

do not think this has increased the number of these cases. I do not think the people will get themselves indicted because the Government will pay the expenses of their trial. I do not know anything of the case in question, but I would be sorry to have the rule stated by the hon. gentleman laid down in all cases. For instance a Customs officer in the performance of his duty, might come into collision with smugglers, and through the caprice of the jury, or the failure of the evidence, a verdict might be given against him. If the Department were satisfied, notwithstanding the finding against him, that he was really acting in the discharge of his duty, and that there was a conspiracy to get an indictment against him, I think the Department should defend their own officer. The Government have always done that in England, and I do not think there have been any heavy votes in Parliament in consequence.

Mr. BLAKE. The case cited by the hon. gentleman is an unfortunate one. This is not a case in which there was a conspiracy against an officer, but it was decided by the Grand Jury that he should be indicted, because he had neglected his duty, and gave the certificate without a proper inspection. In the case of a wrong conviction, it would be better for the Government to take proceedings to have the verdict set aside, than to set it aside themselves by indemnifying the officer.

Sir JOHN A. MACDONALD. In this case, I understand, the Steamboat Inspector certified that he had examined the boiler, and that the inspection was sufficient, and the vessel was seaworthy. An explosion, however, took place, and he was indicted for it. He was tried, and he must have satisfied the jury that the certificate was a true one, and that he was not guilty of negligence or of misstatement in giving the certificate. If so, it appears to me he should be sustained. A poor man may be found guilty through inability to raise the funds to produce witnesses in his defence, and it would be very little satisfaction to him to say, we believe you are innocent, and to hand a sum of money to his family. If the responsible officer is satisfied the man is innocent, he should be protected.

Mr. MITCHELL. I would like to ask on what evidence the Government arrived at the conclusion that Mr. Burgess was entitled to be recouped for the money he paid out. It would not do to act simply on the ground that he was acquitted by the petty jury, but the fact should be ascertained irrespective of any decision of the petty jury.

Sir HECTOR LANGEVIN. No doubt the hon. Minister of Marine and Fisheries examined into the facts.

300. Miscellaneous—To provide for the payment of damages and costs in the suit *Phair vs. Venning* \$707.50

Mr. BOWELL. Acting under the Order in Council of 11th June 1879, Mr. Venning seized the rod and fishing tackle of Mr. Phair while in the act of fishing from his own land in the Mersey River, which had been leased to Mr. Robertson. Mr. Phair claimed the right to fish as a riparian, and the case of the Inspector was dismissed. Mr. Phair then took action for trespass, and got judgment to the extent of \$511, which with costs made \$707.50.

Mr. BLAKE. No doubt if the Department, under misapprehension of the law, instructed the officer to take this course they must protect him from the consequences, but an officer is bound to use discretion, and from what I learn there are more actions than this one against him. The proper course would have been to take one case as a test case, and not give occasion for a number of cases. If his instructions were to take the course of laying the Government open to a number of actions, his instructions were not what they should have been.

Mr. WELDON. The hon. gentleman says the officer was instructed by the Department to take these actions,

but one case would have been sufficient, because it was well known the right of the Government was to be contested. Since these Estimates have been prepared the verdicts in the other cases have been sustained, and votes, no doubt, will have to be brought down to meet those cases as well. In one of the cases the damages were reduced from \$3,000 to \$1,500.

Mr. BLAKE. If this gentleman was instructed to take steps against three or four different persons, which involved the Government in damages of \$500, \$1,500, \$1,200, and \$1,000 the Department should pay the damages, but if not the officer should pay them.

Mr. BOWELL. You will find the instructions in the papers laid before the House, given to the different fishery officers. Whatever fault there was in the matter lay with the Government and not with the officer, because he acted under the Order in Council passed in 1879. That is the principle on which the Department has been conducted for the last six or seven years. I do not desire to enter into the riparian question, but the late Government carried the principle of the right which they declared the Dominion held over these fisheries, further than their predecessors. When the hon. member for Northumberland (Mr. Mitchell) presided over that office he took great care not to interfere with what he considered certain rights which the owners of these fisheries had; but his successor taking a different view of the constitutional question, issued orders far beyond those which had been issued by his predecessor, and it was carrying out in 1879, the principle which had guided the Department from 1873 up to that time, that this Order was passed. Whether the officer exceeded his duty, as the hon. gentleman says, I am not prepared to say; but my recollection of the transaction is this: that this inspector of New Brunswick was acting under instructions from the Department, that he seized these rods and endeavored to enforce what he believed to be the law, as he had been directed. Whether he went further than he ought to have gone, or used that discretion which should characterize all officers when there is a dispute, particularly as to the rights of the people, is a question that I am not prepared to answer at the present moment. There is another vote to pay damages obtained against *Robertson vs. The Queen*, in which the question of the right to lease these fisheries was decided against the Crown.

Mr. BLAKE. The late Government did not carry out this principle, whatever it was, with reference to the riparian rights so far as to bring down in the Estimates votes to pay for large damages recovered against their officers. I should not complain of a test case, I should not complain of the Government deciding to take a proper opportunity of assisting the principle which they thought was right; but I do say—that when it was known that this was a disputed question, when it was known that the riparian proprietors took a different view, when it was known that all that was wanted was an opportunity of testing the case—to make three or four seizures of implements and to make them in such a manner as resulted in such heavy damages, was an act of gross indiscretion on the part of the officer, unless it was warranted by instructions from the Department, and if there were such instructions I would like to see them.

Sir JOHN A. MACDONALD. I have just learned that the case was in this wise: the officer found Phair, Hanson and Stedman on the fishing ground. He stopped them, and as regards Hanson and Stedman the interruption was merely nominal. Phair resisted and there was a scuffle and the verdict was heavy in his case. You can imagine the spirit of the officers who were anxious to prevent unlimited fishing. The jury found a verdict for Hanson for \$1,000, and for Stedman for \$3,000, afterwards reduced to \$1,500, for the nominal offence, they having been merely stopped, and I am informed those two cases will go to appeal.