THE FISHERY LAWS

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The Great International Fisheries Exhibition

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BY

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THE FISHERY LAWS.

FISHING takes place either at sea or in rivers or other inland waters. We may thus divide it into sea-fishing and freshwater fishing, though not with strict accuracy of language, as in the latter term we shall have to include fishing in tidal rivers, estuaries, and arms of the sea. There is a wide difference, as everybody knows, between the two kinds of fishing as to their methods and apparatus. The difference is hardly less striking to an Englishman who contemplates them from the legal point of view. Freshwater fisheries are subject to a number of regulations, partly general and partly local, which go into considerable detail, and are not wholly free from obscurity. These regulations are created by Acts of Parliament, or made by persons on whom Parliament has conferred authority for that purpose, and they are naturally a matter of internal or, as we say in technical language, municipal government and jurisdiction. Foreign Powers have nothing to do with them. Sea fisheries, on the other hand, are now but little affected by any purely municipal law or legislation. Whales and sturgeon, and, some books say, other "great fish" caught in English waters belong by ancient prerogative to the Crown. In Scotland the herring fishery has been fostered and regulated by statutes, of which, however, only a very small part remains in force. British subjects fishing in certain parts of the high seas may come under the operation of

particular conventions with foreign Powers made by the British Government and confirmed by Parliament. There are also special provisions as to oyster fisheries and other shell-fish. Apart from these, and from any particular convention of the kind just mentioned, there is nothing to prevent any British subject from fishing on the high seas when, where, and how he thinks fit. In territorial waters within the jurisdiction of any foreign State he is subject to the local laws and regulations, whatever they may be. There have been controversies about the extent of a maritime State's jurisdiction in its own coast waters, but it seems to have always been admitted that it includes the regulation of fisheries. Territorial or, as they are sometimes called, marginal waters are commonly understood to extend to a distance of a marine league (three geographical miles) from the shore. This measure, fixed long ago with reference to the supposed extreme range of cannon planted on the land, is thought by some modern authorities to be too short: the question, however, is one of general international law, which cannot be discussed here. For the purpose of fishery rights the three-mile limit is expressly adopted in our conventions with France and other Powers.

A. *Freshwater Fisheries.*

Let us begin at home with the law of freshwater fisheries. The questions with which it deals fall under the two general heads of who may fish, and how they may fish; or, to put the questions as an individual fisherman might put them to himself: May I fish here at all? and, if so, on what conditions and within what limits as to manner, time and otherwise? Restrictions, again, where they exist, may be of two classes; they may be (as most of them are) designed for the preservation of the fish and the benefit of the public,

or they may be for the benefit of persons having special rights in that particular fishery. We will take the general question of persons first. Are there any inland waters where all the world are legally entitled to fish? There are certainly some. It is allowed without question that fishing is of common right in the tidal part of an ancient navigable river, unless a contrary private right can be shown. If an exclusive right exists in such water, it is an exception to the common rule of law. It may exist, however, by a grant from the Crown before the date of Magna Charta; and ancient and continuous usage may establish a judicial presumption that the usage had its legal origin in some such grant. Since Magna Charta the Crown has had no power to make a grant of this kind. Therefore anybody may fish in the Thames below Teddington Lock, for instance, without lawful hindrance except from the person, if any, who can make out his title by special grant or usage to exclusive fishing-rights in the river at the particular spot.[1] In the case of the tidal part of the Thames there are not in fact, so far as I am aware, any such exceptional rights. If we go above Teddington Lock, we find a very different state of things. In practice all manner of people fish on the upper reaches of the Thames and other navigable rivers without interruption. And whether they are within their legal rights in so doing is a question that has been settled in England—and perhaps not finally—only by decisions given so lately as last year.[2] It was long uncertain whether there did or did not exist a public right to fish in navigable rivers above the limits of the tide. In Ireland it has been

[1] But not when or as he pleases, for the Thames fisheries are regulated by the Conservators under special statutory powers.

[2] *Pearce* v. *Scotcher*, 9 Q. B. D. 162 (March 31, 1882); *Reece* v. *Miller*, 8 Q. B. D. 626 (April 4, 1882).

held (in 1868)[1] that there is no such right; this decision, though not in itself binding on English, still less on Scottish tribunals, has now been followed in England, and would not improbably be followed in Scotland. The prevailing opinion in the United States is that both the bed of the river and the right of fishing belong to the riparian owners. Even if a public right of fishing did exist, still it would not include or carry as a consequence any right to use the banks of the river for fishing. The bank belongs to the owner of the adjacent ground, and he is no more bound to let strangers come on it to fish than for any other purpose. And if there is a public right of way along the bank—a towing-path, for example—that does not strictly entitle any one to stand there and fish. The land and the power of controlling its use belong to the landowner, subject only to his duty to allow the road or path to be used for the kind of traffic to which it is appropriated. A loiterer on a high road is, strictly speaking, a trespasser; and one who loiters or stops to fish is in no better case. The inhabitants of a particular place on a river-side might possibly have a customary right to fish from the bank, or to use it for drying nets; but such a right, if it could or did exist, would make no difference to the position of a stranger. In Scotland, however, a right to use the bank seems to be more easily allowed than in England when once the right to take fish is established. It must be added that, where public rights of both fishing and navigation exist in the same waters, the fisherman must give way to the merchant sailor in case of need, navigation being deemed of greater public importance than fishing.

[1] A contrary opinion seems to have been entertained by the Court of Queen's Bench in England in the same year; but the point was not before them for argument or decision.