

Ex. C.]

THE KING v. KITTY D.

[May 4.

*Illegal fishing—Seizure of vessel—Evidence of vessel's position.*

The American vessel Kitty D. was seized by the Government cruiser Petrel for fishing on the Canadian side of Lake Erie. In proceedings by the Crown for forfeiture the evidence was conflicting as to the position of both vessels at the time of seizure, and the local judge in Admiralty decided that the weight of evidence warranted a finding that the vessel seized was not in Canadian waters at the time. On appeal by the Crown.

*Held*, that as the Petrel was furnished with the most reliable log known to mariners for registering distances and her compass had been carefully tested and corrected for deviation on the morning of the seizure; as the Kitty D. and two tugs in her vicinity at the time, whose captains gave evidence to shew that she was on the American side, carried no log or chart and kept no log book, and as the local judge had misapprehended the facts as to the course sailed by the Petrel, the evidence of the officers of the Petrel must be accepted, and it establishes that the Kitty D. had been fishing in Canadian waters and her seizure was lawful. Appeal allowed with costs.

*Newcombe*, K.C., for appellant. *German*, K.C., for respondent. *Ritchie*, K.C., for United States Government.

Ont.]

RANDALL v. AHEARN & SOPER CO.

[May 4.

*Negligence—Electric wire—Trespasser—Evidence—Contributory negligence—New trial.*

The Ahearn & Soper Co. had a contract to illuminate certain buildings for the visit of the Duke of York to Ottawa and obtained power from the Ottawa Electric Co. For the purposes of the contract wires were strung on a telegraph pole and fastened with tie wires, the ends of which were uninsulated. R., an employee of the Ottawa Electric Co., was sent by the latter to place a transformer on the same pole and in doing so his hands touched the ends of the tie wire by which he received a shock and fell to the ground being seriously injured. To an action for damages for such injury the Ahearn & Soper Co. pleaded that R. had no right to be on the pole and was a trespasser, and on the trial their counsel urged that the work he was doing was connected with the lighting of a building in the city. The Court of Appeal held that this defence was established and dismissed the action.

*Held*, reversing said judgment, 6 O. L. R. 619, that the counsel's address did not indicate that the building referred to was not one of those to be illuminated under the contract and the evidence did not shew that R. was engaged in the ordinary business of his employers and the case should be retried, the jury having failed to agree at the trial.