

THE HALIFAX FISHERIES AWARD.

Lord Salisbury, if it be possible to gather any meaning from his expressions quoted, would seem to admit that British sovereignty, as regards the fisheries in the maritime territories specified, is limited in its scope by the engagements of the Treaty of Washington, which cannot be modified by any municipal legislation; but he seems to put forward the pretension that some other British authority has a right to modify those engagements, thereby in effect advancing the proposition that the Imperial Parliament alone can change, so far as the fisheries in Colonial waters are concerned, the treaty engagements of the Empire with the United States.

With all due deference to Lord Salisbury's authority, it is impossible to admit the soundness in law of his propositions.

If British sovereignty as regards the matter in question is limited in its scope by the engagements of the Treaty of Washington, it is impossible for any British authority, Imperial or Colonial, to modify those engagements. The sovereignty and jurisdiction over its own maritime territory were not taken away from Newfoundland by the Treaty of Washington. They still exist, subject of course to the fair carrying out of the engagements contracted thereby between the United States and Great Britain. In that sense it may be said the sovereignty of Newfoundland is restricted, but the restriction is of the same kind as that imposed upon the sovereignty of any State which admits foreigners within its borders to reside or to trade.

Vattel thus describes the rights and duties of a foreigner resident or sojourning in a State other than the one of which he is a subject:—

B. 2, c. 8, § 101. "But even in those countries which every foreigner may freely enter, the sovereign is supposed to allow him access only upon this tacit condition, that he be subject to the laws,—I mean the general laws made to maintain good order, and which have no relation to the title of citizen or of subject of the State. The public safety, the rights of the prince necessarily require this condition; and the foreigner tacitly submits to it as soon as he enters the country, as he cannot presume that he has access upon any other footing. The sovereignty is the right to command in the whole country, and the laws are not simply confined to regulating the conduct of the citizens towards each other, but also determine what is to be observed by all orders of people throughout the whole extent of the State. In virtue of this submission, foreigners who commit faults are to be punished according to the laws of the country. The object of punishment is to cause the laws to be respected, and to maintain order and safety."

B. 2, c. 8, § 104. "The sovereign ought not to grant an entrance into his State for the purpose of drawing foreigners into a snare: as soon as he admits them he engages to protect them as his own subjects, and to afford them perfect security, as far as depends on him."

B. 2, c. 8, § 106. "He [that is to say, the foreigner] cannot indeed be subject to those burdens that have only a relation to the quality of citizens, but he ought to bear his share of all the others. Being exempted from serving in the militia and from paying those taxes destined for the support of the rights of the nation, he will pay the duties imposed upon provisions, merchandise, &c.; and in a word, everything that has only a relation to his residence in the country or to the affairs which brought him thither."

B. 2, c. 7, § 84. "The sovereignty united to the domain establishes the jurisdiction of the nation in her territories or the country that belongs to her. It is her province or that of her sovereign to exercise justice in all the places under her jurisdiction, to take cognizance of the crimes committed, and the differences that arise in the country."

"Other nations ought to respect this right. And, as the administration of justice necessarily requires that every definitive sentence, regularly pronounced, be esteemed just and executed as such,—when once a cause in which foreigners are interested has been decided in form, the sovereign of the defendants cannot hear their complaints. To undertake to examine the justice of a definitive sentence is an attack on the jurisdiction of him who has passed it. The prince, therefore, ought not to interfere in the causes of his subjects in foreign countries and grant them his protection, excepting in cases where justice is refused, or palpable and evident injustice is done, or rules and forms are openly violated, or, finally, an odious distinction is made, to the prejudice of his subjects or of foreigners in general."

Orotan, in 1 Dip. de la Mer, L. 2, c. 8, p. 161 (4th ed.) says, on the subject of the Mer Territoriale:—

"Quant aux mesures à prendre, aux règles et aux lois à faire observer touchant le commerce, si elles sont quelque fois l'objet de traités conclus entre les nations, elles sont le plus souvent, et de plein droit, fixées par le gouvernement seul à qui appartient l'empire sur la mer territoriale. Les peuples commerçants avec le pays sont censés les connaître, et sont tenus de s'y conformer."

Fiore, in vol. 1 of his Nouveau Droit International, p. 289, says:—

"A chaque droit est attaché un devoir, et comme les étrangers ont des droits même dans un Etat étranger, et qu'ils doivent être protégés par les lois, ainsi ils doivent sentir le devoir de respecter les lois et de leur obéir. Sous ce rapport, nous pouvons dire qu'entre le souverain de l'Etat et l'étranger intervient un contrat tacite par lequel le souverain, d'une part, s'oblige à accorder et à garantir à l'étranger l'exercice de ses droits; celui-ci à son tour se place sous la juridiction du souverain, et devient son sujet pour tout ce que se rapporte à l'ordre intérieur de l'Etat."

See Heffter, § 60, § 62; Bluntschli, § 386, § 388.

By Articles 18 and 19 of the Treaty of Washington, each of the contracting powers merely granted the liberty to fish in common with its own citizens or subjects to the citizens or subjects of the other in certain portions of their respective maritime territories. There is no provision in either of the Articles creating a close time, regulating the mode of fishing, or providing for the establishment of regulations. It never could have been the intention of the contracting parties to have delivered over the waters, as Lord Salisbury expresses himself, to anarchy. By the omission of such provisions, is it not clear that each of the contracting parties trusted to the sense of justice of the other, and left to that other the undisputed power of framing fair and equitable regula-

tions *quoad* the fishing thenceforth to be enjoyed in common in its maritime territory?

