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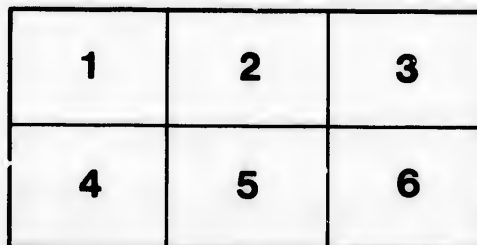
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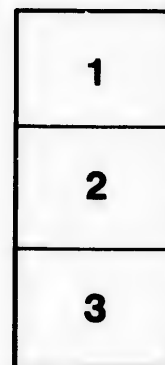
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REMARKS
ON THE
FISHERIES BILL,

ADDRESSED TO

THE HONORABLE A. CAMPBELL,

Commissioner of Crown Lands,

BY

F. W. G. AUSTIN.

QUEBEC:

PRINTED AT THE "MORNING CHRONICLE OFFICE," FOOT OF MOUNTAIN HILL.

1865.

["Where Stake Weirs exist to the prejudice of Navigation they are only maintained by the sufferance of the public as regards the use of Navigation, and no length of time can prevent them from being amenable to this objection."—Evidence of T. Spring Rice, Esq., M. P., (Lord Monteagle), 1825.]

REMARKS ON THE FISHERIES BILL.

TO THE HONORABLE ALEXANDER CAMPBELL,

Commissioner of Crown Lands;

SIR,

In the debate on the Fisheries Bill, introduced during the last session of the legislature, it was correctly asserted "that it was hardly possible to over-rate the importance of the Fisheries to this country." The editor of Baron Ouvier's Natural History of Fishes, in alluding to the Herring Fishery uses even stronger terms. "The Coffee bean, the Tea leaf, the Spices of the torrid zone and the Silkworm, have less influence on the wealth of nations than the Herring of the northern seas. Luxury and caprice may seek those productions, but necessity requires the other. This fishery sends every year numerous fleets to collect from the depths of the stormy ocean an abundant and certain harvest, which the vast shoals offer to the courageous activity of different nations. The greatest statesmen, the most intelligent political economists, have looked on the herring fishery as the most important of maritime expeditions. It has been called the Great Fishery. It forms robust men, intrepid mariners, and experienced navigators. The nations industriously occupied in this Fishery know how to make it the source of inexhaustible riches."

The submission of your bill to the people, with the debate upon it in the Legislative Council, is a course which cannot fail to meet the appreciation of every one feeling an interest in the measure, as it affords all concerned an opportunity of expressing an opinion upon its merits.

Of this opportunity I now avail myself, and respectfully submit for your consideration the following REMARKS, the result of some reflection upon the means of developing the Inshore Fisheries of the St. Lawrence. Before, however, alluding to the points involved, I desire emphatically to state that I have no interest whatever in these Fisheries, and in giving publicity to my convictions I am influenced solely by a wish to contribute the information collected for the benefit of the people at large.

These Fisheries have already received attention from former legislators, but no marked results have arisen from the labours of any of them; indeed, during a quarter of a century they have uninterruptedly declined, notwithstanding that Canada possesses in the St. Lawrence the link connecting the waters of the great lakes with the tides of the ocean—a field for their cultivation unrivalled in capacity and extent.

When the banks of the St. Lawrence were first peopled, this vast field formed the rich pasture-ground of untold numbers of fish; 50,000 salmon were annually captured in one river alone. In 1841, 1,800 were taken in one day at the Tadousac. Thirty years ago 3,000 barrels of Salmon were annually shipped from the Restigouche. Every tributary from Niagara to Labrador as well as the whole river and gulf, formerly swarmed with these and other valuable fish; there are indeed no regions in the world that had more Salmon and fewer men than Labrador and the North Shore of the St. Lawrence, yet that abundance has by ignorance and abuse been turned to scarcity; it is a scorn to Canada and her rulers that so many of the tributaries of the St. Lawrence, running through comparative deserts, are depopulated of these beautiful fish.

The first Act for their protection was passed in 1789, the 28th, Geo. III. This was followed by the 47th and 48th of the same King. The 4th, 5th and 9th, Geo. IV. The 6th Wm. IV. The 4th and 5th, 7th, 18th, 20th and 22nd Victoria, the present Fisheries Act. Many of these statutes required that a free passage for the fish up the rivers should be preserved, indeed they all record the opinion entertained by former legislators upon this point.

In 1857 the present government staff was organized to carry out the provisions of the law. This establishment has cost, with the payment of bounty claims, travelling and incidental expenses, the sum of \$102,700, about \$12,800 per annum,* and with all this expenditure, the Inshore Fisheries of the Lower St. Lawrence were in a worse plight last season than when the staff commenced operations in 1857. This fact the following comparative statement of the prices of fish in the Quebec Market will illustrate:—

	1857	1864
Green Cod, per barrel.....	\$2 75	\$4 50
Dry, per 112 pounds.....	3 50	4 75
Salmon, per barrel.....	18 00	15 50
Labrador Herrings, per barrel.....	5 00	6 50
South Shore do, do	3 50	3 50

Shad, a fish at one time in great abundance, and used by all classes, was last season nearly double the price it was a few years ago. The prices of sea-trout, mackerel, &c., have not diminished, and fish oils, notwith-

Vide Public Accounts.

standing the high bounty offered by law, still command the same prices as in 1857.

It has also been authentically stated that fresh fish packed in ice was last season brought by rail from the coasts of the United States and laid down on Canadian fishing grounds for a less sum than the same fish could be there purchased for.

The Report of the Honorable the Commissioner of Crown Lands for the half year ending the 30th June last, says:—"The mercantile fisheries have not been so productive as usual." Since that time appeals to the benevolent have been made in many places to save suffering fishermen from starvation.

The principal objection to the Bill under consideration is that it contains no clause to prohibit in tidal waters the employment of fixed engines for the capture of fish. The fixtures used for this purpose on the shores of the St. Lawrence are "Stake nets" and "Brush weirs," both self-acting fixed engines which it will be established are ruinous to all inshore fisheries where their use is permitted,—they cause this injury by the capture of the breeding stock in undue quantities and beyond the supply; at the same time they turn entire shoals out of their course along the shore * as well as fence them off their natural breeding grounds—the fry of the larger kinds as well as the smaller fish are also destroyed by the weirs.

