down the sentence of the Court correctly and neglecting to compare his book with the Magistrate's note. I do not find anything beyond a mistake which was caused by the want of system to which I have before referred, this disposes of all the charges brought against Stewart.

The result of the investigation shows that a radical alteration in the manner of conducting the Police Court and in the discipline of the Police Force is required. The Police Magistrate in all cases where informations are laid or warrants issued should take care that the evidence is properly taken down in writing and that all informations, evidence, warrants and other documents shall be kept together by the Clerk of the Police Court if one or by the Police Magistrate if no clerk and a record kept of all distresses and other warrants issued to the Police officers, as matters have hitherto been carried on, the greatest laxity is apparent and it is not to be greatly wondered at that dissatisfaction at the manner in which the Police Court

business is conducted, is so generally expressed. The Police Magistrate, by his own admission shows that he has not taken the trouble to make himself acquainted with the provisions of the Statutes under which he is called upon to exercise jurisdiction, and even when he has exercised his jurisdiction, the Clerk, Solicitor appears in some instances to have given directions not to carry out the orders of the Court. Such a course of proceedings renders the administration of justice, difficult if not impossible.

The Chief of the Police is the executive officer for the purpose of enforcing the sentence of the Police Court; he however appears to have acted independently of the Magistrate, to have varied his sentences and exercised his own discretion in enforcing them. Several of the instances however may have arisen from a mistake or misapprehension on his part; because he states he hardly ever compared his notes of the judgment rendered with the Magistrate's book. It is essential that care should be taken that the sentence is correctly recorded and correctly executed.

Mr. Stewart and the other police officers examined, all admit that they have not complied or attempted to comply with the regulations issued by the Police Commissioners if they had done so many of the charges now brought forward could not have had any existence. If any of the regulations hereafter should be found in-appropriate they can be altered but unless they or similar rules are enforced the same confusion which now exists must arise.

All fines and penalties ought to be paid to the Clerk of the Police Court and proper receipts given, and the amount of costs should in all cases be specified (See Sects Summary Compositions Act) if any police officer is

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authorized to receive these monies irregularities
are sure to arise.

No prisoner should be discharged before his
sentence has expired without the written author-
ity of the Police Magistrate, and the reasons
for such discharge given, in the cases under
inquiry money may have been paid to the
Gaoler or the Chief for their discharge but
there is no evidence of such being the fact
but the system hitherto in vogue renders
such a suspicion not unreasonable.

In cases where a prisoner is sent
to a provincial Gaol a receipt should
be given in order to discharge the Gaoler
from responsibility.

It was also proved that the Police Officers
on night duty were accustomed to meet
at a restaurant and take their meals
during the time they were supposed to be
on their beats and this was done without
any orders from the Chief; it is obvious
that such a proceeding must be sub-
versive of all discipline and some
arrangement ought to be made to avoid
the necessity of the officers taking meals
while on duty.

I have touched upon the chief points
brought out on this inquiry and trust
they may be of service to the Corporation
(Sgd) M. W. Tyrohill, Deane.

Oct 14, 1889.

Report on H. Tyfe.

In the case of Officer Harold Tyfe charged
with accepting bribes from Chinese prosti-
tutes since January 1888 and from Mary
Sam since September 1888.

There were two charges made against this
officer in the first case a Chinese woman
named Whee Hec proved that she

had paid a monthly sum or on about the first of each month commencing 12 months ago, at first \$5 a month afterwards \$8 a month, so that the Police would not interfere with her. Her testimony was corroborated by another witness, named Chock who was present on two occasions when money was paid by Lee Kee to Siff.

It was admitted that this woman's residence was in the beat of Officer Siff and that he had, for the last two years, been in charge of this Central beat and no complaint had ever been lodged against this woman or the house she occupied. Chinese testimony is not the most satisfactory but in charges of this description it would be impossible to get any other and as I can see no ulterior motives actuating these witnesses I consider the charge proved.

The other case of Mary Sam is of the same character but there is no corroborative evidence and if it stood alone I should be inclined to give the officer the benefit of "not proven" but taken in connection with the other charge I am of opinion that the officer did receive money in order to protect the houses occupied by these women from Police interference.

I submit the evidence and documents put in as exhibits.

17th Oct 1889. (28^d) Wm. Tyrowhitt Drake, J.

Moved by Alderman Belard.

Seconded by "McConnell.

In Charges 38, 39, 42 & 43 Mr. Blake is blamed that Stewart was acting under his advice, think that Blake acted outside his authority in advising Stewart and consider that Stewart acted wrong in taking his advice, he should

have consulted the Police Magistrate, but as he took the advice of the City Solicitor and having taken his advice and acted on it in good faith, consider that on those particular charges he be exonerated from any wilful breach of duty. Carried

Moved by Alderman McConnell.
Seconded by " Whetham

That the Chief of Police displayed gross neglect of duty in not paying the money in promptly according to the By. Laws of the City on charges Nos 4. 5. 7. 8. 9. 18. 30. 31. 37. & 44 and that he be requested to pay same forthwith to the City Treasurer. Carried

Moved by Alderman Clark.
Seconded by " Costello

That charges 2. 16. & 23 under the Indian Act but consider that Stewart committed a grave breach of trust and violation of existing contract with the City and that all the monies required in those particular cases be immediately refunded to the City Treasurer. Carried

Moved by Alderman Brewer.
Seconded by " Prichouse

In charges 13. 15. 34 & 41 we find that there was wilful neglect of duty in allowing prisoners to be released before the expiry of their sentences. Carried

Moved by Alderman Clark.
Seconded by " Brewer

In charges 25. 27 & 28 the Chief should be exonerated as he had no book to compare his with, as the Magistrate made no entries for several

days in those charges.

Moved by Alderman Mcbournell. Carried.

Seconded by " Brewer
In charge 3 The Chief of Police exceeded his authority in selling the liquor and paying expenses out of the proceeds contrary to the decision of the Magistrate Carried

Moved by Alderman Oppenheimer.

Seconded by " Brewer.
That Chief Stewart's services be dispensed with, and a general re- construction of the department inaugurated. Carried

Moved by Alderman Brighthouse

Seconded by " Brewer.
That Havelock Pyfe's services as Police Constable be dispensed with Carried

Moved by Alderman Oppenheimer

Seconded by " Blair.
That the recommendations of Mr Justice Drake be carried into effect. Carried

Moved by Alderman Mcbournell.

Seconded by " Brighthouse.
That the press be allowed all papers in connection with the Police investigation for publication Carried.

The Council then adjourned.

J. Oppenheimer Mayor

Thos. S. McGowan
City Clerk

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