

“Having No Entries, Keeping No Books”: The Records of the Prince Edward Island Fisheries Claims Commission, 1884-1888

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The usual requirement for an archival “find” is a rusty trunk discovered in a dusty attic behind a long-locked door. Yet the fascination of discovery is still present when the find is made within a proper archival storage container called up because of a straightforward entry in a finding aid at a major repository. This is not a story of a mislabelled treasure for the records are indeed what they are described as being. Yet even without an undisturbed layer of dust it is clear that they have rarely been used.

The records of the Prince Edward Island Fisheries Claims Commission are found within the series of the federal Department of Finance records relating to commissions, committees, and other short-term entities.¹ It is the kind of series that can be found in most record groups — the leftovers that don’t fit into other specialized series, or archival strays that are discovered too late to integrate into existing order. The description of the collection is straightforward and accurate: “Records of R.R. Fitzgerald appointed Commissioner to evaluate the claims arising from payment of the American duty on fish and fish oil by PEI residents in 1871 and 1872.”

The PEI Fisheries Claims Commission had its roots in the Treaty of Washington which was signed on 8 May 1871. One of the clauses of the treaty enabled American citizens to fish in the territorial waters of Canada, Newfoundland, and Prince Edward Island. However, enforcement of the legislation was suspended until enabling legislation had been passed in each of the colonies and in the United States Congress.

The chief American negotiator, Hamilton Fish, had written to Edward Thornton, British minister at Washington, the day the treaty had been signed, urging that the legislation and regulations then in force be relaxed in order for American fishermen to take advantage of the new agreement. He indicated that the U.S. would reciprocate. The matter would have to be dealt with by Congress but Fish said that until the tariff legislation was passed the president would urge on Congress a refund of duties paid on fish oil and fish. This request was communicated to the colonies and, following a request from Lord

1 The PEI Fisheries Claims Commission should not be confused with the Halifax Claims Commission of 1877 which set the compensation to be paid by the United States to Canada for the difference in value between the benefits of Canadian use of American fishing waters and American use of Canadian waters under the Treaty of Washington.

Kimmerly, the Colonial Secretary, Prince Edward Island customs officers discontinued the enforcement of laws prohibiting American fishermen from fishing to inshore waters.

The Treaty of Washington was not ratified by Canada until more than a year later, and not by the U.S. until 25 February 1873. It came into effect on 1 July 1873, the same day that Prince Edward Island entered Confederation. Until ratification, however, Canada refused to act on Fish's request and Canadian waters remained closed to American fishing vessels. Consequently Congress did not act on the request for a rebate on duties paid on fish products by Island fishermen.

The Island government held the Dominion government responsible for the failure to pay this refund, as the Islanders had allowed American fishermen in their waters in good faith and in the belief that Canada would agree to the proposed arrangement.²

The matter dragged on and was raised in Parliament by the Island members in 1880 and again in 1883. By mid-April 1884 it was evident that the government planned some action and a petition signed by six Island members and senators called for early appointment of a commissioner in view of the fact that many of the fishermen would be so busily engaged in the fishery later in the season that they would not have the opportunity to present their claims.³ Cabinet met on 8 May 1884 and approved \$30,086.10 to "make good" to Islanders who were British subjects the amount of duties paid to U.S. Customs in 1871 on fish and fish oil under the Treaty of Washington. The following year a further \$16,542.49 was voted to cover duties paid by PEI fishermen for 1872.

The cabinet committee indicated it was desirable to appoint "some gentleman of good standing as a commissioner to take evidence and report to the government fully as to the claims that may be presented before him." Presumably the "good standing" included political as well as administrative skills and it is not surprising that Rowan R. Fitzgerald, Stipendiary Magistrate of the City of Charlottetown and a good Conservative was appointed commissioner.⁴

By 2 June Fitzgerald had received his commission and was prepared to commence his duties. He placed notices in several Island papers to call for written applications for duty rebates but already he anticipated a problem with the "probable illiteracy of many of the claimants and the impossibility of at present settling what evidence will be necessary in each particular application."⁵

It was not until October that Fitzgerald actually began taking evidence, by which time his mandate had also been extended to cover the quantum of rebate to be paid for 1872. The evidence appears to have been taken in a rather informal manner with account books, receipts, correspondence, and scraps of paper presented to substantiate the claims of both

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- 2 Prince Edward Island was not opposed to using its fisheries as a bargaining chip. In 1868, as the result of the visit of a delegation from the United States, it had been prepared to trade fishing concessions for duty free admission of its agricultural goods into the United States. See F.W.P. Bolger, *Prince Edward Island and Confederation* (Charlottetown, 1964), pp. 174-192. Claims by the province against Canada dominated the relations between the two governments until the end of the nineteenth century. See Nancy Jean MacNeill, "W.W. Sullivan and Provincial Finance," (M.A. thesis, University of New Brunswick, 1977).
 - 3 Public Archives of Canada (hereafter PAC), Records of the Department of Finance, RG 19, vol. 3025, file 1836, Petition dated 17 April 1884.
 - 4 PAC, RG 19, vol. 3025, file 1836, Report of the Committee of the Privy Council, approved 8 May 1884.
 - 5 *Ibid.*, R.R. Fitzgerald to J.M. Courtney, 2 June 1884.

the fishermen and the packers and shippers. The evidence was summarized and put in the form of an affidavit by Fitzgerald's secretary which was then sworn by the claimant.

