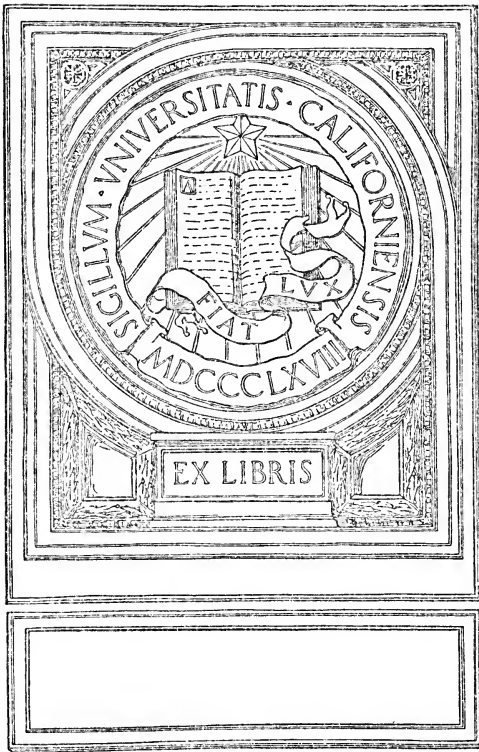


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**REMARKS**

ON A PAMPHLET, ENTITLED,

**OBSERVATIONS**

REGARDING THE

**SALMON FISHERY**

OF

**SCOTLAND,**

*&c. &c.*

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## REMARKS,

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THE Salmon Fishery of Scotland has been lately brought forward as an object of national interest, which had been neglected, and it is said that the laws by which it is regulated are obsolete, founded in ignorance, and that they tend to encourage monopoly. It is, however, pretty certain, that it occupied the attention of our ancestors many centuries ago, and that they, as well as other northern nations, were well acquainted with the nature and habits of the Fish, and, as they thought, with the interest of the Fisheries. Many laws were passed, whose professed object it was to protect and encourage the growth of the Fish, while they interfered as little as possible with the right of Fishing, which accrued to the possession of the shores where the Fishing could be carried on.

All that is necessary to be known of the natural qualities of the Salmon, is contained in a few words of Linneus: "*Habitat* in Oceano Europæ, *Parit* in Fluviis;" and it seems to have been fully understood of old, that all the Salmon which frequented our friths and estuaries came there for the purpose of ascending the rivers to the spawning grounds; and the object of the law seems to have been, to allow the fish a free and uninterrupted course from the sea to the highest parts of the river; although in the course of years, many individuals, by one means or other, by prescription or by charter, had acquired a sort of right to damdykes, yairs, and otherwise illegal methods of fishing. With this view too, the regulations which regard the close time were enacted; by which the period was attempted to be precisely defined, in which the spawning took place, and during which it was unlawful to take fish in any manner.

It is pretty generally known, that the upper and lower heritors on the river Tay have been frequently engaged in law-suits about the fishings, each party endeavouring, under the sanction of the law, to appropriate as many fish to themselves as they could. For, since the great facility with which the fish can be sent to London has existed, the value of the Salmon Fisheries has greatly increased. What was formerly regarded as a pleasant object of sport, and as an agreeable appendage to a country seat, has



now become a source of profit and of commercial speculation. It is not less generally known, that in the course of the many questions at law that took place, it was fully established that all yairs, dam-dykes, &c. were illegal, and that although it was for some time thought, that stake-nets, being nets, might not be found included among the prohibited modes of fishing, yet these too have now received a full and final condemnation. It would naturally seem to follow, that to prevent any future disputes, a sort of river police should be created, to take charge of the Fisheries in each separate river, and to prevent those encroachments which have been hitherto allowed to exist; and, in short, to see the law as it has been completely established, regularly enforced. Such a Bill has accordingly made its appearance, to regulate the Tay Fishings, and as it would necessarily lead to an effectual prohibition of all illegal methods of fishing, those who are interested in the stake-nets are very naturally alarmed; and as a last attempt at maintaining them, it is now submitted to the Legislature, that the old Acts of Parliament are founded in ignorance, and that all the law regarding the Salmon Fishery should be altered. With this view, a Pamphlet has been put forward, called Observations regarding the Salmon Fishery of Scotland; and as it contains the chief part of all that can be said in justification of the claims of the stake-net fishers, I shall take the liberty,

in the following pages, to examine some of its arguments.

