

## NOVA SCOTIA ADMIRALTY BISTRICT.

1904  
 June 29.

HIS MAJESTY THE KING ..... PLAINTIFF;

AND

THE SHIP "SAMOSET" AND HER } DEFENDANT.  
 CARGO..... }

*American fishing vessel—Canadian territorial waters—Unlawful fishing.*

The method of catching fish has no bearing upon a violation of the provisions of R. S. C. c. 94. The fact of taking fish without a license in the territorial waters of Canada constitutes the offence.

*Semble:* That coming into the territorial waters of Canada to cure fish caught outside the limits of such waters will subject the offending vessel to forfeiture.

**ACTION** for the condemnation and forfeiture of a United States vessel for illegal fishing in Canadian waters.

The facts of the case are stated in the reasons for judgment.

The case was tried at Halifax, before the Honourable James McDonald, Local Judge of the Nova Scotia Admiralty District, on January 6th and 7th, 1904.

*A. G. Morrison* and *R. T. MacIreith* for plaintiff;

*W. B. A. Ritchie, K.C.* and *S. H. Foster* (of the Boston Bar) for the defendant.

MACDONALD (C.J.) L.J. now (June 29th, 1904,) delivered judgement

This is a proceeding by the Attorney-General of Canada, in the Admiralty District of the Court of Exchequer of Canada, to obtain a decree of forfeiture against the schooner *Samoset*, a vessel belonging to a citizen of the United States of America, and her cargo,

arrested on a charge of violating the laws of Canada in relation to fishing by foreign vessels in the territorial waters of the Dominion.

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The statement of claim filed by the Attorney-General charges that the said vessel and her crew on various occasions, contrary to the laws of Canada, engaged in fishing and catching and curing fish, and curing and taking fish within the territorial waters of Canada and along the coasts thereof; and more particularly that on the 25th day of August, A.D. 1904, the said vessel and crew were engaged in fishing and catching fish and did catch fish in the neighbourhood of Flint Island, on the coast of Cape Breton, within three miles of the coast and bays of Cape Breton aforesaid, and in the territorial waters of Canada, and by such illegal fishing and catching fish, the said vessel and cargo became liable to forfeiture.

The crew at the time laid in the statement of claim was composed of the master, one Joseph Sampson, and seven or eight men, several of whom were examined at the trial. One of the charges principally relied upon by the Crown was that the *Samoset*, on the 25th of August aforesaid, while at anchor within a short distance of Flint Island and within three miles of the coast adjacent, engaged in fishing with hook and line or hand line fishing as distinguished from gill-net fishing and in curing the fish thus caught. This charge, if satisfactorily proved, would render unnecessary the consideration of any other charge of illegal conduct on the part of this vessel and her crew. It was claimed by the owner and master of the *Samoset* that she was fitted out only for a voyage of gill-net fishing. It was admitted, however, that the vessel was furnished with hooks and lines and other necessaries for hand line fishing which could be used by the crew if they thought fit to do so, and that at least on one occasion

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these hooks and lines were so used and fish caught with them, but not in the locality of Flint Island or Cape Breton. On the morning of the 25th August a number of vessels, including several from the United States, were anchored or drifting in the vicinity of Flint Island, some of them a short distance from the *Samoset*. Several persons from these vessels were called as witnesses by the Crown, and if they are to be believed, proved beyond all doubt that several of the crew of the *Samoset* were not only fishing but had, in the presence of these witnesses, hauled the fish out of the water and thrown them into barrels or other receptacles to be cured in the ordinary course of the business.

The owner and some of the crew of the *Samoset* were examined as witnesses and the former testified that the vessel was fitted out for gill-net fishing only and that he was not cognizant of any supplies for hand-line fishing having been put on board. It was of course immaterial how the fish were caught if the evidence that they fished within the line be accepted as true; and the attempt to show that there had been no hand-line supplies on the vessel could only be an attempt to contradict those who swore that they saw fish caught with those hand-lines. Several of the crew of the schooner were called to testify that none of the crew of the schooner had, to *their knowledge*, fished with hand-lines in the places and on the occasions testified to by the witnesses for the Crown.

A perusal of the evidence will show, I think, some diffidence or hesitation on the part of these people to deny absolutely that there was no such hand-line fishing as was testified to by the witnesses for the Crown. Still their evidence does practically amount to denial of what was testified to by the other party, and creates the difficulty that always meets a judge

when it becomes his duty to analyze and determine the relative value of contradictory statements, and I admit that I have been in this case pressed with that difficulty. After giving the whole testimony the best consideration in my power, including the probable effect of personal interest upon the minds of the witnesses for the defence, I have arrived at the conclusion that the strong weight of evidence is in favour of the Crown, and that a decree forfeiting the vessel and cargo should pass.

Apart from the question just disposed of, Mr. Morrison, on the part of the Crown, urged that forfeiture has been incurred by the *Samoset* by reason of the admitted fact that, while within the territorial waters, fish were cured and salted, which had been caught the night before, although it was not proved that the fish so cured had been caught in forbidden waters. This nice question I am pleased to know it is not necessary for me to decide now, but it would appear from the observations of the late Sir W. Young, when presiding in the Vice Admiralty Court of the Province in 1871, that he held the opinion that coming into the territorial waters to cure fish caught outside of the line would subject the ship to forfeiture.

There will be the usual decree for the condemnation of the vessel and cargo and the disposition of the proceeds

*Judgment accordingly.*

Solicitor for plaintiff: *R. T. MacIlreith.*

Solicitor for defendant: *Henry C. Borden.*

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