Fitzgerald heard evidence through the autumn of 1884 at the major fishing port in each of the Island's three counties. There had been some 657 responses to the notices placed in the newspapers and, of these, 603 claims proceeded to the hearing of evidence. By the end of February he was complaining that the evidence was "very bulky" and wondered if he could obtain a railway pass to take it with him to Ottawa and to consult with J.M. Courtney the Deputy Minister of Finance.⁶

The bulky evidence was accompanied by a detailed summary and report giving not only the distribution of the funds voted but also on analysis of the fish marketing and export system which provides a picture of the industry at the end of the pre-Confederation period.⁷ Fitzgerald divided the claimants into a number of groups:

1. merchants buying and shipping and actually paying the duty;
2. fishermen catching fish in either their own boats, on a half line or other arrangement on boats owned by the merchants or as crews in a merchant's boats on half line;
3. middlemen who obtained fish and afterwards sold them to merchants who exported them.

Fitzgerald placed thirty-three claimants, mostly firms, in class one. The fishermen in class two were the majority of claimants but the variety of arrangements for selling the fish frequently made calculation of duty paid almost impossible. Fish might be sold barreled, culled, and inspected at a set price per barrel for each grade of fish, or by the 200 pound of salt fish culled — barreling, culling, and inspection at the expense of the merchant, or by the 200 pound, salted, unculted, and ungraded, or by the 240 pound green (unsalted) fish, unculted, or by the 100 fish at a price per 100. Even the middlemen were in two separate groups — those who had small stages and ran boats with men hired on half line, buying from the fishermen their half of the catch but also purchasing from independent fishermen, and those who had no boats or stages and who merely bought and then resold to larger merchants. A major problem was encountered in ascertaining whether or not the price paid to the fishermen reflected the fact that duty would subsequently have to be paid. If the price paid to fishermen was reduced, then Fitzgerald judged that they had effectively paid the duty themselves and would be eligible for refund.

With this complexity in the system it is not surprising that Fitzgerald found many overlapping claims for the same fish. It was extremely difficult at times to determine just who had paid the duty and was therefore entitled to the rebate. If there had been no direct charge to the fishermen, did the price paid them include a calculation of the expense of the duty? Nor were these the only difficulties. Few of the fishermen and middlemen had kept books and records, and they

6 *Ibid.*, R.R. Fitzgerald to J.M. Courtney, 22 January 1885. He was not successful in getting a railway pass; see PAC, Records of the Department of Justice, RG 13, vol. 2792, J.M. Courtney to R.R. Fitzgerald, 28 January 1885.

7 The report and evidence are held together in PAC, RG 19, vol. 3846-3849. Subsequent references to the report will be to the copy in vol. 3849, an additional copy of the report is found in PAC, Records of the Privy Council Office, RG 2, series 1, Order-in-Council 799, 26 May 1885.

almost entirely relied on their memory in detailing transactions which took place some thirteen years ago, could not speak with any certainty as to the price they got, or the number of fish they caught and were directly contradicted by most of the Merchants as to the deduction of the total duty from the price.⁸

The records of the middlemen were scarcely any better, for Fitzgerald found that “having no entries or keeping no books of account... they on their part were very generally unable to give me either the prices they paid or the prices they sold for.”⁹ Some of the larger merchants had refused to open their books to Fitzgerald or to give information to the fishermen because they were not British subjects and therefore not eligible for refunds themselves. Some available records, such as those of the largest shipper on the Island, Hall & Myrick, had gaps. In the case of Hall & Myrick, all of the records for one county and one-half of them for another had been destroyed by fire some years before. The larger merchants and shippers were often able to supply better documentation and the affidavit of George W. Howlan is accompanied by a thick file of correspondence, customs clearance papers, bills of lading for vessels, and circulars from commission merchants.¹⁰ This is in contrast with the sparse evidence tendered with other affidavits which, when present, consists of worn, creased scraps, notes made on the backs of envelopes or other similar documentation. Given the routine nature of the transactions, it is surprising that any material of this sort was retained by the fishermen.