In a question which has been so often before the Courts of Law, it may be supposed that many legal distinctions exist, which lawyers only could readily apprehend ; I shall therefore content myself with the statement of the law, given by the Author of the Pamphlet above alluded to. He says, page 17 : “ That although the decisions regarding stake-nets, hitherto pronounced, apply only to friths, it is impossible to anticipate what views our Courts of Law may entertain on this subject,” (that is to say, stake-nets in the open ocean) “ though it is not to be forgotten, that when the decisions in the Tay case were pronounced, more than one judge is reported to have expressed an opinion, that the operation of the Statutes extends to the ocean, ‘ to wherever the tide ebbs or flows.’ ” This is the natural cause of the present alarm among the proprietors of stake-nets, and we must allow that they have good reason for apprehending that their profits must soon cease. In this dilemma, they tell the public that they have, in fact, made a wonderful discovery in fishing. They can suspend a net on long fir poles and carry it out a great way into the sea, and thus intercept a great quantity of fish. Now, to apply so many fine words as skill and machinery to such a contrivance as this, is hardly fair ; and I hope I am not speaking irreverently when I say, that it may

properly be compared only to the skill of a poacher, who, if he were allowed to display his experience and skill in the immediate neighbourhood of a preserve, would not fail to succeed in taking a great quantity of the game ; and I presume, that although he were to allege the great benefit which the public derived from the regular quantity of game which he could supply, he would scarcely escape the fate his skill usually meets with.

Another rather homely remark which I would venture to make (to the Stake-net Fishers) is this : Why do you not display your skill nearer the London market ; because it is the supplying that market which is so desired ? Are there no other rivers but the Tay, which would be found productive, if fished in that way ; and no other coasts, but those of Scotland, proper for stake nets ? The Author says, in a very pithy manner, (page 1), that he shall “ leave the Fisheries of England and Ireland to those better acquainted with them.” No doubt he knows very well, that if the *great stake-net capitalists* were to appear at the mouth of the Severn or the Thames, with their wonderful contrivances, they would require rather stronger arguments, than those used in his Pamphlet, to prove the great benefit the public would derive from the new mode of fishing.

An unguarded reader of the Pamphlet before us, might be led to conclude, that the proprietors of the shores of friths and estuaries, and of the open

sea coast, were treated with manifest injustice, since they are not allowed to fish in any way they please. What would be the effect of such a liberty, I will endeavour to shew, and, in the mean time, I will hazard the assertion, that by being confined to the only legal mode of net fishing, that is, the net and coble, (meaning generally any kind of boat and any kind of net if the meshes are large enough,) they sustain no injustice; and that, if the waters in their neighbourhood abound with fish (at seasons, too, as it is said, when they are scarce in the upper fishings), they can reap all the adventitious benefit of their situation (provided they have obtained a King's Grant through the Exchequer) by using the legal methods. Let it not be said, that the sea is too boisterous and the water too deep, for the Salmon is taken very plentifully, and of a very good kind, in many of the interior lakes, or used to be taken before the employment of stake-nets on the coast, where the surf runs fully as high, and the water is much deeper than on any of the surrounding coasts.

But in the Pamphlet before us, this mode of fishing, that is, with the coble-net, is described as most destructive to the young fish; and, as the charge is new, I shall take the liberty of transcribing the words themselves. Page 25, 26:—

“While the net is in this manner impelled down the river, and drawn on shore, its weights and heavy ropes are dragged along the banks and upon

the bottom of the river, tearing up the gravel and crushing or bruising every delicate matter they fall upon." Here he describes coble fishing in a rapid stream; but, as he before mentioned (page 21), that the spawning fish betake themselves to retired shallows for this purpose, he cannot well say that the ova are destroyed by the coble net going down the stream. And really it is rather hard to charge this mode of fishing with committing havock and waste, which it would require the finest microscope and the nicest examination to ascertain. Neither do I think this havock and damage is done amongst the young fish, because he tells us, that "they keep near the margin of the river, avoiding the current of the stream as too impetuous, and seeking what the fishermen call the easy water at the side." As to the fry being taken in numbers by the coble nets, I cannot think this requires any other answer than that it is plainly impossible that such small fish could be taken by the net if the meshes were of the proper size.

