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To the Honourable L.P. Brodeur,

Minister Marine and Fisheries, MAY 18 1909

Ottawa.

18-1/13

*See memo  
R. B. Smith  
1 May 09*

Your Commissioner appointed by Commission dated the sixteenth day of March A.D. 1909, Number 53,748 to investigate into the applications made by the St. Andrews Company, Limited, for weir licenses for fishing in the County of Charlotte in the Province of New Brunswick begs to present his report as follows:-

The formal Commission was received by your Commissioner on the first day of April A.D. 1909. Your Commissioner being of the opinion that the assistance of counsel would facilitate the carrying on of the investigation, engaged N. Marks Mills, as counsel, on authority from your Department.

Your Commissioner named April 12th, A.D. 1909 at two o'clock in the afternoon at St. Andrews in the County of Charlotte as the time and place for the opening of the investigation, and the St. Andrews Company, Limited, by letter dated April 7th, 1909 and mailed the same date (a copy of which is hereto annexed) was duly notified to this effect.

The investigation was duly opened and commenced on the date last aforesaid.

Warrall J. Webber was sworn in as stenographer. N. Marks Mills was present as counsel to assist your Commissioner.

Mr. George J. Clarke and W. G. D. Grimmer appeared on behalf of the St. Andrews Company, Limited.

Evidence was taken on April 12th, and 13th, and at

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the request of Mr. Clarke, acting for the St. Andrews Company, Limited, the hearing was adjourned to April 27th, at two O'clock in the afternoon at St. Andrews, when further evidence was taken and at Mr. Clarke's request the hearing was again adjourned until May 4th, when further evidence was taken and the investigation concluded. Mr. Clark asked for the postponements on account of it being necessary for him to attend to his duties as Speaker of the Provincial Legislature, then in Session, and the investigation was not concluded until the Legislature was prorogued.

On May 4th, Miss Edith Stevens was sworn in as Stenographer.

A copy of the evidence with the exhibits is herewith submitted for your consideration.

The evidence discloses the following facts, viz:-  
That George J. Clarke purchased the wires in question about the year 1904 for Francis P. Mc. Coll and held them in trust for said Mc. Coll from 1904 to 1908; that in 1908 Mr. Clarke transferred said wires to Mr. G.D. Grimmer without valuable consideration; that G.D. Grimmer held said wires a portion of 1908 in trust for Francis P. Mc. Coll; that during the latter part of 1908 G.D. Grimmer transferred said wires to the St. Andrews Company, Limited, receiving therefore 45 shares of the Capital Stock of the said last mentioned Company; that G.D. Grimmer held said 45 shares as trustee for Francis P. Mc. Coll; that in January 1909 G.D. Grimmer transferred said 45 shares to Francis P. Mc. Coll; that Francis P. Mc. Coll holding 51 shares of the capital stock of the said St. Andrews Company, Limited, deposited with

with the Sea Coast Canning Company, of Eastport, Maine U.S.A. the said 51 shares as collateral for money spent by said last mentioned Company in financing said weirs from 1904 to 1909; and that the said Sea Coast Canning<sup>C.</sup> now hold said shares as collateral as aforesaid; that from 1904 to 1909 the said Sea Coast Canning Company controlled and financed these weirs; that the said Sea Coast Canning Company furnished Francis P. Mc.Coll with the funds he gave Mr. Clarke to purchase said weirs during the year 1904; that only 55 shares of the capital stock of the St. Andrews Company, Limited, (being four more shares than the number held by said Mc.Coll) have been issued by the Company, out of a capitalization of 200 shares; that said Mc.Coll is an American citizen residing in Eastport, Maine U.S.A. and in St. Andrew, in the Province of New Brunswick; that said Mc.Coll is Vice-President and General Manager of the Sea Coast Canning Company, an American Corporation, and Vice-President and Treasurer of the St. Andrews Company, Limited; that the 55 shares of the capital stock of the St. Andrews Company, Limited, which have been issued are held as follows viz: 51 shares in the name of Francis P. Mc.Coll an American citizen, but said 51 shares are held by the Sea Coast Canning Company, an American Corporation, as collateral, one share by George J. Clarke a British subject, one share by G.D. Grimmer a British subject, one share by J.T. Whitlock a British subject and one share by W.M. Clarke.

The evidence shows that no matter whether these weirs or parts of weirs as the case may be, were held in the name of George J. Clarke or in the name of G.D. Grimmer, they have actually been

been operated for the benefit of Francis P. McCell, an American citizen and Vice-President of the Sea Coast Canning Company, which is the largest corporation engaged in canning cordons in the State of Maine, or for the benefit of said Sea Coast Canning Company direct, Mr. Cell and the Sea Coast Company being so closely allied that I would not attempt to draw the line of separation. Therefore the licenses for said webs have since 1904, been held in contravention of the Regulations of your Department governing the same.

I would call your attention to the history and composition of the St. Andrews Company, Limited, the present applicants for these licenses, as shown by the evidence. The said company was incorporated by Act of the Legislature of the Province of New Brunswick passed on May 20th, 1902. The incorporators of said Company were G. B. Grimmer, George J. Clark Francis P. McCell, Julius T. Whitlock and H. McNeill Clark. An organization meeting of the Company was held on September 23rd 1902, when the incorporators were elected directors. At that meeting they decided to take over the webs in question, and also disposed of 55 shares of stock as follows viz:- J. T. Whitlock one share, George J. Clark one share, H. M. Clark one share, Francis P. McCell six shares and G. B. Grimmer forty six shares. Mr Grimmer testified that he held 46 shares of the 46 shares appearing on the Stock Book in his name, simply as trustee for Mr. McCell and that when the webs were transferred to the St. Andrews Company, Limited, he transferred said 46 shares back to Mr. McCell. Mr. McCell swore that his entire amount of stock in the St. Andrews Company, Limited, being 51 shares is at present held by the Sea Coast Canning Company.

of Eastport, Maine, as collateral for money advanced for the purchase and operation of said weirs.

