

THE FISHERIES' CASE.

COMMITTEES REPORT ON THE QUESTION, PRIVY COUNCIL JUDGMENT.

The following report from the committee of the executive government concerning the fisheries of the province will be found of general interest.

To The Honorable A. R. McClellan Lieutenant Governor of the Province of New Brunswick.

May it please your Honor:—The undersigned who were by Order in Council on the 27th day of October 1898 appointed a committee to confer with the Dominion Government and with the Honorable Sir Louis Davies K. C. M. G. Minister of Marine and Fisheries for Canada, in relation to fisheries and the conditions existing by reason of the decision of the Privy Council in what is commonly termed "The Fisheries Case," and to make such arrangements with the Dominion Government as might be necessary or expedient under the circumstances, beg leave to report.

That having arranged by correspondence for an interview with the Honorable Minister of Marine and Fisheries your committee went to Ottawa, arriving there on the 31st of December last and two meetings were held. The Minister of Marine and Fisheries, at the first of these stated that it had been arranged between his colleagues in the Dominion Government and himself that the matter should be discussed by him on behalf of the Dominion Government with your committee.

We beg to submit a report of the substance of the principal points discussed at these meetings and the result of such discussion.

Your Committee claimed that their Lordships' judgment established the following propositions:—

1. That all proprietary rights in relation to fisheries in all ungranted waters situate within the territorial limits of the Province belong to the Province, except in the case of such harbors as are "public harbors" within the meaning of that term as used in the Third Schedule of the British North American Act.

(a) That inasmuch as their Lordships state, that "they think it extremely inconvenient that a definition should be sought of the abstract question, what falls within the description "public harbor," they must therefore decline to attempt an exhaustive definition of the term applicable to all cases. To do so would in their judgment be likely to prove misleading and dangerous. It must depend to some extent at all events upon the circumstances of each particular harbor, what forms a part of that harbor," it follows that, to prevent confusion and any conflict of jurisdiction it would be desirable to have the Dominion and Local Governments settle by mutual agreement what harbors shall, within this province, be held to be comprised within the term "public harbors" as used in relation to fisheries, or as governing the rights in relation to fishing.

2. That while, on the one hand, the judgment affirms as unquestionable, the right of the province to impose, for provincial purposes, the obligation to obtain a license to fish in waters which are the property of the province, and to prescribe the terms and conditions upon which such fisheries may be granted, leased, or otherwise disposed of, on the other hand it, with equal clearness, affirms the power of the Dominion Parliament to impose a tax by way of license as a condition of the right to fish.

(a) It would be likely to prove injurious to the fisheries, and to both Provincial and Dominion interests, if these powers were exercised independently and without any preconcert or agreement between the two Governments. It would be simply disastrous if the Dominion and Local Legislative authorities were to act upon this question in any spirit of hostility to each other.

It is, your Committee therefore urged, important that a clear understanding should be come to between both Governments whereby any conflict or difficulty upon this point should be avoided. In this connection your committee pointed out that the powers of the Local Legislature in regard to raising revenue by taxation were limited to two sources, license fees such as those referred to in relation to fisheries and direct taxation. On the other hand, the powers of the Dominion Government for raising revenue by taxation were practically unlimited. That under these circumstances the Dominion Government ought not to look to the fisheries as a source of revenue; but if they imposed any license fee at all it should be merely nominal and be imposed not for purposes of revenue, but only as a part of the machinery required to regulate and protect the fisheries.

To act otherwise, would practically be to deprive the Province of one of the few sources of revenue which it was provided by The British North American Act the Province should possess.

3. That the decision of their Lordships leaves beyond question the powers of the Dominion Parliament to regulate and control by limitations and restrictions, the times when, the manner in which, and possibly the localities where fish might be caught.

(a) It is manifest, however, that the extent and character of these restrictions

must very directly and measurably effect the proprietary rights in the fisheries possessed by the Province, and the revenue derived therefrom. At the same time, it is indisputable that the province has as strong and direct an interest in the protection and promotion of the fisheries belonging to the province as the Dominion can possess. It follows that the province may reasonably ask not perhaps as a matter of strict legal right, but at least as a party deeply interested, to be consulted as to the extent and character of any restrictions and limitations proposed to be adopted by the Dominion for the protection of the Provincial fisheries.

