

The *White Fawn* was a foreign vessel in British waters ; in fact, within one of the Counties of this Province when she was seized. It is not alleged that she is subject to forfeiture for having entered Head Harbour for other purposes than shelter or obtaining wood and water. Under Section III, of the Imperial Act, no forfeiture but a penalty can be inflicted for such entry. Nor is it alleged that she committed any infraction of the Customs or Revenue Laws. It is not stated that she had fished within the prescribed limits, or had been found fishing, but that she was "preparing to fish," having bought bait (an article no doubt very material if not necessary for successful fishing) from the inhabitants of Campobello. Assuming that the fact of such purchase establishes a "preparing to fish" under the Statutes (which I do not admit), I think, before a forfeiture could be incurred, it must be shown that the preparations were for an illegal fishing in British waters : hence, for aught which appears, the intention of the Master may have been to prosecuting his fishing outside of the three-mile limit, in conformity with the Statutes ; and it is not for the court to impute fraud or an intention to infringe the provisions of our statutes to any person, British or foreign, in the absence of evidence of such fraud. He had a right, in common with all other persons, to pass with his vessel through the three miles, from our coast to the fishing grounds outside, which he might lawfully use, and, as I have already stated, there is no evidence of any intention to fish before he reached such grounds.

The construction sought to be put upon the statutes by the Crown officers would appear to be thus :—"A foreign vessel, being in British waters and purchasing from a British subject any article which may be used in prosecuting the fisheries, without its being shown that such article is to be used in illegal fishing in British waters, is liable to forfeiture as preparing to fish in British waters."

I cannot adopt such a construction. I think it harsh and unreasonable, and not warranted by the words of the statutes. It would subject a foreign vessel, which might be of great value, as in the present case, to forfeiture, with her cargo and outfits, for purchasing (while she was pursuing her voyage in British waters, as she lawfully might do, within three miles of our coast) of a British subject any article, however small in value (a cod-line or net for instance) without its being shown that there was any intention of using such articles in illegal fishing in British waters before she reached the fishing ground to which she might legally resort for fishing under the terms of the Statutes.

I construe the Statutes simply thus :—If a foreign vessel is found—1st, having taken fish ; 2nd, fishing, although no fish have been taken ; 3rd, "preparing to fish," (i. e.), with her crew arranging her nets, lines, and fishing tackle for fishing, though not actually applied to fishing, in British waters, in either of those cases specified in the statutes the forfeiture attaches.

I think the words "preparing to fish" were introduced for the purpose of preventing the escape of a foreign vessel which, though with intent of illegal fishing in British waters, had not taken fish or engaged in fishing by setting nets and lines, but was seized in the very act of putting out her lines, nets, etc., into the water, and so preparing to fish. Without these a vessel so situated would escape seizure, inasmuch as the crew had neither caught fish nor been found fishing.

Taking this view of the Statutes, I am of the opinion that the facts disclosed by the affidavits do not furnish legal grounds for the seizure of the American schooner *White Fawn*, by Captain Betts, the commander of the Dominion vessel *Water Lily*, and do not make out a *prima facie* case for condemnation in this Court, of the schooner, her tackle, &c., and cargo.

I may add that as the construction I have put upon the Statute differs from that adopted by the Crown Officers of the Dominion, it is satisfactory to know that the judgment of the Supreme Court may be obtained by information, filed there, as the Imperial Act 59, George III., Cap. 38, gave concurrent jurisdiction to that Court in cases of this nature.