The net and coble fishing has, however, been sanctioned by the law and by the experience of centuries; but if, by means of a minute inquiry, it can be discovered that they actually injure the beds of the Ova, this objection can be at once removed by merely extending the close time. But, according to the reasoning of the Author, it is a most destructive mode of fishing, and should only be allowed during the very short time which takes place be-

tween the descent of the last of the fry, and the ascent of the breeders, or spawning fish. In fact, he seems inclined to leave the upper heritors little more concern in the Salmon fishing, than the protection of the rivers and the occasional use of the rod and line. But it is time now to consider, if this kind of destruction and havock may not be justly imputed to the stake nets.

The flow of the tide along most parts of the coast of Scotland brings with it sea wrack and other marine substances, in such quantities, as to supply the neighbouring farmers with plentiful dressing for their lands. When this stuff is laid, as it must be, on the lower parts of the stake on which the nets are hung, in no long time a dyke or mound will be formed that will be perfectly impassable. The young fish keeping close to the bottom, are thus detained till the heap tides, when they are left dry. I will allow to the Author of the Pamphlet, that he may point to many stake-nets where this cannot happen, because the fish are known to follow some other direction. But his Pamphlet is written, not to recommend a stake-net here and there, but the propriety and expediency of generally adopting that mode of fishing. Those, then, who oppose its introduction, may use such objections, as will necessarily arise when it is universally adopted. Now, the whole coast of Scotland is so much indented by gulphs and arms of the sea, into which rivers of greater or less dimensions are

running, all of which the Salmon ascend for the purpose of breeding; that between the estuary of one river, and of that next to it, there can be but little space at all. The Author of the Pamphlet would perhaps easily find the point where the estuary ends and the open coast begins, as he has done at Carpow Bank, in the Tay. Would he send experienced men, poking into every hole on the coast, until they had geometrically surveyed the course of the Salmon fry? Such a plan is not here mentioned as practicable, and I see no other by which a stake-net can be placed in such a situation as to be perfectly harmless in this respect.

It would not, however, tend either to interest the public, or to procure any advantage to either side in this question, should we follow out in this way, every statement made against one mode of fishing, and retort it on the other. For instance, a comparison is drawn between the two modes of fishing, in regard to taking the fish when full of spawn. It is said (page 38) that it has been established in the Tay case, that the stake-nets take fewer of these fish than the coble-nets. Now, we are pretty often told of the superior quality of fish taken by the stake-net. Will any one suppose that the breeders have a pass ticket? or that they are not found where the other fish are? And, to revert to what is said before to be a fair mode of objection, let us suppose the universal adoption of this mode of fishing as it is desired, and that, as we are told, it would be very proper,

that the stake-net fishing were continued to a later period of the season ; surely we have some reason to conclude, that it will take a very sufficient quantity of breeding fish.

In fishing, as in all other sporting, no fact is better established than this, that if you pursue the game too constantly in one spot, they will soon desert it altogether. From some such cause as this, I presume, it arises, that the stake-net fishers find it convenient to move their stakes every two or three years, (the fishing in that part of the shore being destroyed for a time,) what then must be the effect on the whole fishing, when this system is in full vigour ? It is not, however, by what is taken alone that the upper fisheries can be permanently injured, but by the obstruction which the breeding Salmon meet with.—Accordingly, the leading feature in the law regarding river fishing in Scotland, as well as in England and Ireland, is that the passage of the fish up and down must not be permanently interrupted. Even where cruives have obtained place, besides being under strict enactments (according to the statute quoted by our Author) as to the breadth of water-course, the owners are obliged to allow the whole to be opened for twenty-four hours every week. No man can erect a new wear for taking fish in a river, although it did not reach the middle of the channel, nor can any proprietor of the bank of a lake erect a stake-net. And is it to be supposed the upper heritors will allow the lower to use means of fishing which they



are withheld from themselves? If fixed nets are to be allowed on the coast, and not in the rivers, the upper heritors and all having the right of fishing, but not of using stake-nets, must be considered as holding their right subject to such control, as the interest of the coast proprietors may require. In this case, the natural order of things is inverted; a right, acquired by purchase or succession, is infringed on, (whether that infringement be great or small, does not alter the justice of the case) if the upper heritors are not as free to fish in any way they please, as the lower; while these latter receive all at once and at the expence of the others, a right they have not acquired as a free gift.

