1895
Nov. 23.

THE QUEEN ON THE INFORMATION OF THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA, ... } PLAINTIFF;

AND

HOLLAND H. ELDRIDGE.....DEFENDANT. (1)

Fishing Bounty—R. S. C. c. 95—Fishing by traps and wears—Right to bounty.

Defendants prosecuted fishing by means of brush wears and traps. The wears were formed by brush leaders from the shore with a pound at the extreme end. At low water the wears were dry, and at neap-tide there would be some four feet of water therein. The traps were constructed by means of a leader from the shore and a pound at the end formed by netting stretched on poles or stakes set upright in the bed or bottom of the water. Boats were sometimes, but not always, used to take the fish from the wears and traps.

Held, that fishing by such means was not "deep-sea fishing" within the meaning of R. S. C. c. 95, and the Regulations made thereunder by the Governor-General in Council and the Instructions issued by the Minister of Marine and Fisheries in the year 1891; and that the defendants were not entitled to bounty as provided by the said Act.

THESE were four Special Cases submitted to the court under the provisions of Rule 111 of the Rules and Orders of the Exchequer Court of Canada.

The material facts were common to all the cases. The following is the case agreed upon herein.

"This action was commenced on the 5th day of April, A.D. 1895, by an information filed at the instance of the Attorney-General for the Dominion of Canada, against the above named defendant to recover $4.00, paid to the defendant on a fishing bounty claim for the season of 1891.

(1) The following cases were consolidated with this for the purposes of argument and for judgment: *The Queen* v. *Jacob E. Moorhouse; The Queen* v. *Samuel Gidney; The Queen* v. *Holmes Saunders*, et al.

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The following admissions, for the purpose of this information only, have been agreed upon by counsel for the Crown and for the defendant:

1. The defendant was the owner of one-sixteenth of a brush wear at Sandy Cove, in the County of Digby, in the year 1891.

2. The said wear was an ordinary low water brush wear, formed by a brush leader from the shore and a pound at the extreme end. At low tides the wear was dry; at neap-tides there would be four feet of water in the wear.

3. The fish caught in the said wear were taken out at low tide sometimes by men wading out around the wear; and sometimes when the tide was not dead low by seining the fish out of the wear into boats.

4. The boat owned by the defendant on which he claimed bounty was 13 feet 4 inches long, and it was employed in attending this wear when necessary during the season.

5. The defendant's share of the product of the said wear was three barrels of split mackerel, weighing 200 pounds each; but these fish, fresh from the water and undressed, would weigh nearly 400 pounds.

6. The defendant also owned one-tenth of a seine boat and seine.

7. The defendant's share of the mackerel caught in the said seine, together with the mackerel caught in the brush wear aforesaid, would weigh 2,500 pounds of split mackerel.

8. The said boat used in attending the brush wear was also used when necessary in attending the said seine; and was so employed in attending the said wear and seine more than three months during the season of 1891.

9. At the close of the season for 1891, the defendant filed the fishing bounty claim which is produced here-

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with, and marked exhibit "A," and was paid by the Department of Fisheries the bounty of $4.00 claimed, viz : $3.00 as fisherman, and $1.00 as owner of the said boat.

10. The regulations for 1891, in reference to fishing bounties, which are produced herewith and marked exhibit "B," were posted during the season in public places at Sandy Cove where the defendant resided, and they were read by him.

11. Defendant says that at the time he filed his claim herein, he believed that he was entitled to the bounty claimed.

12. The orders in council referring to fisheries and payment of fishing bounties are admitted as a part of this case.

The facts being as above stated the question for the opinion of the court is whether the defendant was entitled to the fishing bounty of $4.00 paid to him, viz: $3.00 as fisherman, and $1.00 as owner of the boat employed as aforesaid.

If the court shall be of opinion in the negative, then judgment shall be entered for the plaintiff for the sum to which the defendant was not entitled with interest and costs of suits to be taxed.