4. Your committee further pointed out that, as the British North American Act gave to the Dominion Parliament exclusive powers to legislate for the protection of fisheries by prescribing and limiting the time and manner, and to a great extent the localities in which fish may be caught, this exclusive power to enact fishery regulations and restrictions carried with it a corresponding duty on the part of the Dominion to make and enforce such regulations as are reasonably necessary for the proper protection of the fisheries. In other words, that the burden of the properly protecting the fisheries is cast by law upon the Dominion Government.

The Honorable Minister of Marine and Fisheries in reply stated that the views put forward by your Committee involved some important questions of law which had been referred to the Department of Justice, and he said that pending the receipt of a formal opinion from the Honorable Minister of Justice upon these matters he would not undertake to give any officially binding or final answer. He had however, he said, no objection to discuss the several points raised by your committee and to give his personal views as to some or all of the questions involved, that, indeed, it gave him much pleasure to have an opportunity of talking these matters over with your Committee with a view to ascertain just where both governments stood, and, if possible, to so adjust the position of each that their action in regard to fisheries shall be harmonious.

With regard to the first proposition submitted by your Committee, the Honorable Minister stated that while the decision of the Privy Council doubtless defined with sufficient clearness and accuracy the proprietary rights of the province in relation to fisheries in all ungranted waters situated within the territorial limits of the province, there was still a question, he thought as to whether the province possessed any such proprietary rights, or if so what proprietary rights they possessed, in shore fisheries within the three mile limit, especially those below low water mark. It was a question in his mind, which in his opinion the judgment of the Privy Council did not satisfactorily determine, how far the soil within said three mile limit, could be said to be within the territorial limits of the province, within the meaning of that expression as applied to the question under discussion.

That the fisheries below low water mark and within the three mile limit, while carried on over the soil, could hardly be said to be connected with the soil or proprietary rights therein in the same manner or at all events in the same degree, as fisheries carried on within or over a river or lake.

That in conducting fishing within the three mile limit the operator has necessarily to move from place to place over a very wide area, and that, except perhaps as to fishing by traps attached to or placed upon the sea bed, it seemed to him that it might very fairly be argued that these fisheries were so independent of any proprietary right in the soil that they would not necessarily pass to the province, even though the soil within the three mile limit for certain purposes, and subject to certain restrictions, might be said to belong to the province.

That before this question could be definitely and permanently settled it might, in case the province and Dominion failed to agree, be necessary to have the point submitted for determination to the Supreme Court of Canada! He suggested that after the opinion of the Minister of Justice upon the question was obtained the representatives of the province might confer with the Dominion Government, with a view to seeing whether we could not come to some agreement upon the subject whereby it might be settled which government should have the exclusive or other control of these fisheries, either permanently, or for such limited period as could be agreed upon, and subject to such terms as might be agreed upon.

That at the same time it could be settled by agreement as to what harbors would be taken to fall within the description of "public harbor", as used in relation to the fisheries.

In reference to the second proposition submitted by your committee, and the contention your committee based thereon, the Honorable Minister stated, that he recognized the difficulties which might arise from want of the concerted action referred to, but if the Dominion Government was expected to protect the fisheries and enforce regulations to that end he was not prepared to accede to the view that the fees it should exact should be merely nominal in amount.

As to the third proposition submitted to your committee, he stated that while

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had the honor to hold the office of Minister of Marine and Fisheries he would be prepared at all times to give the most careful and attentive hearing to any representations which the Provincial Government might make upon the matter, he was not without further consideration prepared to concede to the province any right to share in the determination as to the extent and character of the restrictions and limitations which the Dominion might impose.

That it might be taken for granted that the Dominion Government in imposing such restrictions and limitations would have regard to the public interests entrusted to them and that they would not unnecessarily adopt any such regulations or restriction where the Province was able to indicate any satisfactory reason against the making of the restriction proposed.

As to the fourth proposition submitted by your committee, the Honorable Minister stated that it so closely involved questions of Law and the true interpretation of the British North American Act that he would prefer not to express an opinion upon the subject, further than that the Committee could readily understand he would be naturally somewhat slow to assent to a proposition which would impose upon the Dominion Government the responsibility and expense of protecting the fisheries, if at the same time the province were to receive all the income and receipts derivable from the fisheries.

The Honorable Minister further stated that he was about to leave with his colleagues for Washington and he would suggest that the matter for the protection of the fisheries should remain as at the present and the Dominion Government should continue in the usual way until a further conference could be had between both governments, to administer the fisheries as they have in the past, receiving what ever fees may be paid and paying the necessary officers and expenses, to which proposition your committee agreed.