Now, whether it is consistent with sound policy; that chartered and patrimonial rights should be violated, because the holders are not able to exactly ascertain the actual damage any infringement on them may occasion, I leave to be determined in the proper place; but this I may venture to say, that it is impolitic to raise questions in which such important points are involved for such an object as that now proposed. For, if we make an admission, of what, in point of fact, I am sure cannot be made clear, that is, that by the new mode of fishing, there will be a considerable excess in supply over that attainable by the old mode;\* it is surely not sufficiently important

\* i. e. "supposing all yairs, cruives, and stake-nets, were removed."

in a public point of view to create so much discussion as has already taken place. In short, in order that a few thousand more Salmon may be brought to Billingsgate, (for this is all the public ground that can be alleged), the Legislature is to be petitioned to alter the whole Law as it regards the Salmon Fishery. Not, be it observed, to change some of the less material regulations, but to change the fundamental principle. Permanent net fishing, hitherto illegal throughout the whole kingdom, according to the petitioners' request, should now be rendered legal in Scotland alone. The mode of fishing by coble and net, and all the river fishings are to be considered of little or no importance, and as a proper subject for a dashing experiment, although standing on the faith of crown charters, and a free gift of so much increase of income as the different mode of fishing would amount to, is to be made to the coast proprietors; and although this boon would be very well bestowed on the respectable individuals and powerful bodies, so much interested, it is no national benefit, if it is obtained by the violation of the paramount considerations of justice and equity.

In page (20) of the Pamphlet, an attempt is made to prove that the Salmon is properly a sea fish; and that from ignorance of this new discovery of natural history, the old laws were necessarily absurd. I cannot conceive any thing less important in this question, than to enter into any

inquiry into such a subject; but when it is said that the coast of Fife, being situated between the Frith and Tay, is so much resorted to by this fish, and that, on this account, it is unjust to prevent the coast proprietors from taking all they can, and in any manner they find expedient; one cannot help seeing, that it must be for the sole purpose of ascending these rivers, that such quantities are found upon the coast of Fife. Perhaps, the Author of the Pamphlet may be able to discover some other cause which draws such shoals of fish to the shores of Fife. But I think it not unfair to conclude, even from these statements, that it is only one common stock of fish which is found on the shores and in the rivers. That, like the game, even those who have any right to take it at all, can only do so in a legal manner, not by permanent nets or stakes, or any other snare or trap which they may choose. What is there so peculiarly hard in all this? If they were prevented from using all the other modes of fishing, by drag nets, &c. and such as are used for taking the deep sea fish, they would have some right to complain. But all these means are in their power, and they will not be content unless they are allowed a privilege which would imply that they had a greater right and a larger interest in the Salmon fisheries than the upper heritors.

In whatever way the interest of the proprietors of the sea coast, and of the banks of lakes and

rivers in the Fisheries adjoining, may be defined by the law of the country, I presume it will not be contended, that one set of proprietors has a larger share in that interest than the other. If, however, it were considered expedient to enlarge that interest in favour of the sea-coast proprietors, can the permission to erect yairs and cruives where they please, be refused to the others? Can those who offer to prove that the Salmon is not a sea fish, oppose the granting such a boon?

If this conclusion be just, the whole question may be set at rest in a few words. The Salmon Fisheries could not long exist under such a system, however modified as to the time of fishing. During that time the stake-nets along the coast, and the yairs and cruives in the friths and rivers, would be in full operation; there would be a sort of scramble for a year or two, but the fishing would rapidly diminish, and soon be quite destroyed altogether. It may therefore be concluded, that while common justice forbids the granting of the partial privilege, the interest of the public is quite at variance with that condition, on which alone it can be fairly granted. Who would suppose that those who are petitioning to obtain this partial privilege, were so full of declamation against monopoly? Such, however, is the blindness which a strong sense of peculiar interest is apt to produce.