The stake net, which is of Scotch invention and used in Canada, is formed of strong netting attached to high stakes firmly driven into the soil, and runs from high to low water mark; it acts upon the principle of a leader against which the fish, seeking their rivers along the shore, strike, and are conducted downwards to a narrow opening, the entrance to a cage or cell, from which there is but little chance of escape. To render this engine more deadly a second leader is often added and extends at a right angle from the cell of the first, when the whole engine forms a figure in shape not unlike the letter "L." This second leader is terminated by another cell to which is sometimes appended a "gill net" which shoots from it into the deep water where it is kept stationary by anchorage so that fish which may have missed the entrance to the cells of the stake nets generally enmesh themselves in the gill net and there perish. A stake net with double cells and a gill net attached could be seen in full operation last season at the Tadousac. This machinery, by arresting the course of the fish, attracted a large whale with a flanking party of seals on each side to prey upon the straggling salmon.

The brush weirs are similar in height and operation to the stake nets but are formed of Brush wood; they also contain at the lower end one or more cages in which fish of all kinds and sizes affecting the tide way are

* Russell on the Salmon, p. 362. Letter of R. A. O'Donnell to Mr. Lysaght, p. 8. Report of Committee, House of Lords.

enclosed. These weirs are put up in the spring and continue fishing day and night without intermission during the whole season until the frost of winter obliges the fishermen to remove them.

Practical men agree in stating that these brush weirs ruin the Herring Fisheries, and as this is a most important branch of trade it would be a serious omission not to record their opinions.

The herring is a native fish which breeds along the shores of the lower St. Lawrence and disappears after spawning time either by returning to the sea or sinking into the depths of the river. A few however linger on the coast during the whole season. Yarrell * says "the proper mode of fishing for herrings is by drift nets, but whether in deep or shallow water the nets are only in actual use during the night. It is found that the fish strike the nets in much greater numbers when it is dark than when it is light, the darkest nights therefore are the most favorable; it is supposed that nets spread in the day time alarm the fish and cause them to abandon the places where that practice is followed—it is therefore strictly forbidden."

Mitchell, † in substance, asserts that fishing during the day for Herrings should be prohibited by the Legislature, as it drives away the shoals. Perley also writes on the same subject "that nothing tends more to break up and destroy Herring fishing than setting nets in the day time."‡

This fish Mitchell also says "is extremely select as to its spawning ground and does not spawn in the open sea;" its disappearance from breeding grounds on our shores is therefore rationally accounted for. It was stated during the debate "that as far as Herrings were concerned they do not frequent the river now as much as they used to do; the character of the shores changes and the fish go elsewhere to spawn. Near River Ouelle the sea carried off a shoal and there are now very few Herrings caught on the shores of the Parishes of St. Denis and River Ouelle." The sea did not carry off a shoal from the opposite shore, but the Herrings have deserted that also, and they formerly abounded there in great numbers—it is the Brush Weirs, as will be presently seen planted upon their very breeding grounds, which have diminished their numbers as well as obstructed their approach to these places.

John Sandall, Esquire, who was long actively engaged in the fisheries of the Bay of Fundy, writes—"Herrings are taken around Grand Manan and West Isles by Torch-light and Brush Weirs. These Weirs must destroy a great quantity of fry every season."§

"Formerly," writes Mr. Perley, "the quantity of Herrings cured in this

* Hist. of Brit. Fishes, vol. 2, p. 187.

† The Herring, its natural Hist. and national importance, p. 38.

‡ Report on Fisheries, Bay of Fundy.

§ Appendix to Report on Sea and River Fisheries of New Brunswick.

place (Annapolis Basin) was from 25,000 to 30,000 boxes annually; and twenty years ago the average catch of every Weir was 2,000 boxes each season. The whole quantity now cured (1850) from the catch of all the Weirs together was supposed not to exceed 2,000 boxes."*

Mr. Ray said "that he formerly cured 1400 boxes of Herrings every season from the catch of his Weir. The quantity gradually diminished to 400 boxes, and after the weir was placed on the bar it fell off to 200 boxes. During the season (1850) he did not catch a single fish."†

It was stated by Mr. Riley, of Annapolis, "that about one-half of all the fish caught in the Weirs are entirely lost; that he had sometimes seen 300 or 400 barrels of Herrings taken during a single tide, left in the Weir to spoil. It is quite certain that this fishery has fallen off to such an extent as forebodes its ceasing altogether."‡

Oochran Craig, Esq., J. P., of Grand Manan, writes to Mr. Perley—"They (Herrings) are also taken in Weirs, which are put down on every bar and in almost every channel which those fish "play" through, and even around our shores. This mode, I think, must be most destructive, as in securing such as are fit for use, they destroy double the quantity saved, of those that are entirely too small for any purpose whatever but manure."§

"These Standing Weirs," adds the same writer, "are most injurious to the Herring and In-shore Fisheries. None that I have talked with on the subject pretend to deny, and they have been many of our oldest and best fishermen, and among them several of the Weirholders themselves."

And further on he continues—"I will, with a large majority on my side, say that I consider the extent to which our In-shore Fisheries are and have been injured by the destruction of Herrings, both fit and unfit for proper use, taken in the Weirs, is almost endless. The heavy schulls of Herring Fry being yearly cut up by those Weirs, and the Cod having no bait to draw them in-shore, they are only to be found far out in deep water, where boats and small vessels (the poor man's dependence), cannot follow them."

Again, "It is considered a settled point by all experienced fishermen on this island that, while so many Weirs are allowed to stand, so long will our Herring and in-shore fisheries continue to decline. So long also must we be annoyed with obstructions to our navigation, which many of the Weirs are at present."

"Next to the Weirs," writes the same gentleman, "the falling off of our Fishery may be attributed to the very great destruction of spawn for many years past. The preservation of spawn ought to be attended to; but

* Appendix to Report on Sea and River Fisheries of New Brunswick.

