

POOR DOCUMENT

AGENTS FOR THE HERALD.
TRAVELLING AGENTS.
J. G. T. Clarke, O'Brien, Thomas Buchanan,
S. H. Wortman.
LOCAL AGENTS.
R. Vanward, St. Mary's Ferry;
J. Gibson, Marysville;
J. A. Johnson, Shonago;
G. H. Dykeman, Macquack;
H. M. Stevens, Somerville, C. C.;
Albert Boone, Geary;
Howard Gray, Upper Masserville;
J. A. Stieling, Upper Masserville;
E. E. Harrison, St. John;
R. McMillan, Stanley;
H. M. Harrison, Jacksonville.

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THAT INVESTIGATION.

The similarity which exists between great minds is well illustrated by articles which appeared in the *Capital* and *Star* of Saturday. Both begin by charging their contemporaries with falsifying the evidence in the Clerk of the Peace matter; both go on to give a version of the case entirely different from what the witnesses have sworn to; both close with the mountain in labor story; and both are entirely wrong. The falsification of evidence is one of the last and meanest resorts of a coward. It lacks the respectability of downright lie. For an example of it we may refer to the account which the *Capital* gave of the fictitious encounter between its editor and a merchant, after first securing itself against the possibility of contradiction by asking all the news paper men in the city not to notice the facts. Neither the *Globe*, the *News*, or the *Herald* falsified or garbled the evidence given before the committee of the House. The evidence as published in the *Herald* was taken down *verbatim* as given by Mr. Carman, and the only difference between our report and that of the Clerk of the Committee is, that in ours the evidence being taken exactly as first given makes Mr. Carman repeat one or two statements, which repetitions were usually eliminated by the Clerk from the answers as they were given—a discrepancy which any man who knows anything about taking down testimony, knows will occur in spite of the utmost care. Having indulged in an onslaught upon the *Herald*, on the correctness of its report, and also because we expressed an opinion in favor of the evidence as in our contemporary proceeds to do the very thing it enjoins upon us, and we presume will accept its own version of our case as conclusive in its own name, that it "has lost the small share of journalistic decency which it possessed." It instigates the evidence by giving Mr. Babbitt's authority for the statement that the \$290 check was given to Mr. Carman to stand against a invoice as he "Mr. Carman said something of the kind the first day, but corrected it the second day. Mr. Babbitt said nothing of the kind in his evidence, and the fact actually is, that the check was never given to Mr. Carman, but was presented by the Receiver General, cashed by the Bank, and the amount of it ought to have appeared in the public accounts, but it did not. The *Capital* says nothing has been proved except "that a few dollars have been paid as judges' fees which should not have been paid." Is it nothing that a public officer, whose salary by law was only \$5,000, should have been paid for so many years \$1,000, and for others \$400 out of the public funds, and never a word of it appear in the public accounts, and the statement of receipts be deliberately falsified year after year, in order that the unauthorized payments might be covered up? Is it nothing that a Government has made a private agreement for the payment of a large sum of money annually, and has concealed it from the House, while taking credit for having saved the amount which was so illegally paid? Is it nothing that the accounts of this Province are so kept that a man who seeks to arrive at the facts, must take his political reputation and standing in his hand when he attempts an investigation? If Mr. Blair had failed to sustain his charge, his standing in the Legislature would be gone, and yet we are told it is nothing that the affairs of the Treasury of this Province are so conducted as to handicap members of the Legislature in this fashion, in their endeavor to arrive at the actual state of affairs. We have not space today to analyze the evidence any further. We publish the testimony that our readers may refer to for themselves. In this we differ from our neighbor which does not publish the testimony. He is evidently afraid of it.

Before leaving the subject, we wish to refer to the statement in the *Capital*, that Mr. Blair, in making his charge, "expected to prove corrupt practices and personal dishonesty against the members of the Government." Mr. Blair expressly stated that he did not expect anything of the kind, and every paper which reported his speech, except the *Capital*, reports him as having stated that he did not impute any personal dishonesty to members of the Government. Yet, in the face of this fact, the *Capital* utters the foregoing wilful and deliberate misstatement.