Fitzgerald allowed sworn evidence from fish buyers, cullers, and from other fishermen to support the claims. The bookkeeper for Hall & Myrick was in almost constant attendance supplying information from company books and records. Nevertheless Fitzgerald maintained a strict requirement for evidence before he recommended payment of a claim:

I have in making up this Schedule report been careful to see in the first place that duty was paid on the fish claimed for, requiring the Boston Customs Certificate in every case, true copies of the Account sales of the fish and in many cases the affirmation of the agent in Boston, and have rejected all claims whether of merchants or of fishermen in which full and satisfactory evidence of the payment of the duty has not been given. This was necessary as no small amount of fish caught in 1871 & 1872, especially codfish, were not sold in the United States though entered in bond there but were sold without payment of duty in Demerara and Havana and elsewhere.¹¹

In his final report Fitzgerald had eliminated a number of American citizens who were specifically excluded from the enabling legislation. The largest of these was the claim of Hall & Myrick for \$38,701.98, more than the total sum appropriated for the fishery claims. The firm was the largest and most important fishing company on the Island and had direct access to the Boston market. Fitzgerald made a special plea for Hall & Myrick stating that the American firm had been doing business for more than thirty years which had “greatly stimulated the industries of the Province, and that although American Citizens their Citizenship has in no way affected their commercial relationship with its

8 PAC, RG 19, vol. 3849, file 3407, p. 10.

9 *Ibid.*

10 *Ibid.*, vol. 3846, file 9, Claim of George W. Howlan.

11 *Ibid.*, vol. 3849, file 3407, p. 27.

people.”¹² He had also reduced claims in some cases because there was insufficient documentation or because a fisherman relying on his memory in proving his catch had submitted a claim “exorbitant and largely in excess of the average catch of his neighbouring fishermen....”¹³

Additional cuts were apparently made to the list on the floor of the House of Commons for departmental files contain a stop payment put in place by Mackenzie Bowell on the advice of Island M.P. George Howlan.¹⁴ Howlan himself had had his own claim cut back by some \$2200 as Fitzgerald had found insufficient proof that the duty had actually been paid. Howlan was not without influence and supplementary estimates for 1886-87 contain additional funds to pay his claim and that of H.M. Churchill who, although a U.S. citizen, had been naturalized in 1872. Churchill was not lacking in political skills and obviously made his position clear to Island M.P., A.A. McLean, who then wrote Joseph Pope, John A. Macdonald’s private secretary, that “Mr. Churchill has always been a good friend of our party. He controls a large number of French (Rustico) votes. He employs a large number of men.... We cannot afford to lose his vote and *Influence*. The cheque should be sent at once. Churchill against us would be bad.”¹⁵ Pope quickly contacted Tupper and the matter was resolved. A leading Island Tory, Lewis Carvell, reported to the minister that Churchill had received a reassuring telegram that “Now he knows you have this matter in hand he has already sent out his men and will do his best for the supporters of Sir John.... This of course on his part will be good for 60 to 80 votes.”¹⁶

The following year it was clear that all of the political difficulties had not been cleared up. The Myrick claim had still not been settled and Edward Hackett, who had just been defeated as M.P. for the district of Prince and was shortly to be named Inspector of Fisheries for the province, reminded Tupper that Myrick’s employees had caused trouble at the last election and warned, “He is a large employer of labour in this province and can control more votes than any other single individual in it.... We have a strong party in this province but the way matters now stand unless we can get some support from the other side I fear it will be a long time before we can elect a supporter of the government.”¹⁷ Hall & Myrick renewed their claim for the reduced amount of \$15,000 in 1897 and two years later the sum was voted.

In spite of the additional funds voted in 1899 all of the claimants were not yet satisfied. Michael McElroy of Tignish wrote that he had been absent at the time the claims were heard and had been told in 1887 that the matter was closed. The payment of the Hall & Myrick claim prompted him to reapply and his claims, endorsed by the parish priest and M.P. in 1900, another M.P. in 1902, a senator in 1904, and again in 1914 swell the file.¹⁸ Correspondence and reports on the PEI Fisheries Claims Commission come to an end in March 1914 — forty-three years after the first duties on fish had been paid and thirty years after the commission had been established.

12 *Ibid.*, p. 32.

13 *Ibid.*, p. 28.

14 *Ibid.*, vol. 3018, file 1317, Mackenzie Bowell to G.W. Howlan, 16 June 1885.

15 *Ibid.*, vol. 3044, file 3401, A.A. McLean to Joseph Pope, 2 February 1887.

16 *Ibid.*, file 3401, Lewis Carvell to Charles Tupper, 17 February 1887.

17 *Ibid.*, file 3403, Edward Hackett to Charles Tupper, 27 April 1888.