† Ibid.

‡ Ibid.

§ Ibid.

what will be the use of this, if the Herrings are to be fenced in and killed before they are the length of your finger." "We had formerly a law here," adds Mr. Craig, "during which our Herring and other in-shore fisheries remarkably improved; at that time however, there were no Weirs."

Augustus F. Kynaston, acting-commander of H. M. sloop *Persian*, wrote to His Excellency Sir E. W. Head, Bart.:—"There are actually Weirs laid down which must necessarily interrupt the course of myriads of fish, which, had they been allowed to pass, could have deposited their spawn unmolested. Independent of this, these Weirs offer a great obstruction to free navigation and I would venture to suggest their entire removal.†

Captain McLaughlin, a gentleman who was engaged as overseer of Fisheries for 18 years, also writes—"The passage of fish is obstructed by Weirs in every place where the fish resort."‡

This evidence establishes beyond question that wherever the weirs exist there the Herring Fishery declines, and it is a sad lesson to be taught that, through the blindness of former legislators, as well as the inhabitants themselves, a populous region, extending from River Ouelle almost to Rimouski, is now thinned of the most valuable species of fish which once affected it.

The destructive tendency of Brush Weirs is to some extent admitted by the Bill which contains a provision requiring a net-work to admit of the escape of the fry and small fish, to be inserted at the lowest point inside, where the tide ebbs. This provision will not effect the object intended, for the instant the tide ebbs the current rushes through the open net work as through a flood-gate, and naturally attracts the drift sea-weed and rubbish, which lodges against the netting and closes the apertures; this can be seen in any Weir in which the grating has been placed.

The Basse and Shad Fisheries also are nearly extinguished by the Weirs.

Perley, in allusion to the Basse (bar fish), wrote—"Basse were very plentiful formerly, but now are seldom seen, having been thinned off by the Weirs and other contrivances.§

A zealous missionary, who resided for many years in the Bay of Fundy, the Rev. Ferdinand Gauvreau, alluding to the condition to which the Shad Fishery would be reduced by these Engines, thus wrote to the Hon. M. H. Perley:—"Standing Weirs and Standing Nets are unquestionably the most effective means of destroying Shad altogether in our bays, or at least of thinning their quantity to an incredible degree; both ought to be discontinued at once, and prohibited by strict laws, and defaulters heavily fined."

* Appendix to Report on Sea and River Fisheries of New Brunswick.

† Ibid.

‡ Ibid.

§ Report on Sea and River Fisheries of New Brunswick.

In another part of the same letter the reverend gentleman adds—"I reiterate that both Weirs and Standing Nets ought to be prohibited by law, as being destructive to Shad, and very ruinous to our Fisheries and commerce. "The Brush Weirs," writes Mr. Perley, "are believed to be most injurious to the Shad Fishery, as in almost every case they were found to take the smallest fish only."

Many other authors could be cited to show the injury done to the Shad Fishery by the Weirs, as they capture the small fish, and thus cut off the succeeding year's supply. They are as destructive to the Shad Fishery as they are to that of the Salmon.

The Salmon affecting the Gulf and River St. Lawrence are identically the same species as the *Salmo Salar* of the British coasts,* possessing the same instincts, and have been diminished by the same means. Both kinds are reproduced in fresh waters, and migrate periodically to the same ocean, where they grow to an equality in size. In the spring and early part of summer the fish which have fattened themselves in the sea return again along the coast to their native rivers, there to deposit their spawn. The instinct by which they are impelled at a certain season of the year to make their way from the sea for this purpose—the early-breeding fish ascending to the higher parts of the streams, the later fish in succession sowing the lower portions with their seed, so that, in a natural state of things, the whole course of a river, so far as it affords suitable spawning ground, becomes stocked with the ova, is a beautiful arrangement.

In their migration to the spawning grounds the Salmon, Shad and other fish seek their pathway for miles close along the shores.—Yarrell † writes "When the Salmon rove along the coast in quest of the mouths of the different rivers in which they annually cast their spawn, they generally swim pretty close to the shore that they may not miss their port; and the fishermen who are well aware of this coasting voyage take care to project their nets in such places as may be most convenient for intercepting them in their course."

Russell‡ says "The chief aim of legislation on the subject, both in England and Scotland from Magna Charta downwards," and it may also be added now in Ireland, "has been to prevent the raising of standing gear in the run of the fish, but this prohibition did not extend to the sea coast, partly because that was not then known to be the run of the fish, and partly because no sort of engine had formerly been invented capable of standing and acting effectively in the open sea. It has now however been discovered that the sea coast is almost as much the course of the fish as is the channel of the river or estuary. The Salmon returning to the fresh water does not lie off in mid-ocean and then, as with a needle and compass, steer

*Descriptive Catalogue of Fishes.—Perley.

† Hist. of Brit. Fishes, vol. 2, p. 56.

‡ The Salmon, p. 123.

right into the river's mouth. It feels, or as Sir Humphry Davy expressed it to the Committee of 1824, *scent*s its way along the shore for many miles. The distance from the river of which they are in search, or from any river at which Salmon begin in a nautical phrase to hug the shore, is greater than seems generally believed, even by those who have paid some attention to the subject. To take a single illustration, we see a line of coast running out into a bold promontory, then trending inwards to form a bay five miles indented. In the inmost corner of that bay stands a productive stake-net fishery, although there is at the place no run of fresh water which would afford passage to a minnow, and no salmon river debouches within sixty miles. Here—and the fact is one of a multitude—it is proved that even in the absence of any contiguous river the Salmon not only keep the shore but follow its deepest and most sinuous indentations."

The owners of the Stake Nets and Brush Weirs knowing this habit and keeping it in view, fix their Engines on the shore and arrest the gravid fish. The knowledge of this disposition of the Salmon ought of itself to indicate the necessity of inserting a clause in the Bill to prohibit the placing of permanent machinery across their highway, as the destructive tendency of such a practice must be obvious.