—There is a disposition to talk everything to death in the House this winter. It is a poor day for politics which passes without one worthy row.

—Mr. Willis is filling his position of Chairman of the Committee of investigation into the returns for the Clerk of the Peace, with a good deal of dignity and entire impartiality.

SALMON FISHING.

We surrender a large amount of space today to Mr. J. Henry Phair's letter on the course pursued by the Fisheries Department in respect to the river fisheries in this Province. This letter gives to the public for the first time the history of the proceedings which terminated the other day at the Nisi Prius Sittings, in a verdict for \$11 in favor of our correspondent and against Mr. W. H. Venning, the New Brunswick Inspector of Fisheries. It lays bare for the inspection of the public one of the most scandalous attempts to deprive the people of this Province of their rights which can be well conceived, and it is a matter for great congratulation to the public that the men who had to bear the brunt of official oppression were of the right stamp. The manner in which applications for licenses to fish have been treated by the Ottawa Government is a clear proof that the gentlemen in charge think the pleasure of a few political friends counts for more than the rights which the courts of this country have declared to be inherent to the owners of the soil. Notwithstanding the decision of the Supreme Court, as I think there are many matters connected with the subject with which you are unacquainted, and which may be interesting to your readers, I propose, with your permission, to give a short account of the manner in which the fishing for salmon with rod and line on non-tidal rivers in this Province has been dealt with by the Government of the Dominion and the Minister of Marine and Fisheries of the Dominion of Canada. I shall confine my remarks more particularly to the South-west Miramichi River, as it is an old friend whose waters I have fished for the past forty years, enjoying much rare sport and many pleasant hours in its rushing waters and tranquil pools. In 1834 the New Brunswick and Nova Scotia Land Company obtained a grant from the Government of New Brunswick of the lands on both sides of the South-west Miramichi (including the river itself from a point a few miles above Boiestown to near the head of the river. This grant, by operation of law, conveyed to the Company the exclusive right of fishing within its boundaries. The Company, however, rarely exercised this right, but allowed all parties to fish within its limits, without any other restrictions than those imposed by the laws of the Province for the regulation of the times and modes of fishing and the preservation of fish generally. They rather encouraged parties to fish their waters, believing it in their interest to do so. Numbers of gentlemen from the United States, from Canada (as then known) and even from Europe, every season visited the S. W. in pursuit of the king of fishes, and as a pleasant recreation from the toils of a city life. Their visits were a boon to the Province generally and to the settlers on the river in particular, for they travelled on our roads and steamboats, they brought custom to the hotels and the merchants, and they gave employment annually to numbers of canoe-men and guides on the river, besides affording a good market for the settlers for a considerable portion of their farm produce. Such was the state of affairs until the time of Confederation. In 1868 the Dominion Parliament enacted what is known as "The Fisheries Act 1868." The second section of this Act is as follows:—

2. The Minister of Marine and Fisheries may, where the exclusive right of fishing does not already exist, issue an order authorizing to be issued, fishery leases and licenses for fishing and fishing whereas situated or carried on; but leases or licenses for any term exceeding nine years, shall be issued only with the authority of an Order of the Governor-in-Council.

"Where the exclusive right of fishing does not already exist" the Minister of Marine and Fisheries may issue leases or licenses, but there could be no doubt that the exclusive right did already exist on the S. W. It had been granted to the Land Company in 1834, thirty years before the passing of the Act of Confederation, (and here by law, in parenthesis, I would add that it has been decided by our Supreme Court that it had not been so granted prior to Confederation, the exclusive right of fishing being incident to the ownership of the land, unless severed by grant or reservation, exists in the Government of New Brunswick for the benefit of the people of N. B.) Thus you will perceive that the 2nd section of the Fisheries Act not only does not give the Minister of Marine and Fisheries power to issue leases or licenses where there is an exclusive right of fishing, but it incidentally recognizes and preserves the right where it does exist, and there is no other authority given by this Act or any other Acts to grant such leases or licenses, though I believe it is contended by the Minister of Marine and Fisheries that the 19th section of this Act gives to the Governor and Council of the Dominion power to make regulations to that effect. I will refer to this section and the regulation assumed to be made under it as I proceed.

