

and her cargo to forfeiture, although no mackerel are proved, except by the declarations of the crew, to have been taken. If I am wrong in this conclusion, an appeal to the High Court of Admiralty, under the Imperial Act of 1863, will afford the Defendants redress, and I shall not be sorry to see such appeal prosecuted. Or the Dominion Government may see fit to relieve from the penalty in whole or in part, as they have a right to do, under the Act of 1868, Sec. 19. Personally, I may say—if a Judge has a right to express any personal feeling—as the vessel was appraised at \$800, and the cargo, in which the crew were largely interested, at a much larger sum, I would be well pleased to see the penalty in this case largely mitigated.

“It is not the policy, as I take it, of the Dominion Government, nor is it the disposition of this Court, to press with undue severity upon the American fishermen, even when they trench upon our undoubted rights. The Court has been accused, I am told, of condemning the *Wampatuck*, because the steward, in the absence of the master, had caught seven codfish within the limits, for the purposes of cooking. Such, it is true, was the defence that was set up, and, had it been established, there would certainly have been no condemnation. But the evidence showed that there was a fishing by three or four men, having lines overboard, as was admitted by the master, and several codfish caught for the purpose of curing, and not of procuring food only, as was averred. So, in this case, three or four codfish are admitted to have been taken within the limits; but I have not taken that circumstance at all into account, considering it too trifling to be a ground of condemnation.

“In the case of the *Reward*,—2 Dodson Adm. Repts., 269, 270—Sir William Scott, observed: “The Court is not bound to a strictness at once harsh and pedantic in the application of Statutes. The Court permits the qualification implied in the ancient maxim, ‘*De minimis non curat lex.*’ When there are irregularities of very slight consequence, it does not intend that the infliction of penalties should be inflexibly severe. If the deviation were a mere trifle, (and the catching of a few codfish for a meal is such), weighing little or nothing in the public interest, it might properly be overlooked.”

“Upon the other grounds, however, on which I have enlarged, I conceive it my duty to declare the *A. J. Franklin*, her apparel and cargo, forfeited, with costs, and her value, when collected from the Bail, distributed under the Act of 1868.”