You will notice that the Order in Council requiring applicants for weir licenses to make statutory declarations, setting forth the name or names of the actual owner or owners of such weir or weirs, as well as the nationality of such owner or owners, was passed on April 6th, 1908, and that the Charter incorporating the St. Andrews Company, Limited, was obtained in May 1908, or about a month after it became necessary for applicants for weir licenses to support their applications by statutory declarations.

After hearing the evidence and carefully going over since it has been transcribed I recommend that the application of the St. Andrews Company, Limited, for Special Fishery Licenses to operate during the year 1909 the following weirs, and parts of weirs, namely :-

Gallagher Weir No. (Consecutive)	178.
Mag Island	179.
3-4 Craig	180.
1-3 Pine Tree	181.
1-2 Orr	182.
2-3 Apple Tree	183.

be refused. They have been owned by Americans since 1804 and if the licenses were given to the St. Andrews Company, Limited, they would be operated practically for the benefit of the men who have owned them in the past.

The spirit of the Sea Coast Counting Company, of Eastport, Maine, has been upon nearly every particle of evidence submitted, and the only redeeming feature in connection with the testimony of the officials of the St. Andrews Company, Limited, was the statement of Mr. McCall in answer to a question by your Commissioner, to the effect that in the event of the license

licenses being granted to said St. Andrews Company, Limited, they would probably within a month arrange a meeting with the Sea Coast Canning Co. pay off their debts to said company and sever their connection. But that even is provisional. Mr. McCall testified that he had no written agreement with said Sea Coast Canning Co. regarding the weirs, only an understanding between them that he had the right to refund the advances and get back the weirs. There is no evidence to show that the Sea Coast Canning Co. <sup>is willing</sup> to give back the weirs to Mr. McCall, or that they would do so. But assuming that they would transfer them to him, or the St. Andrews Company, Limited, and said St. Andrews Company, Limited, were to become the actual owners of these weirs, how then would the matter stand with respect to the Order in Council of April 6th, 1888? The answer is obvious: They would be owned and operated for the benefit of a company in which an American citizen owns 51 shares out of the 55 shares of the Capital Stock that has been issued.

Assuming you decide after going over the evidence that the said St. Andrews Company, Limited, are not eligible to hold these licenses, you are confronted with the knotty problem of disposing of them. It is true you could cancel the licenses for the "Callaghan" weir and the "Mag Island" weir without injustice being done anyone for they were wholly owned by the Americans and the entire interest in them is now asked for by the St. Andrews Company, Limited, but two thirds of the "Pine Tree" weir, two thirds of the "Birch" weir and one third of the "Apple Tree" weir are owned by British subjects who have supported the applications for their particular shares by the necessary declarations to that effect. There is no evidence that would throw any light on the ownership of that part (one fourth)

of the "Craig" weir not covered by the application of the St. Andrews Company, Limited, but Mr. Clark informs me that it is owned by a resident of Deer Island, New Brunswick, presumably a British subject; therefore in order that the Canadian owners in the four last mentioned weirs be not deprived of their means of earning a livelihood by sporting their respective portions of said weirs I would recommend that the licences for them be issued.

I also recommend that the share in each of these four licences now applied for by the St. Andrews Company, Ltd., be disposed of at public auction, after having given sufficient notice of the sale. In fact I would very much dislike to see them disposed of in any other manner.

I recommend that the licences for the "Gallagher" weir and the "Hog Island" weir be not renewed. These two weirs are located on Hog Island. The Sea Coast Canning Company own an undivided two thirds interest in said island, which they acquired by purchase from the former Canadian owners. Hog Island is valuable only for these weir privileges, and I am of the opinion that you should not dispose of these two licences until said Sea Coast Canning Company have had an opportunity to sell said island unto some British subject, and then the new owner could procure the licences in the usual manner.

I now come to the last point for your consideration namely:—is Mr. McCall or the St. Andrews Company, Limited, entitled to any recompense? Have they any equity in them? If so to what extent? Legally they can have no claim for damages if the licences are refused them; in fact Mr. McCall is liable to prosecution for owning these weirs in contravention of the regulations of your Department governing them but I think you

you can afford to be generous and pay them from the proceeds of the auction sale of said licenses enough to cover whatever value may be placed the building material owned by them in said weirs. I am aware that sub-section three of Section 47 of the Fisheries Act require weir owners to remove their stakes at the expiry of the fishing season, and of course, that deprives them of any legal rights in this respect, but as a matter of fact herring weirs are permanently constructed and each spring it is only necessary, to repair the damages done during the winter, and whoever obtains these licenses will find the weirs partially built; therefore I recommend that you instruct the Inspector of Fisheries for the district to estimate the amount of value to be placed upon the building material owned by Mr. Mc.Coll, or the St. Andrew Co., Ltd, in these weirs, and to pay them the same from moneys derived from the sale of said licenses, with the distinct understanding that your Department is not obligated to do so, but is doing it as an earnest of your desire to preserve our fisheries for Canadians and at the same time not to deal harshly with foreigners who have been able by misrepresentations to acquire and hold certain of these privileges for a number of years.

All of which is respectfully submitted for your consideration.

Dated 14th. day of May 1909.

John F. Calder  
Commissioner