In 1873 the Minister of Marine and Fisheries granted to Christian A. Robertson, of St. John, a lease of the exclusive right of fishing on the S. W. from Price's Bend (about four miles above Boiestown) to the head of the river and its source for a term of nine years from the 11th of January 1874, at an annual rental of \$50, and reserving to the fishery department the right to fish with four rods. This lease included all the waters of the S. W. within the grant to the Land Company as also those granted to a number of individual settlers prior to Confederation. There was no notice given to the public that the river was to be leased; it was not put up to competition, but was secretly granted to Mr. Robertson at a nominal rental. Within the lease there are at least ten good fishing pools, one of which if put up to competition would have produced twice the amount (at least) charged the present lessee for the whole river, and I have

The South-west Miramichi.

Interesting Letter from Mr. J. Henry Phair on Fishing in this Beautiful Stream.

To the Editor of the Herald:—

Sir,—In your issue of the 25th January last I find some remarks upon a case in which I was plaintiff and William H. Venning defendant, tried on the 24th ult., at the recent Nisi Prius Sittings of the Supreme Court. As I think there are many matters connected with the subject with which you are unacquainted, and which may be interesting to your readers, I propose, with your permission, to give a short account of the manner in which the fishing for salmon with rod and line on non-tidal rivers in this Province has been dealt with by the Government of the Dominion and the Minister of Marine and Fisheries of the Dominion of Canada. I shall confine my remarks more particularly to the South-west Miramichi River, as it is an old friend whose waters I have fished for the past forty years, enjoying much rare sport and many pleasant hours in its rushing waters and tranquil pools. In 1834 the New Brunswick and Nova Scotia Land Company obtained a grant from the Government of New Brunswick of the lands on both sides of the South-west Miramichi (including the river itself from a point a few miles above Boiestown to near the head of the river. This grant, by operation of law, conveyed to the Company the exclusive right of fishing within its boundaries. The Company, however, rarely exercised this right, but allowed all parties to fish within its limits, without any other restrictions than those imposed by the laws of the Province for the regulation of the times and modes of fishing and the preservation of fish generally. They rather encouraged parties to fish their waters, believing it in their interest to do so. Numbers of gentlemen from the United States, from Canada (as then known) and even from Europe, every season visited the S. W. in pursuit of the king of fishes, and as a pleasant recreation from the toils of a city life. Their visits were a boon to the Province generally and to the settlers on the river in particular, for they travelled on our roads and steamboats, they brought custom to the hotels and the merchants, and they gave employment annually to numbers of canoe-men and guides on the river, besides affording a good market for the settlers for a considerable portion of their farm produce. Such was the state of affairs until the time of Confederation. In 1868 the Dominion Parliament enacted what is known as "The Fisheries Act 1868." The second section of this Act is as follows:—

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been informed, and I believe correctly, that an American gentleman has stated his willingness to give \$200 per year for one station alone (I allude to Burnt Hill). Surely if the Dominion owned the right of fishing on these waters which they pretend to claim, (but which the Courts have decided they have not) they merely hold it for the benefit of the people of the Dominion and not for the individual benefit of the Government or their friends. It was (under their contention) public property, and if so I contend the public of the Dominion had a right, if the property was to be leased, at all events to be informed of that fact and be afforded an opportunity of competing for its purchase. It appears, however, the Dominion authorities thought otherwise and so they granted the lease in question without advertisement or competition, reserving to the Minister of Marine and Fisheries the right to fish within the waters the lease at any time with four rods. What does this reservation mean? I take it to be this: that four gentlemen of the Department of Marine and Fisheries or their friends may, when they desire a few days or weeks pleasant recreation from the toils of office, make an excursion to the S. W. to inspect the Fisheries!!! The expense of such an excursion and free fishing to be paid out of the public chest. Immediately on obtaining such lease the lessee forbade all parties from fishing within its limits without a permit from him, for which permit he charged \$2 per day for each rod. Thus without any authority of law or otherwise the Minister of Marine and Fisheries quietly, and without notice to any one concerned, by a stroke of his pen, has taken from the Company and other parties the valuable privilege which they had purchased and enjoyed for upwards of thirty years. But I and one or two friends (who had together for years fished these waters by the permission of the Company and having purchased from them some fishing stations on the river) did not propose to tamely submit to be driven off the river and to be deprived of our property without a struggle.

