

The conclusion I have come to on this branch of the case renders it unnecessary for me to express any opinion on the other questions debated in this case, and which had reference to the sufficiency of the entry of the 2nd of May, and to the question as to whether or not the intention of the Legislature to make the Tariff Act of 1895 retroactive had been so clearly expressed that effect should in such a case as this be given to it.

There will be judgment for the defendant company, and with costs.

NOVA SCOTIA ADMIRALTY DISTRICT.

THE QUEEN v. THE SHIP "FREDERICK GERRING, JR."

Maritime law—Seine fishing within the three-mile limit—Illegality.

The crew of a fishing vessel owned in the United States had thrown her seine more than three miles off Gull Ledge in the Province of Nova Scotia, but before they had secured all the fish in the seine both it and the vessel had drifted within the three-mile limit, where the vessel was seized by a Canadian cruiser while the crew was in the act of bailing out the seine.

Held, that the vessel was guilty of illegal fishing within the meaning of the Treaty of 1818 and the Imperial Act, 59 Geo. III., c. 38, and also under the provisions of chapter 94 of the Revised Statutes of Canada.

[HALIFAX, AUG. 5—McDONALD, C.J.]

The facts are sufficiently recited above.

W. B. A. Ritchie, Q.C., for plaintiff.

W. F. MacCoy, Q.C., for ship.

McDONALD, C.J., Loc.J.: It is immaterial to inquire how the vessel reached the position in which she was seized. She was there found, and found fishing, and the legal consequences must result.

I must not omit to notice the contention of counsel for the defence that, admitting the seine to have been thrown, and the fish enclosed in it outside of the three-mile limit, it is not an offence against the Act to continue to bail the fish from the seine into the vessel after permitting her to drift across the prohibited boundary. I cannot accept his contention that the "fishing" and the "catching of the fish" was complete when the seine was successfully thrown. Further labor is required to save the fish from the sea, and reduce the property to useful possession, and until that be completed the act of fishing and "catching" fish is not in my opinion completed, and in the case before us the crew were in the act of bailing the fish from the seine into the vessel when the seizure was made. It would, I apprehend, be difficult, if not impossible, to enforce these Fishery Laws, [(1) Treaty 1818; 59 Geo. III. U.K., c. 38; C. 94, R. S. Can.] to which our people attach supreme importance, if those American subjects who so eagerly seek to compete with our people along our shores in this industry, and who are not, I fear, always over scrupulous in the observances of laws of which they have ample notice, should be permitted to plead accident or ignorance to a charge of infraction of these laws. Such a plea, however effective it may be to the executive authority of the country, cannot avail in this court.

There will be a decree condemning the vessel and cargo with costs.