On the other hand, should the laws, as now explained, be carried into full execution, in this case,

too, it may be worth while to contemplate the consequences. In the first place, all yairs, cruives, and stake nets, and, in short, all illegal modes of fishing by whatever name they may be called, would be taken away. The owners would not be able to support their rights by anything short of a king's charter; and every man, having a legal right to fish, would proceed to exercise his right in a legal manner. Now, we are told, that no sufficient quantity of fish would be brought to market, and the quality would be inferior. To this I answer, that without presuming to doubt all you say of the excellence of your own fish, all the upper heritors will agree that better and cleaner fish than those they are in the habit of taking during the whole of the fishing season, cannot be; and as to quantity, only remove your stake-nets, &c. for a year or two, and they will be able to give you an answer on both points; till that is done, no sufficient comparison can be had, and the ex parte statement of one side is at least as good as that of the other. You then refer to a period of ten years preceding 1798, for statements regarding the quantity of fish taken at certain fisheries before and since the stake-nets were erected. But at none of the periods referred to, can it be said that the communication with London, was so ready as at present, and after all, it is not by a comparison of the quantity of the fish taken at any particular fishery, that any thing very satisfactory can be elicited. What proportion does the fishing

of any individual proprietor, however large, form of the whole fishing of such a river as the Tay and the streams leading into it? If, however, the law were put into full force, and especially if such a Bill of River Police, as that proposed for the Tay, were to be enacted for every river in Scotland, a new stimulus would be given to the fishing. A race of hardy peasants would be drawn to an employment which is best suited to their habits and inclinations.

I do not think it improbable, that many rivers, which formerly abounded in salmon, would be stocked with them again. In addition to this, precipices and rocks would be removed by artificial means, so far as to break the fall of the water, and to allow the fish to pass to places remarkably adapted to the spawning Salmon. In short, if Linneus is right in stating of the Salmon, that it breeds in rivers, access would be given to ten times more extent of river than it can reach at now, and consequently more fish would be produced; and I need not proceed to draw the inference, that if more were produced, more would be taken, because sufficient capital and industry would always be found in the country to bring them to market. Hitherto, these exertions have been repressed by a sense of injury prevailing amongst the upper heritors, and arising from the natural reflection that they were not fairly dealt with; since they were confined to certain modes of fishing, while it was supposed the coast

proprietors might fish as they pleased. The fish were found to have quitted many spots where they had formerly been found in great numbers, and although the "fluctuating nature of fisheries depending on unknown causes," (page 47) may account for it in one or two seasons, it will not account for a continuation of this scarcity: and in rivers where no other cause could have contributed to drive the fish away, it was naturally attributed to the stake-nets. The plainest mode of reasoning on subjects of this sort is generally the best. The fishermen saw that their fisheries were diminished; they knew that the stake-nets were taking fish in great quantities, and they properly concluded, that if more were taken by one way, fewer must be taken by any other way.

Indeed the Author of the Pamphlet can hardly be serious in attempting to make out that the coble fishings are improved by the stake-nets; "plenty returned to the coble-net fishings, when the stake-nets were restored to the frith." (Note, page 47.) And, accordingly, he comforts (page 54) the upper heritors, with a view of the prodigious power of increase which the roe of the Salmon displays, and calculates that whatever quantity of fish are taken, if the power of increase were allowed to develop itself fully, there could be no sensible diminution of the numbers.