The Honorable Minister further stated that until further consultation between the province and the Dominion and until he had received the opinion above mentioned of the Minister of Justice he did not propose to grant any fixed location licenses, and that he would suggest that we should not grant "any either, but that the whole matter should wait in obedience until the Minister of Justice had an opportunity to give his opinion.

Your committee also assented to this proposal.

It was then suggested that possibly an arrangement might be come to between the Dominion and the Province whereby the province should assign over to the Dominion Government, upon such terms as should be mutually agreed upon, any rights which the province may have in such fisheries as it would be found most convenient for the Dominion to manage and control, and the minister stated that if such a proposition were made he would be glad to give it every consideration; and that if the Province determined to obtain from the licensing of weirs, fishing plants and oyster beds, assuming it has the power to lease them, all that it can get, than it seemed to him perfectly apparent that he could hardly be justified in continuing the large expenditure in protecting the fisheries that had been made in the past. This however, he added, would depend upon the conclusion that might be reached at a future conference.

It was agreed between the Honorable Minister and your committee that the negotiations with a view to an adjustment of the whole matter relating to the fisheries as between the Province and the Dominion should be resumed at the earliest period when it was found possible for a committee of the Dominion Government for that purpose.

Your Committee wish to testify to the very courteous manner in which they were received by the Honorable Minister of Marine and Fisheries. Although the Minister was on the eve of leaving for Washington to resume the negotiations in connection with the International Commission then about to sit, he devoted to us almost the entire morning and the whole evening of one day.

Dated this sixth day of February, A. D., 1899.

(Signed) H. R. EMMERSON, L. J. TWEEDIE, A. S. WHITE.

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PROVINCIAL LEGISLATURE.

FREDERICTON, April 11.—Mr. Venoit, from the standing rules committee, submitted a report.

Mr Tweedie submitted a report of Hotel Dieu Hospital, Chatham; also a further report of the General Public Hospital at St. John.

Hon. Mr. Dunn submitted the crown land report for last year.

Hon. Mr. White introduced a bill amending an act to revise and codify an act to provide for the division of the province into counties, towns and parishes, and to better define the bounds of the parish of Springfield.

Hon. Mr. Tweedie submitted the report of the chancellor of the N. B. University for the last year; also the calendar of the university.

Mr. Melanson asked for particulars of the building of the Kouchibouguac bridge. Hon. Mr. Emmerson said the government had entered into a contract for the building of a bridge across the Kouchibouguac River, in the parish of Shediac, and the contract was awarded to John M. Brown.

TENDERS WERE ASKED for the work, and the tenders were John M. Brown, \$1,505; J. B. McManus, \$2,200; Jacob W. Steeves, jr., \$1,526; A. Legere, \$2,800; W. Brewer, \$3,000; Antoine and Louis Robichaud, \$2,475; J. A. Killam, \$1,510. Mr. Emmerson gave particulars of the lumber to be used, and said the work was to be completed in, or, before June 15th next.

Mr. Hazen enquired: When does the government intend to appoint a judge of probates for the county of Kings?

Hon. Mr. Emmerson—At its next meeting. I may say that the appointment is practically made, but I am not at liberty to make the announcement, as that is a privilege that belongs to his honor. It will be in the Gazette this week.

Mr. Hazen inquired is it the intention of the government to take any steps towards securing adequate representation of the resources and products of the province at the Paris exhibition of 1900?

Hon. Mr. Emmerson—I would say that it is not the intention of the government to make a special New Brunswick exhibit but we are negotiating with the Dominion government as to what contribution New Brunswick will make to the national exhibit. No conclusion had yet been reached as to just what the New Brunswick exhibits would be. It seemed to be desirable that there should be an educational exhibit, and perhaps that would be emphasized by the province as a part of the Dominion exhibit.

Mr. Hazen—It seems to me there should be representation of the lumbering and fishing resources of the province.

Hon. Mr. Emmerson—Yes, in connection with the whole Canadian exhibit but the expense of making a special exhibit in that line would be greater than the government feel like assuming.

Mr. Hazen gave notice of inquiry for Thursday: What debentures are included under the description: "Redemption, \$294,500," on page 122 of the auditor general's report in the public accounts for the year 1897, under the heading: "Summary of provincial debentures" and for what purposes, and when were such debentures issued?