A few miles from River Ouelle, in a deep bay, stood last season a net composed of brush, but heightened by net-work round the cages; this Engine Salmon net, has been in operation for several seasons. When first erected 1300 Salmon were annually taken in it. This number has steadily declined, and last year the quantity captured was not over 100. I visited it in the month of July and found enclosed at the ebb of the tide, Salmon, Shad, Herring, Sardines, Smelts, Tommy Cod and Sticklebacks—the netting was not sufficiently large to admit of the passage of a Sardine. I visited the same Engine again in the month of September, when it was then still in operation.

In Europe, as well as in Canada, it is only since the invention and employment of the Stake Net that the British and Canadian Salmon Fisheries alarmingly declined. Other kinds of fixed Engines existed in the rivers of Britain, and some exist still, but they did not, nor do they now cause the same wholesale destruction as that occasioned by the employment of the Stake Net on the coasts and estuaries. This fact having been discovered, the Stake and Bag Nets by recent Legislation have been abolished, and the ascent of the numbers of fish to long deserted breeding grounds is reported by English Journals to be astonishing;—but I will not anticipate.

The Stake Net was many years ago condemned by the highest authority "as all Salmon and Salmon Trout return to their native rivers, so Stake Net fishings ought to be abolished."

* Encyclopedia, Brit. Ed. of 1845, verbo Fisheries. See also Russell on the Salmon, and a Pamphlet on the Fishery laws, by W. Sinclair, Esq., addressed to the chief Secretary for Ireland, (1863.)

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Of the Brush Weir, the late Superintendent of Fisheries for Upper Canada says: "The system of extending 'watling fences' in the St. Lawrence has, in a great measure, destroyed the Salmon Fishery of Upper Canada."^{*}

The Provincial Statute, 18 Vic. ch. 114, prohibited the employment of these and all self-acting machines as too destructive. This wise law was repealed. It is not however in a new country lacking experience that a sound principle is to be looked for on this subject; that adopted by the Committee of the Legislative Assembly, the active members of which were dependant for their political existence upon the votes of the Stake Net and Brush Weir owners if not some of themselves actually engaged in the employment of this destructive machinery is, "that the fixed apparatus of which some theorists complain, should not be prohibited, but that no law to regulate their use, which can be enforced, can be too stringent." This equivocally worded conclusion indicates the strong misgivings of the Committee as to its accuracy, and when it is known that it is principally based upon the evidence of Stake Net Fishermen who are personally enjoying the benefit of the expenditure of \$12,000 per annum of public money, cannot weigh very seriously against the mass of testimony adduced which deprecates the use of fixed Engines. The Government Fisheries Staff also, the members of which were but recently assigned to the performance of duties with which they never before had any opportunity of becoming familiar, have all along adopted the same erroneous principle "that Stake Nets confined to the places where they are at present used, are not more destructive to Salmon than would be any other Net fishing in the same places.† The unsoundness of this doctrine is palpable, as it is diametrically opposed to the opinion and experience of all scientific and practical men, as well as to that of the able statesmen who have legislated for the same fisheries in countries where their value has been fully appreciated.

The first authority in addition to those already submitted which exposes the fallacy of this doctrine, is the Report of a Committee of the House of Commons on the Tweed Salmon Fisheries in 1857, on which was based a private Act abolishing the fixed Engines known as "Stell Nets" and "Calrn Nets" which had been in use from time immemorial.

In 1859 a second Committee sat and reported on the same fisheries confirming the abolition of these fixtures, and the discussion which took place gave the cue to the other Fishery Districts of Scotland as well as to those of England and Ireland.

In 1860 another Committee sat on the Ness and Beaully as well as on the Thurso Salmon Fisheries, and two Bills were passed by a Committee of the Commons to abolish Fixed Engines. A committee of the House of Lords

^{*} Rep. of Com. C. L. for 1862, p. 172.

† Evidence of Mr. Whitaker before Committee of Legislative Assembly.

was then appointed and made a report recommending the total abolition of Fixed Engines in Scotland. In 1812 fixed nets in the Firth of the Tay had been declared illegal.*

In 1861 the Report of Sir William Jardine, Bart., the eminent naturalist, and his associates, was published, and recommended that Stake and Bag nets should be abolished throughout England and Wales.

"The principal cause of the decline of the Salmon Fisheries of England and Wales," say these learned men, who formed their opinions after a careful investigation of the subject, and after hearing from experienced and practical witnesses answers to 18,000 questions, were "1st. Obstructions to the free passage of the fish. 2nd. The use of Fixed Engines—the latter cause including the former.—"Of all the evils that affect the fisheries artificial obstructions must beyond all question be regarded as most pernicious, whether such obstructions proceed from the Barrier nets or from the want of Fish Passes. It is obvious that to prevent the fish from entering the rivers is a surer way of destroying the breed than the most deadly mode of making war upon them when they are there. The existence of such obstructions is a cause fully adequate, if there was no other, to account for the gradual disappearance of the fish; and if effectual means be not taken to remove the evil the total extinction of the breed of Salmon must at no distant day be expected."

Upon this report was based an act in the same year abolishing throughout England and Wales Stake Nets.

In 1862 another committee recommended the total abolition of the Fixed Engines in Ireland; a law passed in the subsequent year gave full effect to that recommendation, and no new nets can now be erected anywhere, and the commissioners appointed by the act can compel the removal of all Fixed nets that are in their opinion injurious to navigation or otherwise illegal.

The following figures show the loss to one shareholder in the decline of a Salmon fishery by the use of Stake nets in the Ballyshannon District in Ireland,—

In 1854 the Share was.....	26,602 lbs.
1855 ".....	16,802 "
1856 ".....	13,501 "
1857 ".....	10,088 "
1858 ".....	14,381 "
1859 ".....	7,231 "
1860 ".....	5,018 "
1861 ".....	3,493 "†

* Russel on the Salmon, p. 124,

† Pamphlet on Irish Fisheries by W. Sinclair, addressed to Sir Robert Peel Bart., Chief Secretary for Ireland.

