

sea and serve as tributaries to the larger rivers or receive fish from them; and if you do not protect it at the mouth of the river, you diminish its quantity. It is an important source of wealth for the Dominion and we ought to preserve it by every possible means. I shall, therefore, vote for the amendment moved by the hon. Minister.

Mr. WELDON (St. John). The Minister will recollect that, up to the year 1882, the Dominion claimed the exclusive right to deal with riparian owners, but in the case of the Queen against Robertson, which I argued before the Supreme Court, the point was raised, and it was decided in favor of the riparian proprietor. I contend that the effect of this Act is simply to destroy that right. First, I say, that this is not within the power of the Dominion Parliament; and secondly, it interferes with property and civil rights, and I think it is very important that it should be considered in that view. You must take this Act in connection with other sections of the old Act. The Act in the Revised Statutes is simply the old Act of 1868, which was passed when the Parliament of Canada supposed they had a right to deal with these matters. My hon. friend has said that the penalty cannot be enforced, because a man can get a license to fish above the tidal waters; but my hon. friend must see that, when he has eliminated that provision as to a license, the fishery officer has no power to grant a license, because Parliament will have declared that no nets, or other apparatus, can be used at all in non-tidal waters. The next clause says he shall not fish without a license, except with a rod and line, in the manner known as fly surface fishing. So, unless he can fish with a fly, he is prohibited from fishing in non-tidal waters, and all the rights which the courts have held as incident to a man's right of property are taken away.

Mr. TUPPER. Supposing this Bill became law, and a prosecution was undertaken against a party for fishing in non-tidal waters, and the defendant produced a license under the next section of the Act, could the penalty be recovered?

Mr. WELDON (St. John). I say yes, and I will show my hon. friend why. Take sub-section 6 of section 7 of the 31st Victoria, chapter 60. The hon. gentleman repeals sub-section 5 altogether. Sub-section 6 declares that:

"The use of nets or other apparatus which capture salmon shall, except in the Provinces of Nova Scotia and New Brunswick, be confined to tidal waters; and any fishery officer may determine the length and place of each net or other apparatus used in any of the waters of the Dominion."

So far, my hon. friend's amendment is precisely the same as this Act, eliminating the exception in favor of New Brunswick and Nova Scotia, but then it goes on:

"Provided, that nothing contained in this section shall prevent the use of nets for catching salmon in the lakes of the Province of Ontario, nor preclude the Minister from authorising, by special fishery licenses or leases, the capture of salmon by nets in fresh water streams."

That proviso is taken away, and you must read sub-section 7 in connection with that.

"The Minister, or any fishery officer authorised to such effect, shall have power to define the tidal boundary of estuary fishing for the purposes of this Act; and above the actual limit so to be laid down, it shall be unlawful without the special fishery lease or license, above provided for."

Mr. TUPPER. If my hon. friend will allow me, I would point out to him that while he is quite right in saying that the immediately preceding section will be gone, the words "above provided for" will not refer to that, but they will refer to the beginning of the Act, which provides for the granting of leases and licenses.

Mr. WELDON (St. John). Here is sub-section 5, which the Minister eliminates from the Act.

Mr. AMYOT.

Mr. TUPPER. You have read that.

Mr. WELDON (St. John). I will read it from the Revised Statutes:

"The use of nets or other apparatus for the capture of salmon shall, except in the Provinces of Nova Scotia and New Brunswick, be confined to tidal waters, and any fishery officer may determine the length and place of each net or other apparatus used in any of the waters of Canada; but nothing contained in this section shall prevent the use of nets for catching salmon in the lakes of the Province of Ontario, or preclude the Minister of Marine and Fisheries from authorising, by special fishery licenses or leases, the capture of salmon by nets in fresh water streams; provided, that no one shall fish for or catch salmon with swing nets in any of the waters of Canada."

What does my hon. friend propose to do? He proposes to repeal that section, and what does he say?

"The use of nets or other apparatus for the capture of salmon shall be confined to tidal waters, and any fishery officer may determine the length and place of each net or other apparatus used in any of the waters of Canada; provided, that no one shall fish for or catch salmon with swing nets in any of the waters of Canada."

So the proviso as to special fishery licenses has disappeared. Then how can my hon. friend say that the Minister or any other officer can issue a license to set a net without a special fishery license? I say that, under the present Act, no Minister nor fishery officer can over-ride the law. The law says that no net shall be used in tidal waters in those Provinces except under the authority of licenses, which are repealed, so there can be no fishing by nets or by any other apparatus, not even by hook and line. The effect will be that in the River St. John no fishing can be done between the mouth of the river and the junction of the River Tobique, a distance of 220 miles; no man can put a net or cast a line in that river. My hon. friend has stated that in York county in one year there were 52,000 fish caught, and in another year 29,000. In the counties of King's and Queen's, 190,000 were caught one year, and 150,000 the next year. My hon. friend cited these statistics for the purpose of showing that salmon fishing was diminishing. No doubt one year may be better than another, but, on the whole, there has been but little diminution. Then, again, in the harbor of St. John there is a large fishery going on, likewise in the Bay of Fundy. But I take these statistics to show that the people who catch salmon in the River St. John, in the counties which are not spawning grounds, will be deprived by this law of the right to take a single salmon. It does not touch the spawning ground at all. It has been pointed out by the hon. member for St. John (Mr. Ellis) and the hon. member for Guysborough (Mr. Kirk), that the people have had these rights all along. They have held these rights by virtue of the ownership of the river bank, and the effect of this will be to prevent them from fishing except by rod in any part where the Minister chooses to decide that the waters are tidal waters. It seems to me that this is an infringement on the rights of parties. We find that it was contended under the 19th rule which was issued in June, 1879, by the department, that fishing for salmon except under the authority of a lease or license, was forbidden. It was contended that that was not the prohibition but only a regulation of the fishery. But the Chief Justice, in the case of *Delaney vs. McDonald*, said this:

"I do not so read it. But admitting that it might be so construed, I cannot find anything in the Act giving the Minister of Marine the authority to require a person who has by law the exclusive right of fishing, to take out a license to fish in front of his own land."

Now, I say the effect of all this will be to deprive a number of people of rights which they have heretofore exercised. I think it is a good deal, as the hon. member for Guysborough said, that the officers are not as active as they ought to be in protecting the fisheries. My hon. friend from Gloucester (Mr. Burns) spoke about other rivers which are salmon