

FEDERAL CONTROL OF INTERNATIONAL AND INTERSTATE WATERS.

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Mr. President, Members of the Academy—I shall talk a very few minutes on this subject. The idea of federal control in matters pertaining to fisheries and game is a recent one, and one of recent and gradual development. I think perhaps the idea was first advanced in connection with the control of migratory birds. Ornithologists and others interested in the preservation of birds realized a number of years ago that the state laws of the various states were inadequate for the control of migratory birds. A bird today is in Louisiana or Alabama, tomorrow in Tennessee, next week in Kentucky, then Indiana, then Michigan, and the game laws in the different states are different. In some of these states there would be a law adequate for the protection of migratory birds as they went north or south, but in the next state into which they went there would be no law, so that migratory birds received very inadequate protection or no protection at all.

The first bill that was introduced into Congress that had any bearing on this question was introduced by George Shiras III, of Pittsburg. In this bill he proposed that the Federal government should take over the control of the regulations for protecting migratory birds. A little later the idea expanded and Mr. Shiras introduced a bill in Congress providing for the protection of migratory fishes. His attention had been called to the fact that in the Atlantic coast States there is no law adequate to protect the shad and other migratory fishes. The difficulty existed in all of the streams where migratory fishes came, but particularly in those streams which lie between two States and which are controlled by two or more States. The Potomac River was taken as an illustration. The laws of Virginia on one side and Maryland on the other were never the same, and at the same time it was legal to fish in one State and illegal in the other. The inevitable result was a series of evasions of the law by the fishermen of these States.

The Columbia River is another illustration, perhaps the most serious of all. There you have Montana, Idaho, Washington and Oregon, all con-

cerned in the Columbia River. Idaho and Montana are not seriously interested in the salmon, but Washington and Oregon are both vitally interested in the salmon fisheries of that stream. But these two States have never been able to agree upon concurrent legislation which adequately protects the fisheries, and things have gone from bad to worse. Two years ago an effort was made by certain people interested to restrict the taking of salmon in the upper Columbia by cutting out the use of certain kinds of apparatus. This matter was referred to the people in Oregon, and at the same time those who were interested in the fisheries in the upper Columbia had a similar question submitted to the people stopping fishing in the lower river, and a very curious result followed. The people said it would be a good thing to restrict fishing in both parts of the river, so both amendments carried, and the inevitable result followed that neither is enforced, illustrating very clearly the impossibility of two or more States agreeing upon adequate measures in questions of that kind.

Then the question came up as to the control of the fisheries in international waters. The question there has for many years been a serious one, particularly on Lake Erie. That lake has abutting on it four States on this side of the line—Michigan, Ohio, Pennsylvania and New York—and the province of Ontario on the other—five political units that are all interested in the fisheries of Lake Erie, and no two having the same laws, so that at one time it would be legal to fish at a certain distance from the shore and with certain apparatus off that narrow portion of Pennsylvania which fronts on Lake Erie, and just beyond that narrow strip in Ohio or New York it would be illegal, and there was constant difficulty to keep the fishermen of one State within the strip in which they had a right to fish; and the regulations on our side were in every case entirely different from those on the Canadian side, so that friction followed there. It was impossible for the individual States to handle this question, and in that way the question of federal control came up.

In addition to these questions, and of more recent development perhaps, has come the question of the desirability of federal control of interstate waters and other waters in the matter of public health. We have a good illustration of the necessity for this in the Potomac River. Washington City has sometimes suffered from an epidemic of typhoid fever, and investigation has shown again and again that the source of infection was not in the District of Columbia, but was brought from some place

else; and carrying the investigation still further it has been proved on more than one occasion that Cumberland, Maryland, is responsible for at least some of the typhoid epidemics at Washington. The waters of the Potomac become infected at Cumberland, many miles above Washington, and the germs are carried from there and people infected. The District of Columbia, of course, is absolutely powerless in the premises; it can do nothing. The State of Maryland has done nothing, and the outlook is not encouraging. I do not believe Maryland will do anything to remedy the difficulty. It affects not only the District of Columbia, but every town between Cumberland and the District of Columbia, so that in that case the matter of public health is concerned in Maryland, the District of Columbia and Virginia.