WOMAN FRANCHISE. Hon. Mr. Emmerson gave notice of motion, seconded by Mr. Porter, that in the opinion of this house the time is now ripe for a law providing that the rights of citizenship shall not be denied or abridged on account of sex, but that a full franchise shall be granted to the women of this province upon the same terms as to the men.

Hon. Mr. Dunn committed a bill to incorporate the Royal Kennebecasis Yacht Club; Whitehead, chairman. Progress reported with leave.

Hon. Mr. Tweedie announced that the budget speech would probably be made on Wednesday.

Mr. Hazen committed a bill amending 56 Victoria, chapter 83, incorporating St. John Horticultural Association, and to give it further powers; Porter, chairman. Agreed to with amendments.

Hon. Mr. White introduced bills amending chapter 59 con. stats. of parish courts; amending chapter 66 con. stats. providing for the establishment of an almshouse in Kings county; and amending chapter 58 con. stats. local courts.

His honor the lieutenant-governor came to the assembly chamber and assented to the three following bills: Amending the municipality act; to aid the erection and maintenance of a bridge over the St. John river at Hartland; the amendment of the act of assembly 54 Victoria, chapter 11, so far as the same relates to the Gulf Shore Railway.

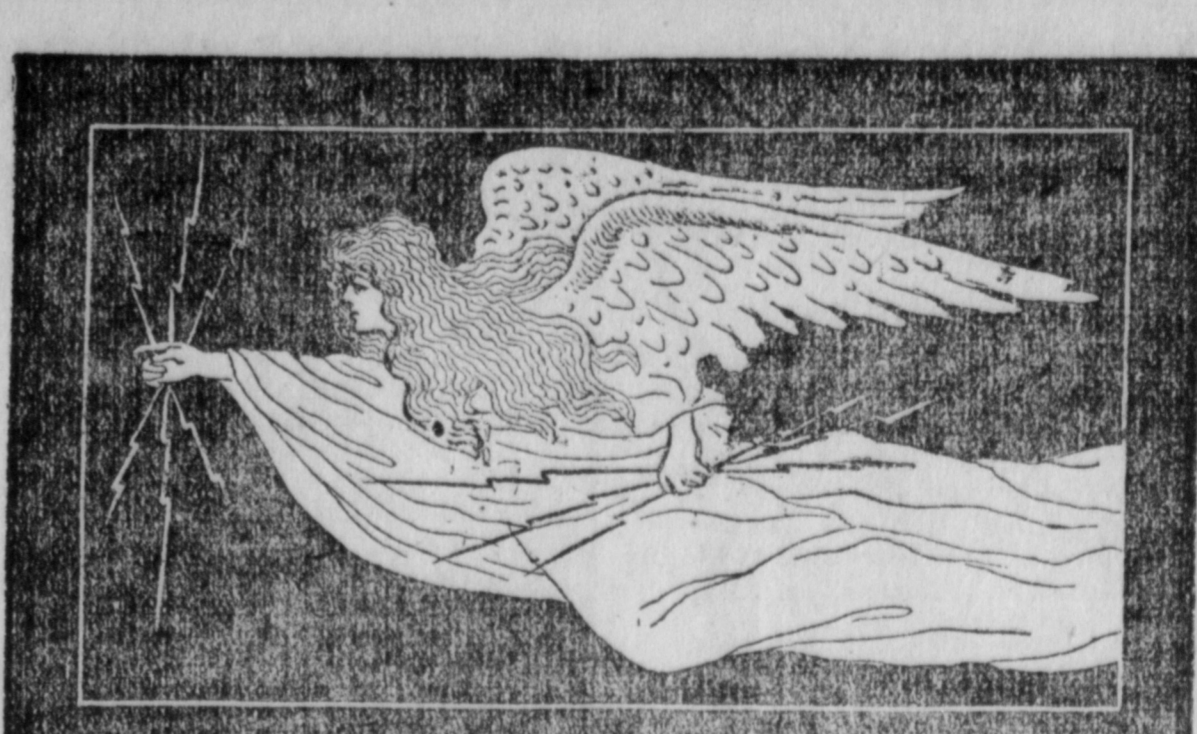
Mr. Humphrey committed a bill relating to Moncton Rural Cemetery company—O'Brien, (Charlotte) chairman; Agreed to with amendments. Adjourned.

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