

## No. 4.

[Extract from the Halifax Daily Reporter and Times, February 13th, 1871.]

## In the Vice Admiralty Court, 10th Feb'y, 1871.

*The "A. J. Franklin."*—Sir William Young, Judge Vice Admiralty.

"This is a schooner of 53 tons burthen, owned at Gloucester, in the State of Massachusetts, under an enrolment of 4th February, 1868, and sailing under a fishing license of 28th January, 1870. Attached to her papers are also printed copies of the Treasury Circulars issued at Washington on 16th May and 9th June last, apprising the owners and masters of fishing vessels of the first article of the Treaty of 1818, of the Dominion Acts of 1868 and 1870, and of the equipment of Canadian sailing vessels for the enforcement thereof. This vessel—the *A. J. Franklin*—having been warned by Captain Tory, of the cutter *Ida E.*, against fishing within the prescribed limits, and having been found on the 11th October in the midst of a mackerel fleet at Broad Cove, was overhauled and visited by the cutter, and was then let go; but, on further information that she had been fishing on that day, she was seized on the 15th October, in the Strait of Canso, and libelled in the usual form on the 2nd November, and a responsive allegation put in. The vessel and cargo were afterwards liberated on bail at the appraised value of \$2,500, and depositions were taken on both sides, and cross-interrogatories filed. Some irregularities appear on the face of them, which were waived by consent as indorsed, and the case came before me on the 6th instant, on the pleadings, and eighteen depositions, those of the master, second mate, and six of the crew of the *Ida E.*, and of six of the crew of two Lunenburg vessels, produced on the part of the prosecution, and those of the first mate of the *Ida E.*, and of the master and two of the crew of the *A. J. Franklin*, produced on the defence.

"Captain Tory states that on the morning of the 11th October, he saw the mackerel fleet close to the shore in Broad Cove, engaged in fishing, and having run outside until he got about midway, he fired a blank shot, for the purpose of ascertaining, by their returning the signal, what vessels were British and what not. The *A. J. Franklin* then came out from the centre of the fleet, and immediately set all sail and ran direct from the land, as if trying to avoid detection. To prevent her escape the captain ordered a shot to be fired across her bow, when she hauled down her jib, and hove to. The two vessels were then about 2½ miles from Marsh Point in Broad Cove, and less than 2 miles from Sea Wolf Island. The captain at once boarded the *A. J. Franklin*, and found some mackerel lines coiled up on the rail that were wet, the hooks attached thereto being newly or fresh baited, and fresh fish-blood and mackerel gills on deck; he saw also other lines coiled up under the rail, which were dry. Captain Tory charged Captain Nass with fishing that morning inside the limits, and he admitted that he was lying to with his jib down and sheets off when the first gun was fired, but denied that he had caught any mackerel. He said, however, that he had caught two or three codfish. He accounted for his lines being so recently wet by the washing of the deck. His attention was then called to the gills, blood, and bait on deck, but no fresh mackerel being found, and Nass solemnly denying having caught any, and appealing to two vessels, which he named, for confirmation of his statement, Capt. Tory released him, warning him, however, that if he ascertained that he had been fishing, or trying to fish, within the limits that morning, that he would seize him wherever he caught him, within three miles of the coast.

"This statement is confirmed by the other men who boarded the vessel with Capt. Tory. Matson thinks the *A. J. Franklin* was not more than one and a-half miles from the shore when they first saw her. Nass at first denied that he had his jib down, but afterwards admitted it, and said he was waiting to see if the other vessels caught any mackerel. Although this circumstance, and his being so near the shore were suspicious, it is obvious that on the facts as they then appeared, the seizure of the vessel could not have been justified, especially if it be true, as stated in the defendants' evidence, that she was then outside of the three miles.

"The evidence of the Lunenburg men is, therefore, very material, and we must see what it amounts to. There were two vessels, the *Cherub* and the *Nimble*, and the *A. J. Franklin* lay within 60 to 100 yards of them. The crews spoke together while trying to fish. Arnborg saw three of the crew of the *A. J. Franklin* fishing,—saw them catch cod-fish—three he is sure of; she was in the position to catch