In another Fishery, the Tweed, the following statistics speak for themselves:—

1811 to 1815 Salmon taken.....	40,207
1816 to 1820 “	37,938
1821 to 1825 “	22,930
1826 to 1830 “	9,804
1831 to 1835 “	14,416
1836 to 1840 “	14,149
1841 to 1845 “	18,846
1846 to 1850 “	11,479
1851 to 1855 “	9,085*

The Encyclopedia Britannica Ed., of 1845, *verbo* Fisheries, contains a tabular statement of thirty years' fishing on the Tay, divided into equal periods of ten years each. The first period, before Stake Nets were used, the number of Salmon and Grilse taken was 130,854. During the succeeding ten years' use of the Stake Nets, the catch fell to 91,312. The third and last period—after the removal of the Stake Nets, and a rest of five years was afforded the Fisheries to recover—the catch rose to 225,372. These statistics afford conclusive evidence that a net increase by the removal of the Fixed Engines was obtained of 134,060 fish—about 140 per cent.

The same reasoning applies to Trout, Basse, Shad, White-fish and other kinds which cast their ova on the shores of the St. Lawrence or ascend its tributaries to spawn; it is therefore obvious that the Fisheries Staff in holding, and acting upon the opinion they have expressed, have been virtually paid with the public money to injure the public interests.

To neutralize the mass of testimony against their use, the proprietors of the Stake Nets and Weirs are accustomed to assert that the Salmon Fisheries in this country are different to those on the British coasts, but there is neither truth nor reason in this pretension; the habits of both British and Canadian Salmon are identical, and the tide ebbs and flows on European shores with the same force as it does on those of the St. Lawrence. In many places indeed the British coasts are more open and exposed. It has also been boldly stated that the Brush Weirs do not capture Salmon. This is equally untrue; one small Weir on the South Shore, in the season of 1863, captured sixty-one full grown fish, and a Weir at the mouth of the Escoumains on the North Shore, a few years ago, destroyed in one tide eighteen bushels of Salmon Smolts.

The policy to be pursued in Canada must be directed not only towards the preservation, but to the restoration of our exhausted Inshore Fisheries, and that object can only be attained if the reasoning I have submitted be sound, (and it is supported by the best authorities the world contains) by the immediate removal of the fixed Engines; this may temporarily interfere with the gains of the few, who in large estuaries or other favored localities still reap a precarious harvest at the expense of the many, but I

* Russel on the Salmon p. 101.

hold it to be due to the people at large that these Engines should be abolished without regard to the private gains of any individual.

It is also contended by the advocates of the Fixed Engines that Salmon cannot be captured efficiently by Drift Nets and Seines used on our coasts and in the estuaries of rivers, but they are without one tittle of reason or evidence to support such a theory, this mode of fishing for Salmon never having been properly tried in Canada, of which any record exists, and it will appear hereafter that it has been completely tested and with great success in British Salmon Fisheries,—Sections 11 and 12 of the 17th clause of the Bill imply, that Seines are to be used on the coasts in the White fish and Basse, as well as in the Smelt Fishery, and there ought to be no exception to the use of the same Engines for the capture of Salmon and Trout, as the habits of the White Fish and Basse are very similar to those of the Salmon in migrating periodically from the salt to the fresh waters to deposit their ova.

The Fishery officers, in giving their opinions of the effect which seining for Salmon would produce upon that Fishery, do not agree even among themselves. Mr. Whitcher, in substance, contends that *Seine-nets for Salmon would be so ineffectual as to amount to a prohibition against netting these fish.** Commander Fortin, on the contrary, as stoutly maintains that *the use of the seine would be much more destructive and injurious to the rivers than the use of the ordinary nets.*† When these Doctors differ upon so plain a point it is time to call in some competent authority to decide between them.

Mr. Ffennell, the Inspector of English Fisheries, writes on this subject ‡:—Fallacious statements are often made that Salmon cannot be caught efficiently and in good condition by other means than Stake Nets; but a reference to a few facts will be quite sufficient to dispel any illusion on this head. The Cot Net, Draft Net, and Drift Net fishermen in the Boyne, the Liffey, the Slaney, the Suir, the Nore, the Barrow, the Blackwater, the Lee the Laun, the Shanron, and in very many other places, did catch Salmon in abundance, and do catch some still, although not in the numbers they would if the Stake Nets did not monopolize them; and those fish always did, and still do obtain the first price in all markets. The lessees of the Duke of Devonshire's Fishery, from Lismore to Cappelquin, catch plenty of Salmon without the aid of Stake Nets, as also do the lessees of the Moy, Ballyshannon, Galway, Sligo, Liffey, Foyle, and many other fisheries; and here again the fish bring the first price in the markets. In Scotland, the Tweed fisheries are *more profitable*, now that Fixed Engines have been abolished, *more Salmon* are captured. The fisheries of the Tay are all worked by Draft Nets (seines.) The Duke of Richmond captures *many more Salmon* without the aid of Stake Nets in the Spey than he did with them; and his

* Appendix to debate on Fisheries Bill, p. 25.

† Ibid, p. 27.

‡ Fennell's Pamphlet, 1863, p. 18.

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fish, as well as those of the Tweed and Tay and the tens of thousands of other fish captured in Scotland with the net and coble, bring the highest price in the markets."

By the 8th Section of the Bill, Bag Nets, which are Engines running from low water mark into deep water, where they are sustained by anchorage, are entirely prohibited for the capture of Salmon, and this is a wise and important provision, as it is a fixed Engine of the most objectionable kind.

Another "Infernal Machine," which unites the deadly character of the Bag-Net with that of the Stake Weir, is the *Gill Net*, an Engine which runs across the whole course of the fish from high water mark down into the deep water where it is rendered stationary by anchors far below the line of the lowest tide; this apparatus descending into the deep water is in active operation at all times and during all conditions of the tide. The meshes of the Gill Net, each one of which forms a fatal trap, are of sufficient extension to admit the head, but not the shoulders of ordinary sized salmon, so that these fish in their attempt to pursue their course, are caught by the neck under the gill covers and strangled. It has been felt to be essential even under the misapprehension which has existed upon the effect of the Stake Nets, that a weekly close time should be observed by opening them, but there appears so far no means of opening the Gill Nets. They ought to be entirely abolished.