We refused to recognize the lease or to pay any license fee to the lessee, contending that he was trespassing on our rights, not us upon his, for years. We were followed up the river whenever we visited it by the Wardens and Fishery officers, forbade to fish, and threatened with seizure of our canoes, tents, fishing rods, &c., and all the other penalties of the law. We were called poachers, and all kinds of offensive epithets were applied to us. We proposed an amicable appeal to the Courts, even offering to pay all costs, but the decision was that it might; but all our efforts in that direction were ineffectual. Finally, the lessee, by his agents or officers, attacked two of the friends to whom I have alluded, and endeavored forcibly to take from them their rods, &c. My friends, however, proving to be the best men retained their property. A suit was then brought by the lessee against these gentlemen and myself, and a special case was agreed upon for the opinion of the Supreme Court of N. B. In this suit the grant to the Land Company was not set out in the pleadings, we relying on the right of property in the fisheries of non-tidal rivers in N. B. being in the government of New Brunswick, and the Dominion Parliament having merely the right to regulate the modes and times of fishing. Upon this question a majority of the Court decided against us, and we had to pay the costs. The late Judge Fisher, however, dissented from the other Judges, and gave a most able judgment in our favor. I then commenced suits in the Supreme Court for the parties whose rods were attempted to be seized, as above mentioned, against the lessee and his officers, for such attempted seizure. These suits were eventually tried before His Honor Judge Wetmore, at the York Sittings in June 1877, and a verdict was entered by consent of the plaintiffs for nominal damages (merely sufficient to cover the expenses we had been put to in the former suits, the only object of the plaintiffs then being to have the matter finally settled, with leave to the defendants to move the Court in banc for a non-suit on the question of the validity of the lease. The whole matter was then argued before the Judges in term, and judgment given without a dissenting voice in favor of the plaintiffs, and sustaining the judgment of Mr. Justice Fisher in the former case. The lessee did not appeal from this judgment; he paid the amount of verdict and costs, and then turned round and sued the Dominion Government in the Exchequer Court at Ottawa, for giving him a lease which they had no power to grant. This case was tried before His Honor Mr. Justice Green, and judgment given in favor of the plaintiff. Some points in the case were appealed from, but they do not affect the main question at issue, and judgment has not yet been given by the Appeal Court thereon.

You would naturally suppose that the matter in dispute was then at rest, that the question of riparian rights was at last settled, but nothing of the kind. All the Courts had decided against the assumed authority of the Minister of Marine and Fisheries, but he was not to be governed by these decisions, and if he could not get over them he at least might get around them, and still uphold his friend's leases. To effect this object, the following Order

ORDER IN COUNCIL.

Government House, Ottawa,
Wednesday, 11th June, 1879.

PRESENT:

His Excellency the Governor General in Council.

On the recommendation of the Honorable the Minister of Marine and Fisheries, and under the provisions of the 19th section of the Act passed in the Session of Parliament of Canada, held in the 31st year of Her Majesty's reign, chapter 53, and intitled "An Act for the Regulation of Fishing and Protection of Fisheries."