18 *Ibid.*, vol. 3166, file 10627, Claim of Michael McElroy.

And what of the evidence itself? The cover sheet, unfortunately undated, gives a partial trail of its travels. "Fyled in T.B. rooms with evidence..., in vault between rooms of Minister and Deputy Minister of Finance..., in drawer over fireplace, 3rd floor left corner...."¹⁹ The report was entered in the departmental file indexes as file 3407, but both it and the supporting evidence had become separated from the main file series (probably because of the bulk of the evidence) and was not handed over to the Public Archives until 1966 as part of a miscellaneous lot of records. The 80 cm of evidence have been reboxed but it is probable they have never been used for research.

The material consists of Fitzgerald's report and his proposed distribution of the available funds along with the sworn affidavits of the fishermen and the merchants. These 603 affidavits are sometimes accompanied by supporting documentation.²⁰ The books of account that Fitzgerald mentions, however, were supplied for his use by cooperative merchants and shippers; they do not survive in the collection and were probably returned to their owners.²¹ Fitzgerald had forms prepared for the taking of evidence which insured that the legal formalities were included and the evidence given verbally by the fishermen or merchants was taken down by a secretary, thus eliminating the difficulties occasioned by illiteracy.

There is a simple eloquence to the narratives, and even though distorted and ordered by the transcribing clerk, the voices and concerns of men who perhaps have no other recorded voice, can be heard. An example is the affidavit of Neil J. McPhee, Angus J. McPhee, and John A. McPhee (deceased), of Big Pond, Lot Forty Five, Kings County, farmers and fishermen.

We are British subjects. In 1871 we fished off Black Bush in our own boat. Father, the late John A. McPhee, and ourselves made the crew. We sold all our catch to Joseph A. McDonald that year. He had a stage there. Joseph McIsaac was his clerk there. I Neil McPhee entered my catch here. I did this for the last 30 years. The account shows that I caught 10½ barrels and as we all shared the total catch my father and brother must have caught the same. I am sure we caught 31 barrels in the boat this season. We sold these green by the 240 pound to the barrel. We got for the first lot 18/- a barrel. This is entered in Neil McPhee's book. We grumbled about this price and he said it was this duty of \$2.00 in gold was a drawback. Besides the greenback is not worth the face and I have to take it off the price. He made it up that each barrel would cost him \$7.00 before they would be shipped, barrel and duty and everything after paying us the 18/-. In August we got 20/- and on the 11th September when we sold the last he gave 24/- per 240 pounds green fish.²²

When one examines other possible sources for a study of the fishing industry of Prince Edward Island for this period the value of the Fisheries Commission evidence becomes

19 *Ibid.*, vol. 3849.

20 It does not appear that all of the affidavits have survived. While there are only a few missing files, among them is that of Hall & Myrick. It is possible that files relating to claims of American citizens were removed from the series before transfer to the archives.

21 The Public Archives of Prince Edward Island has a large collection of records of Hall & Myrick, but this collection consists primarily of letter books, and it is probable that the books of account mentioned by Fitzgerald have not survived.

22 PAC, RG 19, vol. 3848, file 450, Claim of Neil J. McPhee.

apparent.²³ The aggregate census for 1871 shows 1,646 fishermen in the colony and if this figure is accurate then more than one third of those employed in the industry made claims before the commission. Only a few fragments of the 1871 census for Prince Edward Island have survived and as the industry was for the most part unregulated and carried out in hundreds of small harbours there are almost no other records. It is then difficult to gain an accurate picture of the fishing industry in the colony or to identify specific fishermen. Even more difficult to establish are the economic relationships which existed within the fishing communities or even the predominant fishing methods. The affidavits, even when rendered into narrative form by Fitzgerald's efficient secretary, provide details to flesh out the bare statistical information in census and trade abstracts. Although they must be used with some caution for they represent neither a random nor a statistically balanced selection of fishermen in the colony, the affidavits contain a considerable amount of narrative concerning just *how* the fishery was carried out. The importance of these records is not restricted to their social or economic value because, as documentation surrounding the operations of the Fisheries Commission shows, politics was closely related to the economic domination of the fishermen by the merchants and shippers.

The records of the Prince Edward Island Fisheries Claims Commission are not hidden, nor are they misfiled or poorly described. However, for most researchers they are easily overlooked. For the researcher who persists the collection is a rich vein of unique information on a subject which is yet to be fully explored.

23 There have been no adequate studies of the fishing industry in Prince Edward Island. Harold A. Innis, *The Cod Fishery* (Toronto, 1954) scarcely mentions the colony; D.A. MacKinnon's "Fisheries" in D.A. MacKinnon and A.B. Warburton, eds., *Past and Present in Prince Edward Island* (Charlottetown, 1905) pp. 168-73, is short and outdated.