In view of these facts and the authorities cited, the contracting parties have the right of regulating the fisheries, each in its own maritime territory; the other has no right to complain of any regulation made in good faith to prevent the wanton destruction of the fisheries, bearing equally upon British subjects and American citizens.

WILLIAM H. KERR.

Montreal, Dec., 1878.

THE PROS AND CONS OF CLUB LIFE.

So much has been written about Clubs that one would think their prosaic realities were as familiar to every magazine reader as those of domestic life. Their enormous extension within the last ten years, and their establishment as one of the features of the society of the age, have been another means of taking away the mystery which shrouded them so long as they were merely convenient and fashionable retreats for men of large income and plenty of idle time. In the days of despotic committees and exclusiveness there was some reason for looking upon the "club-man" as a person of particular caste; and as long as the luxurious establishments kept up for the benefit of the privileged few were either political centres or great gaming houses, there were plenty of reasons, public and private, for questioning their usefulness.

Nowadays all this has been changed, and, partly through the persistence of the Anglo-Saxon—who would, we believe, found a club if cast upon a desert island and go through the ceremony of balloting for his man Friday when that individual turned up—partly through their own intrinsic conveniences, clubs are common all over the world, and vary as much in the *personnel* of their members as in their laws written and unwritten. The one common feature, the essence of club life, is, however, to be seen in them all. This is the principle of coöperation to secure a degree of comfortable living at a cost which would be impossible for the individual member. A year or two ago there might have been added another distinction, the confinement of this benefit to men alone; but, seeing the success which, contrary to all reasonable anticipation, has been attained by the now famous Orleans, and the promise of an era of bisexual clubs—purely feminine ones having proved dismal failures—this will no longer serve as a *differentia*.

In spite, however, of their wide spread and easy accessibility, it would seem that there are still many misunderstandings and misrepresentations as to clubs, fostered to a great extent by the London "society papers," which furnish to troubled wives and mothers ample material for apprehension, and to moralists texts for discourses on the folly and vanity of the age. Beyond doubt a great deal that is said of the evils of club life in London, its indolence, gossip, high play and cynical skepticism in all things, is true; and its influence, being always great, is naturally assumed to be equally wicked when associated in the public mind with card scandals, heavy losses on the turf, free fights, and the Divorce Court. The other side of the story is overlooked; the political, literary, artistic and social influence of club life, though equally well known, not being brought into such prominence.

With this state of affairs we have little to do. On examination it would be found, we believe, that the wrong cause altogether has been assigned for it, and that the unpleasant problems in social ethics which must be dealt with sooner or later, if modern society is to be changed for the better, arise from more potent causes than the doctrines of club smoking-rooms or the influence of their morality. The symptom has been mistaken for the disease, and the extent of the affection itself has been much overestimated. It is hardly to be imagined that what may be true of clubs frequented by the fastest men of London is necessarily true of all London clubs, still less so of such institutions elsewhere. It may be in England a very handy subject for the purveyors of society gossip for the multitude to spice their paragraphs with while showing their intimacy with "the upper ten," but this immorality by implication becomes absurd when brought across the Atlantic and used as an argument against club life, as has been done lately by that eminent sensationalist, Mr. Talmage. Having thoroughly sated his congregation with the delights of Five Points and Bleeker street, with the unsavoury details of the life of prostitutes and thieves, he has found, as he thinks, fresh fields and new hopes of another increase in salary in depicting the imaginary interiors of clubs imaginary in all but the names. So far no great success has attended his efforts, and he has only been well ridiculed by the press, and much more good naturedly treated by the men he has attacked than the assault on their reputations seems to warrant. He has, however, brought about a good deal of discussion as to the effects of clubs upon life in America, though his highly-coloured charges of luxury, gambling and general interference with religious and social duties meet with no countenance from the public, and are easily disproved.

There is a great deal of well founded and sober objection to clubs, inasmuch as regards their effects upon young men. First perhaps in order, and as productive in great degree of the other charges preferred, is that of breeding habits of extravagance. This, in its positive aspect, is not so formidable as it would at the first glance seem. A man's purse must as a rule limit his expenditure, and with the system almost universally adopted of paying the bill at once, or with accounts rendered weekly, any tendency to spend more than can be afforded is promptly checked, especially as non-payment means expulsion and dishonour. A great deal of harm is done by the yielding to the desire to keep pace with richer men, and to share in their amusements; this must be admitted. But it is not an evil peculiar to club life, and there is much more probability of the man who is deficient in moral courage going to the dogs in this way outside of than in a club, where his own experience and the example of others will soon teach him that the real secret of the attractiveness of club life is the combination of individual liberty, unrestricted save by the demands of ordinary civility, with the benefits of a large society. He can live just as he pleases, and nobody will dispute his right.

The actual cost of living is greatly over-estimated in the popular idea. At any Canadian club a man who is reasonable in his ideas can live most comfortably for from \$1.25 to \$1.50 *per diem*. At the larger figure, this makes \$552 *per annum*, and with yearly dues, which nowhere exceed \$30, makes \$582.

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