His Excellency, by and with the advice of the Queen's Privy Council for Canada, has been pleased to order, and it is hereby ordered, that the following Fishing Regulation be, and the same is hereby made and adopted:—"Fishing for Salmon in the Dominion of Canada, excepting under the authority of leases or licenses from the Department of Marine and Fisheries is hereby prohibited."

W. A. HINCHINBROOK,
Clerk Privy Council.

[Extract from *Canada Gazette* of Saturday, the 14th June, 1879.]

This is called a Fishery Regulation, but you will observe that it makes no provision as to how the lease or license may be obtained, who may obtain it, nor the price, if any, to be paid therefor. We contended that it did not apply to the riparian owners, that they were protected by the 2nd section of the Act, and consequently did not affect us on the South-West. That it was merely an attempt on the part of the Minister of Marine and Fisheries to enforce their leases which the courts of the land had decided were invalid and beyond the powers of the Department to grant, and so we determined to fish as usual.

One gentleman of our party, Mr. Hanson, in order to test the sincerity of the Department, applied to the Fishery Office in Fredericton for a license, at the same time stating that he did not acknowledge the right of the Department to grant such license, but that he applied for it in order to avoid any unpleasant collision with the officers on the river. This application was forwarded by the officer in Fredericton to the Inspector at St. John, and by him sent to the head of the Department at Ottawa.

After some weeks he received from the St. John office the following communication:—

FINANCIAL OFFICE,
St. John, 18th July, 1881.

Edgar Hanson, Esq., Fredericton:—

Sir—On my return here I find answer from Ottawa to your application to fish in front of your lands on the S. W. Miramichi. It is as follows:—
Your telegram on behalf of Mr. Hanson has been submitted to the Acting Minister, who thinks the proper course is for the party to make application to this Department, setting out the grounds of his claim to license and the limits, and also referring to titles on which his claim is based. The application should specify what license the applicant offers.

(Signed) W. F. WRENN,
Commissioner of Fisheries.

From the above you will perceive that it is out of my power to give licenses or permits on the South-west.

I have the honor, &c. &c.,
W. H. VENNING,
Insp. Fisheries.

Now, I am informed (and I believe correctly) that other gentlemen, whose names I can give if necessary, applied to the fishery officer in St. John for license, and upon the recommendation of Mr. Robertson (the lessee) license was granted by such officer without the payment of any fee, and that in their case there was no sending of the application to Ottawa. Why was this? Why was Mr. Hanson's application sent from officer to officer and at last to Ottawa and finally refused, when the other gentlemen obtained licenses in St. John without trouble and without price? Was it not in effect to give to Mr. Robertson the benefit of that lease which the courts of the land had over and again decided the Department of Marine and Fisheries had no authority to grant? After Mr. Hanson's reply thereto, he, my other friend and myself, made arrangements for a fishing excursion to the S. W. We intended starting about the 1st of July last. My friend being in St. John a few days before that date met Mr. Venning, the Fishery Inspector, there, who, in course of conversation, told him that he had been informed of our intention, and that he had received orders from Ottawa to follow us up the river and seize our rods, &c. My friend replied that there was no necessity for such a course; we were all well known residents of Fredericton, we would go up and fish as usual; on our return we would acknowledge the fishing, and if the department thought they had any charge against us, they could then lay their complaint before a magistrate, and have the matter tried out in a legal manner. I believe the Inspector would himself have preferred this course, but there were others at his back whom it did not suit. We went to the river and on the 6th of July were fishing on our own land, purchased by us from the Land Company, when the Fishery Inspector (the defendant in my suit), with the Deputy Minister of Justice for New Brunswick, two other Wardens on the river, a constable, and several other men—some of the party were armed with revolvers—came upon my refusing to give up my rod unless he would do so, the Inspector drew his revolver, and told me he would use it if I resisted. I replied that I would not