It was asserted during the debate that "it would be destructive to allow seines to be used in the fresh waters as is done in Britain." This statement must be taken with a great deal of allowance, if seining be carried on in the upper-waters of the tributaries, or upon spawning grounds no doubt it would be injurious, but this is never done, and some of the older statutes already cited establish that it was always forbidden in this country, the 47, Geo. III. ch. 12, § 14, 4 Geo. IV. c. 1, § 7, expressly declared that *seining should not take place in any river above the first rapid*.

A subject of growing importance to the maritime classes of the population residing on the coasts of the St. Lawrence, as well as to the public at large, is the free navigation of its shores by bateaux, boats, and small craft at all times, but which during the prevalence of wind owing to the obstructions the Weirs occasion wheresoever placed in tidal waters, is dangerous to life. The inconvenience caused to the long shore navigation by these fixtures was entirely kept out of sight during the whole discussion, but the public interest requires that attention should be directed to this point.

It will, no doubt, be conceded that wherever the tide ebbs and flows there exists a right of highway inherent in the public which no private title overrides. The obstruction of this highway by fixtures constitutes a public nuisance to abate which an indictment would lie.

In the case of *Ryan vs. Hayes*, CHIEF JUSTICE PARNFATHER, in deliver-

ing Judgment said "every person has a right to use the King's Highway, and no one can obstruct that by making an erection which causes an obstruction. This is not the case of building an erection in certain places which may injure a few individuals, but on the whole is perhaps an advantage to the public, but here a person erects private Weirs to the injury of a class of persons who must not be injured by private speculations of this description * * *. No person has a right to say, I will leave the public a portion of a highway, and take the rest to myself."—JUSTICES BURTON, ORAMPTON and PERRIN concurred.

At WATERFORD SUMMER ASSIZES, 1844, in the trial of *The Queen vs. Dobbyn, et al*, on an indictment, BARON PENNEFATHER in charging the jury said—"Wherever the tide ebbs and flows is a highway open to all Her Majesty's liege subjects; their rights are not to be abridged, and an interference with public rights is a nuisance at common law.

KILKENNY SUMMER ASSIZES, 1844. *The Queen vs. Patrick W. Power*. Indictment for a Nuisance to the Public Right of Fishery in a tidal part of the river Suir, by the erection of a stake weir.

BARON PENNEFATHER—Gentlemen of the Jury—"The statute of Magna Charta, which is declaratory of the common law, declares and enacts that fish shall not be taken by fixed engines. The sea is open and the right of fishing is open, and that right should not be interfered with by any fixtures in the soil, and I am therefore of opinion that those Scotch Weirs (Stake Nets,) are against the Common Law, and they are indictable if they create an injury. Now the injury stated here is to persons having the right of fishing in the place in question, and the answer complained of by them is, that they could not by any possibility take Salmon in that place, for that Salmon in that part of the river could not be taken by line, by fishing rod or by moveable nets * *. All the subjects of the Queen have a right to fish in a navigable river, and no one has a right to fix down engines to take fish; and if they do it is against the common law of the land. * *. The man who owns a small boat is as much under the protection of the law as the owner of a vessel of 1,000 tons burthen; and he has a right to the free use of the way as much as the proprietor of the largest ship * * *"

The Harbour Commissioners of Limerick addressed the Board of Admiralty in 1862 in the following terms: "It must be almost unnecessary to represent that the existence of the impediments (fixed engines) renders the navigation of the river (Shannon), most inconvenient and dangerous for small craft, depriving them of the shelter of the shore in rough weather and driving them out into the channel even at high tide, and that while the Lords of the Admiralty so stringently protect the public rights of navigation against all other impediments, they should not forbear to exercise their authority against these erections which have been so loudly complained of and so authoritatively condemned."

Extract from a letter from JOHN LONG, Esquire, Civil Engineer to the Board of Admiralty:—

"During the boisterous weather of last week I went along both shores (Shannon) in a boat, and in keeping in shore for shelter was always obliged in passing the Weirs to keep out into the tideway, sometimes at great risk. On one of those days, during a strong ebb, opposed by a stiff, nearly half-gale breeze, the Stake Weirs rendered it impossible to keep the shelter of the land, which with the aid of the backtide inshore would have made our course safe and easy; with much danger we rounded the Stake Weirs, encountering the troubled tide way and adverse current outside at great risk."*

"There are numerous instances of boats having been wrecked and lives lost," says Mr. Lysaght, "on those Stake Weirs and Bag Nets, but one will suffice as an illustration. On the 20th December last, between seven and eight o'clock in the evening, loud cries were heard proceeding from the direction of a Stake Weir belonging to the Knight of Glin. It was discovered that a boat of eight tons, with four men, were in the most imminent danger, having struck on the Stake Weir. Four policemen went to their assistance and found that a boat had been driven on the Weir by a north-west wind while endeavouring to make the quay. There was property worth £150 on board. The stakes had run into the boat in such a manner that the men had the greatest difficulty in cutting them away with saws and hatchets, and eventually the boat was brought into the bay in a sinking condition."†

The French law upon this subject was defined by the Ordinance *des eaux et forêts*, which prohibited the erection of mills, *Fisheries* or other impediments to navigation.‡

The Judges under the Seigniorial Act stated the law to be "that Seigniors had no other rights over navigable rivers than those specially conveyed to them by their grants, provided these rights were not inconsistent with the *public use of the waters of those rivers, which is inalienable and imprescriptible*."§

At the Criminal term of the Court of Queen's Bench, held at St. Thomas in October 1862, William Patton, Merchant, was indicted for a misdemeanor in having cut loose a boom the property of Honore Morin and another, upon the River du Sud.

It was pleaded that no offence was committed. That the river was a highway, the boom across it a nuisance, and that the party injured by a

* Appendix to letter on Mr. McMahon's Bill on the Irish Salmon Fisheries, by W. Lysaght.

† Pamphlet by W. Lysaght.

‡ Ord. of 1669.

§ Robertson's Digest, p. 438.

nuisance had at common law a right to abate it himself, without by so doing committing any crime.

