

**THE PARR, SALMON, WHITLING & YELLOW-
FIN CONTROVERSY: WITH AUTHENTIC
REPORTS OF THE LEGAL JUDGMENTS
IN THE SCOTCH PROVINCIAL COURTS, AND
JUDGES' NOTES IN THE VARIOUS LAW-
SUITS ON THE QUESTION AT ISSUE**

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The Parr, Salmon, Whiting & Yellow-Fin Controversy: With Authentic Reports of the Legal Judgments in the Scotch Provincial Courts, and Judges' Notes in the Various Law-Suits on the Question at Issue by Henry Flowerdew

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HENRY FLOWERDEW

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AUTHENTIC REPORTS OF THE LEGAL JUDGMENTS IN THE
SCOTCH PROVINCIAL COURTS, AND JUDGES' NOTES
IN THE VARIOUS LAW-SUITS ON THE
QUESTION AT ISSUE;

AND ALSO

A BRIEF SKETCH OF SOME INCIDENTS CONNECTED
WITH THE DISSEMINATION OF THE MODERN
PARR THEORIES,

BY

HENRY FLOWERDEW,

*Procurator before the Supreme Courts of Scotland, and Sheriff and
Commissary Courts of Forfarshire; Author of the Dundee
"Law Chronicle," and "Law Test."*

SECOND EDITION.

The world the river is; both you and I,
And all mankind, are either fish or fry.
If we pretend to reason, first or last,
His baits will tempt us, and his hooks hold fast,
Pleasure or profit, either prose or rhyme,
If not at first, will doubtless take in time.
Isaac Walton's Book.

MANCHESTER:

ABEL HEYWOOD & SON, 56 & 58, OLDHAM STREET.

LONDON:

SIMPKIN, MARSHALL & CO., STATIONERS' HALL COURT.

1883.

189. q. 305.



P R E F A C E .

The first edition of this book was published in 1871. There were only a limited number of copies thrown off. No copies are now to be had, except in the hands of private individuals, and in the respective libraries of the British Museum, of Oxford, of Cambridge, of Dublin, of the Edinburgh University Library, and of the Advocate's Library, Edinburgh; in short, the first edition is out of print, and has been so for ten years. This second edition has been increased in size by additions to the original printed text, by a preface, appendix of relative documents, and an index.

The interest which the public at large are now taking in piscatory matters is every day becoming self apparent. We have had an International Fishery Exhibition, held at Edinburgh, from the 12th to the 30th April, 1882, at which the fishery products of the United Kingdom, as well as of some foreign nations, were exhibited; and on the 1st of May, 1888, there was opened in London a more comprehensive International Fishery Exhibition, under the patronage of the Queen, whereat every foreign nation was represented, with relative fishery articles, combined with specimens of the fish found and bred in their respective dominions.

The late editor of *Notes and Queries* (W. J. Thoms, Esq., F.R.S., and one of the librarians of the House of Lords), in the year 1869, vol. 8, p. 524 of that periodical, has a

passage which it may not be out of place here to quote:
"It was observed by a profound scholar, who was at the
same time one of the shrewdest men I ever knew, that there
was hardly any book so worthless, but in it you could find
something you were glad to know."

Edinburgh, 1888.

H. F.

INTRODUCTION.

The topics in this book are of rather a miscellaneous description, and on this account it is hoped they will not share the fate of the Scotchman's "thorough-paced doctrine" which went "in at ae lug and oot at the ither."

Law is necessarily mixed up in it because fishes and their particular element are ruled, now-a-days, or, at least, attempted to be governed, by Acts of Parliament. We are too much enamoured by the constant announcements of the introduced simplicity of legal science, and that now we are not plagued by the gibberish of "special general imparlance" "special *testatum capias*," "special original," "*testatum pone*," "*protestando*," "*de bene esse*," &c., &c. Lord Ashburton once remarked on the profession of the law "It is generally ridiculed as being dry and uninteresting; but a mind anxious for the discovery of truth and information will be amply gratified for the toil in investigating the origin and progress of a jurisprudence which has the good of the people for its basis, and the accumulated wisdom and experience of ages for its improvement." And the opinion of the Lord Chancellor of Ireland, delivered in an address at the Social Science Meeting, in Liverpool, some years ago, is fully as important. His Lordship observed, "Improved procedure, amended laws, much to be valued though they be, yet, if we do not secure the moral elevation, the learned capacity and

the love of justice, in those who are to administer those laws, we deprive them of their loving fervour, and they take no root in the respect and affections of the people." Legal pursuits need not *alone* engross a man's attention ; as they do not open and liberalise the mind exactly in the same proportion. Mr. Raithby justly remarks " I protest I do not know any pursuit in life that requires such various powers : taste, imagination, eloquence." Of course these qualifications are only looked for in the higher ranks of the profession. It is expected a first rate advocate is acquainted with the leading details of the mechanical arts and sciences, of trade, commerce and manufactures ; of the correlative professions ; of the amusements and accomplishments of society, because in all of these questions are constantly arising which require the decision of a court of justice, for which purpose their most hidden concerns must be laid bare before the eyes of counsel, who is expected to be quite master of them. Sudden death, marriage, bankruptcy, or separation of one of the parties concerned rear up, in an instant, oftentimes, the most complex problems in human life, and if an advocate, with rapidity and skill, adjust conflicting rights with precision, he may be styled a benefactor to society.

G. R., the writer in *Land and Water*, in 1872, fairly enough observes that " the Game Laws do not perhaps represent the perfection of human wisdom, as evidenced by human legislation, nor is their operation at all times satisfactory ; but they possess this merit—they are not only clear as to their meaning and intent, but equally so as to their objects. When Hodge is brought before the Bench for wiring a hare, or stealing a hatful of pheasant's eggs, no plea is placed on record that the animal in question was a

polecat or a hedgehog ; no scientific witnesses are brought to prove that the eggs are those of the jay or pie. In this element of certainty the Game Laws are immeasurably in advance of the Salmon Laws."

The author of this work believes that if all parties adopted the word "moderation," as their motto, fish disputes would cease as well as game disputes. The *constant* pursuit of pleasure carries on its front something insolent and unfit for frail human beings. But we see now, oftentimes, that nothing is aimed at, in angling, but rivalry and self gratification. The writer already alluded to, G. R., uses these significant and strong words: "In another month thousands and tens of thousands of fry will be left in small puddles, by the efflux of the water. They are seen by shepherds, artizans, boys, and all who frequent the banks of the river, and as a rule are left to their fate—to die and rot, or to be picked up by herons and gulls. *If the shepherd could hope for a gift kelt at odd times, if the artizan could look forward to the fun of angling for the smolts, if the boys were permitted to catch his few fish for supper, they would one and all, as they used to do, ladle the fish out with their hands, or dig channels to permit of their escape to the body of the stream.*" Such sentiments and ideas are by no means fantastic. The author knows of a case in the Carse of Gowrie, Perthshire, in a measure, illustrating the truth of them. Mr. John Allan was a West India merchant, and returned to this country opulent. He purchased the estates of Errol and Inchmartin, in the middle of last century. They were in a great measure bog or marsh, affording fine wild duck and snipe shooting, and without almost any roads through the lands. Mr. Allan set himself at once to work the lands into