

Province of Nova Scotia.

COUNTY COURT, YARMOUTH.

THE KING v. TOWNSEND.

THE KING v. MURTAGH.

*Protection of game—Fishing in Canada by foreigners—"Temporarily domiciled"—Appeal.*

*Held*, that a foreigner is not "temporarily domiciled" in Canada, within the meaning of those words in Order of Council of August 1, 1894, by reason of his coming to this country for a few weeks for the express purpose of fishing, and living in a house built for the convenience of the fishing party, in which are kept necessaries for the support and articles of personal comfort. The defendant, therefore, was not exempt from the regulations in the Order of Council of June 30, 1894, requiring him to procure a permit, and not having done so was properly found guilty of a violation of the Fisheries Act.

*Held*, also, that there is an appeal from such a conviction as from other summary convictions.

[Yarmouth, Oct. 17, 1901—SAVARY CO. J.]

These cases came before a Stipendiary Magistrate on the complaint of a Fishery overseer, the conviction in each case being that the defendant had violated certain regulations made under s. 18 of the Fisheries Act, respecting fishing by foreign sportsmen in the inland waters of Canada.

The evidence on which it was contended that the defendants were "temporarily domiciled" in Canada was as follows: "I have been here two or three trips fishing. I came here trout fishing and for that express purpose. We are owners of a camp near Kempt, which I suppose is on Crown Land. It is simply a fishing camp; it contains three rooms and attic in which we live; it is a regular shingled house, built for the express purpose of residing in during these trips. After each trip we usually make arrangements for the next trip; we leave all our traps in the camp; a good deal of clothing and fishing material, which remain there till we return next season."

The defendants were found guilty by the Stipendiary Magistrate of fishing without having procured the necessary permit for that purpose. They appealed to the Judge of the County Court for District No. 3.

*Pelton*, K.C., for the Crown.

*Harrington*, K.C., and *George Bingay*, K.C., for defendants.

SAVARY, CO. J.—There is an appeal to this Court from these convictions, as from other summary convictions. The appeal to the Minister of Marine and Fisheries given by the Act, c. 95, Revised Statutes of Canada, s. 18, subsection 6, does not take away the general right of appeal to this Court under