But there are still some objections to the new mode of stake-net fishing, which remain to be no-

ticed the more important, since the plan has been represented as highly to be recommended from views of the public welfare. Any one who has seen a stake-net, will conclude, that to render it equal to its object, it must be made so strong as to resist the tide and the winds. Then, I say, that on such a coast as that of England and Scotland, which is constantly traversed by small craft of all kinds, and where no man is at liberty to interfere with the free right of passage, such a contrivance may be regarded as a nuisance. It is frequently carried out in the sea, to the distance of three-quarters of a mile, and this too in the immediate neighbourhood of fishing villages, and the proprietors, being men of weight by their wealth, can prevent the inhabitants from going to law for a remedy. But now, suppose the stake-nets were to be adopted to the extent which the Author of the Pamphlet seems to desire. The coast will then be covered with a sort of chevaux-de-frize and become inapproachable except in the calmest weather. I confess I cannot think the benefit which the stake-net fishers propose to procure for the public, is sufficient to render the permanant establishment of stake-nets, in the open shores of this country, expedient, under this view alone of the subject; and although it is one part of the glorious prospect which the Author of the Pamphlet indulges himself with surveying, that "villages will rise up along the shores." I presume to say, that in any point of view the villages now there existing may be con-



sidered, where the fishermen are both happy and industrious, and would be much injured if his plans were followed, they are quite as proper objects of the protection of the Legislature, as being the nurseries of seamen, and the source of much national wealth, as any which the stake-net progress of amelioration may hereafter call into existence, if it should be rendered legal.

The passage in page 1 of the Pamphlet, in which the Author says, that he shall leave the Fisheries of England and Ireland to those better acquainted with them, and which I have before quoted, naturally leads us to inquire what is the practice in those countries? Now, if any one will consult Gabbet's Digest, part 2, vol. 2, in the latter part he will find the law of England and Ireland regarding the Fisheries. He will be struck with the remarkable similarity which pervades the statutes on this head, and, except such changes as the difference of terms and of climate prevailing in the three countries necessarily occasions, he will find the ruling principle is precisely the same.

The Author of the Pamphlet will not hesitate to say, that all laws which are found to prohibit the use of stake nets in Fisheries, are founded in ignorance and prejudice. If he means that the system of regulations, under which the Fisheries are now carried on, will not allow the use of permanent nets of any description and denomination, he is quite correct. But he is wrong when he says,

these Acts were passed in an age of darkness, because the principal statutes which relate to the Irish Fisheries, were passed in the reign of George III. As to the English Statutes, I find in Burn's Justice, vol. 1, p. 540, ed. 1764, "Every person who shall set up any new wear along the sea shore, or in any harbour or creek, or within five miles of the mouth of any harbour or creek, shall, on conviction before any justice or mayor, forfeit for every offence, &c. sec. 1, c. 12. And worse than all, in Gabbet's Digest, that by Ed. 3, st. 4, c. 4, E. and I. "all mills, wears, stanks, stakes, &c. &c. set up in the time of King Edward I. whereby ships and boats were disturbed, are directed to be pulled down without being restored; and thereupon writs to be sent to the sheriffs of the places to do thereof execution."

By this time I think it is clear enough what would happen, if the invention of Mr. Little were attempted elsewhere; and the Author seems to be quite aware of this, by doing every thing in his power to keep this part of the subject out of sight. He tells us, that it would be of no use to attempt it in rivers, whose waters have been rendered offensive to the fish by the stuff thrown in from ships and manufactories, and so on; but I take upon myself to say, there is another reason fully stronger. He knows very well, that these statutes are completely opposed to such practices, and that, unfortunately for him, they are not yet become a dead letter, and

cannot, as those of Scotland have been hitherto, be so easily evaded. And surely, the proper course for those to pursue who wish to promote stake-net fishing, would be to propose it for general adoption throughout the United Kingdom ; for, if the argument which they draw from the immense benefit the public would derive from a stake-net fishery established in Scotland, is of any weight, it would become infinitely stronger, when applied to all the rivers of the three kingdoms.

As, however, every one knows the difficulty that is produced by the differences already existing between the Scotch and English Statute books, I humbly deprecate any more legislation for Scotland, which, by rendering a practice legal in one country that has been always regarded as illegal in the other, would draw that line of distinction still stronger : and I shall beg leave to quote a passage from the Author of the Pamphlet, although against himself. “ The best and surest chance of legislating, with advantage to the public, is to introduce one broad and uniform system.” If this be true, the broadest system is surely that which prevails through the whole of the empire, only with the exception of certain illegal practices which have too long been permitted in certain rivers in Scotland. And thus, by allowing the existing laws to remain in principle the same, and merely making such alterations as may be found necessary as the occasion may shew, we shall have ob-

tained the desirable end of a similarity of Statutes in the three kingdoms, on this one point.