A little more than a year ago the United States and Great Britain entered into a treaty providing for the appointment of an international Fisheries Commission, with power to draw up regulations governing the fisheries in international waters between the United States and Canada. That treaty specified the waters—from Passamaquoddy Bay on the east to Puget Sound on the west—taking in all of the Great Lakes except Michigan. As I see it, the principal point, the principal necessity for that treaty was to secure a set of uniform regulations for these waters. Under it, fishing on one side, in Canada, and in Ohio, Pennsylvania or New York, on the other, as far as Lake Erie is concerned would be the same. There would not be the conflicts which now exist. It does not seem to me that that treaty was necessary in order that the Federal government might take control of the fisheries in these waters, and for some reasons it would have been better if they could have brought about federal control of fisheries in these waters without entering into a treaty between the two countries. There may be some little risk in giving a foreign nation a hand in determining what shall be the regulations in the waters of Ohio, of Michigan, Pennsylvania or New York, and make it impossible for the United States to change the fisheries regulations on our side of the line without the consent of another country. But that may be laid aside as a matter of secondary importance.

One of the first men to become interested, to recognize the importance of the question of federal control in these matters was George Shiras III, a grandson of Chief Justice Shiras, an angler, sportsman and all-round naturalist, who is very much interested in the preservation of game

and migratory birds. He first become interested in the protection of migratory birds, then fishes, and then in the larger question of all animal life in the streams which cannot receive adequate protection from individual States, and from that he has taken up the question of pollution of streams, and it has been shown by him and by others that the Federal government always had power to control interstate and international waters in all matters of navigation and fisheries and public health, because these three questions are larger than the interests of individual political units. The Federal government has exercised that power in the matter of navigation, but it has never exercised it in matters of fisheries or public health—the pollution of streams. But that it has that power and can exercise it whenever it wishes to do so, and that it is perfectly constitutional, I have no doubt in my mind, and I think the time is coming soon when it will be done. In this day when the question of public health is being agitated and considered so seriously, and when we understand more fully than we ever did before the sources of disease epidemics, when we realize more and more that the question is broader than the boundaries of a single State, it is clear that this question is a question which must be handled by the Federal government and cannot be handled by the individual States.

In the treaty between the United States and Great Britain, as you doubtless know, President Jordan was appointed commissioner representing the United States, and Prof. Edward E. Prince to represent Canada, and these two commissioners have gone over the boundary line from St. Johns to Vancouver, and at the end of last May they submitted their report to the respective governments, a report embracing a set of recommendations—some sixty-six in number—which they hope will control in a satisfactory way the fishing in international waters. That report will be made public, doubtless, soon after Congress meets. It will go to Congress and to Parliament, where the necessary provisions for enforcing these regulations will be provided. As it now stands, Canada already has the machinery which is needed to enforce the regulations on her side of the line. She has a very efficient system of patrol, facilities and men and means to enforce her fisheries regulations far better than they are enforced on this side of the line, particularly in Puget Sound. There is no such machinery on this side of the line for enforcing any set of fisheries regulations, because the matter has been and is now in the hands

of the respective States. Each State has its own machinery; but under the terms of the treaty it would seem that the Federal government is morally bound to provide the necessary machinery for doing as well on this side of the line as Canada is doing on the other.

Now, if it turns out, as we believe it will, that this is the beginning of federal control in all of these large and important streams, then will come federal control not only of international waters, but interstate streams, and in all matters of pollution of any and all streams.

Mr. Shiras cites a number of cases: The State of Missouri vs. Chicago Drainage Canal, in which the decision of the court showed that the question is one larger than the State of Illinois and the State of Missouri, and that the Federal government must take it up. A similar case, Kansas City vs. The State of Colorado, the decision of the court pointed to the same view. And there is every reason to believe that the Supreme Court will uphold these decisions.

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