The jury found the defendant guilty, but the Judge entertaining doubts upon the point submitted, reserved the question for the opinion of the Court of Queen's Bench sitting in Appeal and Error. That Court decided that the defendant in breaking the boom committed no offence, and gave judgment setting aside the judgment and discharging the defendant. Mr. Justice Meredith intimated as his opinion that the question which should have been submitted to the jury was whether the boom was a nuisance, on which Mr. Justice Monrolet remarked that the obstruction of a river is a nuisance which any one injured by it has a clear right to abate.

It has been seen above that BARON PENNEFATHER has over and over again held the Stake Weirs to be public nuisances ; the Brush Weirs and Gill Nets are of course the same.

Since the acquisition of Canada the trade of the St. Lawrence has increased from a yearly tonnage of 6,496 tons to that of 618,926 tons, and it may be well for the legal advisers of the Vice Admiral of a British Colony to consider whether it be consistent with the public interests to suffer these nuisances to navigation as well as to fishing to subsist any longer.

It has been intimated that the Brush Weirs destroy the small fish as well as the fry of the larger kinds. It is these small fish that serve as the natural food of the Cod, and wherever this supply fails, there the Cod Fishery must also decline. To destroy this bait by using it to manure the soil, which is constantly practiced, is obviously an effectual way of driving the Cod from haunts where such waste prevails.

"There has been great complaint of late years," wrote Mr. Perley, "of the falling off in the Cod Fishery in the upper part of the Bay of Chaleurs—it is said to be every year decreasing. At Carleton, Maria, New Richmond and other places on the Gaspé shore, the fishing establishments are deserted and going to ruin. At these places there was formerly an abundant supply of fish, but the inhabitants now barely catch enough for their own winter store. The decrease is also felt on the New Brunswick shore. The decline of the Cod Fishery in the upper part of the bay is attributed to the wanton destruction of the proper and natural food of the Cod—Herring and Capelin, which are taken in immense quantities, not for immediate eating or for curing, or for bait, but for manuring the land. In a representation made to the Legislature by a fisherman of Gaspé, it is stated that this fisherman has seen five hundred barrels of Capelin taken in one tide expressly for manure, and that he has also seen one thousand barrels of herring caught at one time and left to rot upon the beach."

Mr. Fortin, in his report for 1863, states "that at Cap des Rosiers, Griffin's Cove, Fox River, Natashquan, Kekashke, Meccantine, Whaleshead on the north shore of the Straits of Belle Isle, on the North shore of New-

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foundland, on the eastern shores of Labrador, at the River Moisie, in God-
bout Bay, and indeed almost everywhere the Cod Fishery failed for want of
bait."

The past season affords a sad confirmation of the statements contained
in Mr. Fortin's report. Indeed many of the Codfishermen did not make
sufficient to keep, without assistance, their families from starvation. It
would be wise to revive the old Statutes, and insert a short clause in the
Bill to prohibit the use of small fish suitable for food or bait as manure.

Since the passing of the statutes regulating the Salmon Fisheries of
England and Wales and of Ireland, so short a time has elapsed that it has
been almost insufficient to afford an indication as to what the fruits of that
legislation may be. Nevertheless, some of the English journals, even at
this early stage, represent the effect of these recent laws as promising in
the extreme. The Statute applying to England and Wales received the
Royal assent in the year 1861, and the third Report of the Fishery Inspec-
tors is thus alluded to by a London journal:—

"Two years and a half have passed since an Act for the Improvement
of the Salmon Fisheries in England and Wales came into operation, and
the third Report of the Inspectors appointed under it, which has just been
presented to Parliament, affords us the means of estimating the probable
benefits which we shall derive from the measure. It is gratifying to find
that these in no degree fall short of the anticipations which we had ventured
to indulge. Already a most sensible increase of fish appears to be re-
cognized in every one of the rivers to which the Act has been applied.
Replies have been obtained from the local managers of the rivers from
Cumberland to Cornwall, of those which debouch into the English Channel,
and of those of Northumberland and Durham, and there is a uniform
acknowledgment of the very marked, and in some cases striking, increase in
the numbers of Salmon seen and caught. In some instances the improve-
ment has already affected the markets, and brought the prices down from
an average of 2s. to 1s. per pound, occasionally even so low as 8d. Waters
hitherto empty are reported now to be swarming with fish.

"It is well to remember that, though the new Act is watched over by
Government Inspectors, there is really no Government action, and none
but the simplest of general regulations involved in its operation. All that
it professes to do is—keeping in view that the Salmon is a migratory fish,
which must ascend the rivers to breed and descend to the sea to feed—to
prevent any single owner who holds a portion of the course it must traverse
from so exercising his rights of property as to extirpate it altogether. The
Act, therefore, prohibits the erection of any impassable barrier, such as
Dams or Weirs, and any absolutely fatal methods of fishing, such as those
by Fixed Nets, or any fishing at all at the time when the fish are out of sea-
son and unfit for food. These simple rules are left to be enforced by the
owners of the rivers themselves, who are authorized to form, if they choose,

associations for carrying them into effect, and punishing their breach by the infliction of the statutory penalties. All that the Inspectors have to do is to watch, in the interest of the public and of natural history, the results of these operations, and to acquaint Parliament with the experience gained and the further measures that are thought to be desirable."

The law applying to the Irish Fisheries was passed on the 28th July, 1863, and the effects arising from it in affording employment to increased numbers of poor fishermen in so short a time are astonishing. An English Journal thus adverts to the subject:—

"It is pleasant to find that the recent legislation on the Salmon Fisheries is improving the condition of the fishermen of Ireland, in all the Districts where the Act has come into full operation. Near New Ross, in particular, there are now employed, according to the official returns, 1,392 men, working 348 Drift and Snap Nets, where last year there were only 147 nets, finding employment for 688 men, all of them only one remove from paupers; whilst now each man can earn from £2 15s. to £3 per week. Last year the highest amount paid in one week by buyers of Salmon in New Ross was £105. Since the first of March this year, the money paid there per week for Salmon has averaged from £700 to £1,000."