It now only remains to follow the Author of the Observations through his Remarks on the regulations regarding close time. It is known, that in different rivers, the close time begins and ends at different periods. The Author says on this, "This single circumstance, that the existing laws admit of such diversity, as to the time of fishing, within the different districts of the same kingdom, is of itself satisfactory proof that the recent regulation of the close time is not what it ought to be." Is it then meant to be inferred, that the habits of the Salmon are so regular and uniform, that they appear in the rivers at certain calendar days? a very little reflection will shew that the motions of the Salmon are entirely regulated by the nature of the different rivers they are in the habit of resorting to. In some rivers they appear much sooner than in others, and in the same manner the young fry will, in one river, just have quitted the ova, while in another, they will be more advanced. In fact, the Salmon frequenting one river, differ so much in their general habits from the Salmon frequenting other rivers, that they may be regarded as almost a different species. Instead, then, of passing a sweeping sentence of condemnation on the old laws affecting the different rivers, I should think it would be more agreeable to common sense to let the heritors and persons interested in those

rivers propose alterations, if they were found necessary; instead of suggesting the propriety of causing all the fishing in Scotland to begin at a certain day, unless it should be at the same time proposed to cause the Salmon to be more uniform in their movements.

It is impossible, however, to forget that all this stir and clamour against the laws, arises from those who have a private interest in the decision of the question, and accordingly, if we turn to page 23 of the Pamphlet, we shall at once perceive what has induced them to bring this point forward at all. There we read, "For example, it may plausibly be said that the fishery might be prosecuted with public advantage in the sea, and in friths and estuaries, at times, when it would be attended with noxious effects in the rivers," &c. In short, it is modestly suggested, that when the proprietors immediately above them are exposed to pains and penalties if they fish at all, they the lower heritors should be allowed to fish away for the benefit of the nation at large. Now, whatever variety there may be in the habits of the fish frequenting different rivers, there can be little or none in the habits of those resorting to the same rivers. If the fish are going up any river for the purpose of spawning, they must first appear at the mouth of it; or if black fish or fry are coming down, it must be there that they are first seen, because the season there is earlier; so that

so far from its being *plausible*, that the heritors on the lower parts of the rivers should be allowed to fish longer than those in the upper, the very reverse of all this should take place if any difference in the period of beginning and ending of the close time, should prevail in the same river. After all, it should seem to be much more agreeable to common sense, that all the fishing on the same river should begin at one and the same time. But whether that time should remain as at present, or whether it should be altered and adapted to the different rivers ; whether there should not be two separate seasons of fishing in each year, the one beginning at the first ascent of the fish, and ending when the fry began to move, and the other from the time when the fry had nearly all reached the sea, until the spawning fish began to ascend,—all these and other questions can easily be settled when the present laws are not only declared but put into actual execution.

I shall only remark farther, that in treating of this subject, it is not easy to reason from any but probable arguments. We can only infer what would ensue on the supposition that either party were to prevail. At present, there is no river, where the fishing is regularly carried on, which is entirely free from yairs, cruives or stake-nets, and at the same time so well protected from poaching, as to afford proof of what the fishing in general would be under the operation of such a Bill as

that proposed for regulating the Tay Fisheries. Neither, on the other hand, can we exactly appreciate the effect of the general system of stake fishing, proposed by the opponents of that Bill ; because the stake-nets have hitherto enjoyed only a precarious existence, and have been constantly resisted with more or less success by the upper heritors. The agitation of the question tends only to keep all parties in suspense, and although the judges may declare the law, it cannot be expected that any regular plan of protecting the fishing will be established while the stake-net fishers are enabled to shake the whole system by law-suits and petitions. In the present circumstances, whatever facts are brought forward, must be regarded with civil suspicion and caution, without conveying any disagreeable imputation ; and it may be reasonably expected, that the Board\* of Trade will place the interest of individuals entirely out of their view, and will not be easily induced to alter a system of laws which agrees in its main points with the system under which the Salmon Fisheries in the other parts of the kingdom are placed.

\* It appears now, that this question is to be referred to a Parliamentary Committee.







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