endanger my life for the sake of my fishing rod; myself and my friend then gave up our rods. He afterwards returned them to us upon our promising to produce them when required by Her Majesty the Queen so to do. It has been stated that the whole attack and seizure was an understood matter between the officer and ourselves, and that my show of resistance was a sham. Nothing can be further from the truth than this assertion. We felt ourselves deeply aggrieved and insulted, but were compelled to submit to an armed force, and we determined to appeal again to the laws of our country for redress. I have heard it urged that I could not have been much aggrieved by the attack, inasmuch as, after the affair was over, I invited the party to my camp to dinner. I did invite them to dinner, and gave them the best of my table. My conduct, perhaps, may be contrasted with theirs; so be it. I do not offer any apology for mine. I believed they were acting under their instructions, that there were others at their back, who pulled the wires; and, after the excitement was over, I felt little resentment to the officers, they were merely carrying out their orders. We parted good friends and we resumed our fishing. On our return to Fredericton we found summonses awaiting us, to appear severally before John L. Marsh, Esq., Police Magistrate, and Mr. Ingraham, a Justice of the Peace, to answer the complaint of the Fishery Inspector, for illegally fishing in contravention of the Fisheries Act and Order in Council. We attended and the summonses were dismissed.

Now let me ask, where was the necessity for the Inspector following us up the river with an armed force, seizing our rods under a threat of using his revolver and then giving them back to us, and afterwards laying his complaint before the magistrate in Fredericton? Could he not have made his complaint without the seizure? Was it necessary that he should first publicly insult us and endeavor to force us into a fight, in which blood would probably have been spilled, and perhaps lives lost, but for the peaceable course we pursued? Was it not rather the exercise of a contemptible tyranny of office, a miserable show of a little brief authority, to which we must submit? My friend, when in St. John, offered the Inspector to acknowledge the fishing. He could not doubt his word, but even if he did doubt it and required other proof, I purposely offered it to him, for I continued for some minutes fishing in his presence before the seizure. I think it can only be taken as a deliberate insult and assault upon us, because we dared assert our rights, and would not surrender those rights at the behest of the Minister of Marine and Fisheries. On the foregoing complaints being dismissed, I commenced suits in the Supreme Court for myself, my friend and Mr. Hanson against Mr. Venning for the seizure and assault. My case was tried on the 24th January last, and a verdict given against the defendant for \$511 damages; the other cases have not yet been tried, so stands the matter at present. I await the next move.

But, sir, this subject is one in which the people of this Province are as deeply interested as I am, though we have had to fight the battle single handed. Will they quietly submit to be deprived of their undoubted rights in the manner I have above set forth? Are the decisions of our Courts to be treated with contempt? Are the settlers on the river, where they have resided for upward of fifty years, to be told that you may not go out in the morning and catch a fish in your own waters, in front of your own lands and in a lawful manner, without first applying to Ottawa for permission to do so? Will they consent that the valuable ungranted lands on the non-tidal rivers shall be rendered comparatively valueless to the Province by this illegally assumed authority of the Fisheries Department at Ottawa? Will they submit to be shot down like dogs if they dare assert their rights? I mistake them if they do. We are a law-abiding people, but there is a limit when forbearance ceases to be a virtue.

I do not for a moment dispute the right of the Dominion Parliament to regulate the fishing, that is (for instance) to say that fish shall only be taken at certain seasons, and in a certain manner, or even entirely to close a river for a certain period in order that the fish may have an opportunity to increase, or in many ways, or even perhaps to charge a fixed fee upon all fishermen to raise a fund to protect the river (the latter, I believe, but few fishermen would object to); but to take away my right and give it to another, or to permit A, B and C to fish while they prohibit me, is not regulating the fisheries; it is rather an illegal exercise of authority and favoritism to which I at least will not submit until compelled to, or until I am convinced that I am wrong.

Let me add in conclusion that the same grievances of which I complain in the South-West, exist on most of the other rivers of New Brunswick. I apologize for the length of my communication, as well, perhaps, for its many defects. It is, however, a plain statement of facts. It is the first occasion in which I have figured as a newspaper correspondent, but I trust that the importance of the subject will be sufficient excuse for my bringing it before the public through your columns.

Yours respectfully,
J. HENRY PHAIR.