A correspondent of the *Field* alludes to the large increase of fish in the upper waters of the Shannon, and when it is remembered that the rivers are the proper nurseries of the Fisheries on the coasts the policy of admitting the ascent of a sufficient number of fish up the rivers for the purposes of brood and reproduction is obvious. The *Field's* correspondent says, "It has been observed that the appearance of such large sized Salmon in the upper waters of the Shannon portends an abundance for the ensuing season. Beyond all doubt it argues well and strongly in favor of the new Fishery laws and against the Stake Nets; for while these were in existence, scarcely a single fish large or small was permitted to ascend.

"As regards the Special Commissioners their conduct has been everything that could be desired; before they set to work the Salmon fisheries of Ireland had been monopolised by a few proprietors of Stake and Bag Nets, which devoured all before them, and left our rivers in the upper waters as destitute of fish as the high road. What is the case now? These vile nets no longer exist, and as a consequence most of our rivers in all parts are teeming with fish, and all the subjects of the Queen sharing in the general prosperity. * * * The truth is it was the Stake Nets in the tidal waters that were demolishing the fish, and not the lax weir, for as soon as the former were removed from that moment the fish began to penetrate the river, its lakes and tributaries in all directions, a distance of two hundred and forty miles from the sea. Before the abatement of those nets, to my personal knowledge Salmon were as scarce as Dolphins at the places I have named; and now that they are no longer in existence, thanks to the wisdom of the legislature with the gap in the Lax Weir widened to

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50 feet, and the weekly close time for nets and weirs considerably extended also, the increase in a short time hence in the upper districts must be prodigious—as an old Shannon fisherman observed to me a few days ago: 'There won't be wather enough in the river to hould 'em all shortly.' "

The Editor of the London *Daily News* of the 15th April, 1865, writes, "It is seldom that legislation founded upon correct principles is attended with success so immediate and marked as the Salmon Protection Act of 1861. We have now before us the Fourth Annual Report of the Inspectors who were appointed under it, and their statements are conclusive as to the great increase of Salmon which it has already been the means of causing in our rivers and estuaries† Where it was not at once brought into operation the increase appears in the shape of a larger size of the Salmon caught last year, proving that it had saved for another year's growth a proportion that would otherwise have been destroyed; but where it was at once adopted its influence now appears in an immense augmentation of the number of Grilse and Salmon caught, proving that those which it saved the first year have already repaid the care taken of them by yielding produce which is already fit for market. In proof of this it is sufficient to quote some of the prices which, as Mr. Eden justly observes, are the best index of the supply. He tells us that at Sydney, in the lower Severn, the rate was at one time last year so low as 4d. per pound, and that at Shrewsbury, on the same river, it was lower than it had been known for years. At Carlisle the fall we learn was considerable; at Lancaster the price was greatly lower than usual and for some time continued at 8d. At Chepstow and at Carmarthen it was as low as 6d. and 7d. per pound. These are encouraging facts, and tell us that the interference with the rights of property which was necessary to save property from destruction, has in this instance at least been justified by success.

"It is natural, however, that the working of the act should have brought to light some defects in its provisions. These are chiefly of the same character as those which the Act was intended to remedy, and therefore involve no new principle for their amendment. They arise from the fact that the Salmon is a constantly migrating fish, always either ascending or descending the rivers; that it can only spawn in fresh water, but only grow and fatten in the sea; and that hence whosoever impedes its progress not only robs his upper or lower neighbours of the opportunity of catching it, but as effectually destroys it or its progeny as if he had killed it on the spot." The *Times* of the same date contains a similar account of the enormous progress of the British Salmon Fisheries under the provisions of the same Act.

The principle clause in this Act of 1861, which has promoted this great increase of Salmon in English waters, was also the principal clause inserted

* The *Field*, 18th March, 1865.

† See fourth Report of English Inspectors, Messrs. Ffennel and Eden.

in the Bill introduced by Mr. Irvine, the Member for Megantic, during last session, and which is still before the Lower House.

There can be no reason to doubt that if a clause be added to the Fisheries Bill to abolish the fixed Engines, that our Fisheries will yield not only a fair commercial value but also a large increase of wholesome food—while the population is augmenting, and while efforts are being made to increase it still more by emigration, no source for the supply of aliment should be overlooked, particularly one which if judiciously managed requires neither expense to maintain nor labor to improve its capabilities.

The RESTORATION of these Fisheries is a subject which concerns the public more than any individual. To the fisherman decrease of numbers may be compensated by increase of price; to the public it involves a decrease of food. The REFORM suggested in the modes of fishing may, for a short time, inconvenience a few, but these very persons will be the first to reap the benefit that will inevitably follow its adoption.

The decline of the Fisheries under the large and recent outlay of public money need not create discouragement, as these funds have been misapplied in giving effect to principles fundamentally erroneous, and not based upon that intimate knowledge of the natural history of the fish without which no system of protection can be of the least avail, and it would be unfair to expect Fishery Officers, who had no previous training or experience, taken from other branches of the public service, to be qualified for the efficient discharge of duties which in more advanced countries are generally entrusted to Naturalists and men of great experience, and it would be well to consider before another \$100,000 is cast into the St. Lawrence, whether it would not be prudent to adopt the same course as that pursued in England by the employment of an Officer possessing attainments qualifying him to direct this important branch of the public service, and if no one already possessing the necessary attainments can be found, to send on a visit to the principal Fisheries in Europe, some one who would in a few months acquire the requisite information. Under any circumstances it would be ruinous to persist in the continued employment on the shores and in the tributaries of the St. Lawrence of the fixed Engines which, when they do not wholly capture, the gravid fish scatter and drive them out of their course* as well as fence them off natural breeding grounds; these Engines have also destroyed the fry of the larger kinds, and have so far diminished the sustenance of the Cod as in many instances to banish him from long-frequented haunts.

The course necessary to restore the Inshore Fisheries to their former productiveness has been plainly indicated, and has been tried and approved

* Russell, p. 362. Letter of R. A. O'Donnell to Mr. Lysaght, p. 8. Rep Com. House of Lords.

in older countries ; let us therefore profit by their example and the development of the vast field Canada possesses for the production of food and wealth for her people, will be certainly accomplished.

I have the honor to be,

Sir,

Your obedient servant,

F. W. G. AUSTIN.

Quebec, 1st May, 1865.



their former
and approved

ht, p. 8. Rep