If the court shall be of opinion in the affirmative, then judgment shall be entered for the defendant with his costs of defence to be taxed."

The plaintiff filed certain exhibits to the Special Case. Exhibit "A," was the defendant's claim for the bounty, which it is not necessary to print ; exhibit "B" consisted of the following :

"PRIVY COUNCIL OF CANADA.

"AT THE GOVERNMENT HOUSE AT OTTAWA,

"SATURDAY, 21st day of November, 1891.

"PRESENT—*His Excellency the Governor-General in "Council.*

"His Excellency under the authority conferred upon him by the Act 54-55 Victoria, chapter 42, intituled "An Act to amend Chapter 96 of the Revised Statutes," intituled "An Act to encourage the development of the Sea Fisheries and the building of Fishing Vessels," and by and with the advice of the Queen's Privy Council for Canada, is pleased to order that the sum of $160,000 payable under the said Act 54-55 Victoria, chapter 42, shall be distributed for the year 1891, upon the following basis:

"VESSELS

entitled to receive the bounty shall be paid on the basis of one dollar and a half ($1.50) per registered ton, provided, however, that payment to any one vessel shall not exceed the sum of one hundred and twenty dollars ($120.00), one-half of such bounty, or seventy-five cents per ton to be paid the registered owner or owners of the vessels, and an equal division of the balance of seventy-five cents per ton to be the basis of payment to the crew, except in cases where one or more of the crew shall have failed to comply with the regulations necessary to entitle them to receive bounty; then the amount of such share or shares shall not be paid.

"BOATS.

"Fishermen engaged fishing in boats, who shall also have complied with the regulations entitling them to receive the bounty, shall be paid the sum of three dollars ($3.00) per man, and the owners of the fishing boats shall be paid one dollar ($1.00) per boat.

"It is further ordered that a compliance with the following instructions shall be necessary to entitle claimants to receive the bounty."

"(Certified)

"(Sgd.) JOHN J. McGEE,

"*Clerk of the Privy Council.*"

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"FISHING BOUNTIES.

"1891.

"INSTRUCTIONS TO CLAIMANTS.

"BOATS.

"1. Claimants for fishing bounty, to be entitled thereto, must have been engaged in *deep-sea fishing* for fish other than shell fish, Salmon or Shad; or fish taken in rivers or mouths of rivers (these being the exemptions under the Washington Treaty) for at least *three months* and have caught not less than 2,500 pounds of sea-fish per man;"

"2. No bounty will be paid to boats measuring less than 13 feet keel, and not more than *three* men (the owner included) will be allowed as claimants in boats *under* 20 *feet*;"

"3. Dates and localities of fishing must be stated in the claim, as well as the quantity and kinds of sea-fish caught;"

"4. Ages of men must be given. Boys under 14 years of age are not eligible as claimants;"

"5. Returns must be verified by the solemn declaration of claimants;"

"6. Only one claim will be allowed in each season, even though the claimant may have fished in two vessels, or in a vessel and a boat, or in two boats. Any person or persons detected making fraudulent returns, will be debarred from participation in the bounty;"

"7. Claims must be filed on or before the 30th November."

"8. Customs or Fishery Officers will supply the requisite blanks free of charge and after certifying the same, will transmit them to the Department of Fisheries."

"VESSELS.

"9. Canadian registered vessels of 10 tons and upwards (up to 80 tons) which have been engaged during

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a period of three months in the catch of sea-fish not exempted under the Washington Treaty, are entitled to a bounty of $1.50 per ton; one half of which is payable to the owner or owners, and the other half to the crew;"

"10. Owners of vessels intending to claim bounty will be required, before proceeding on a fishing voyage, to procure a license from the nearest Collector of Customs or Fishery Overseer. The license must be attached to the claim when sent in for payment."

"11. Directions contained in paragraphs 3, 4, 5, 6, 7 and 8 apply to vessels as well as to boats."

"(Sgd.) CHARLES H. TUPPER,

"*Minister of Marine and Fisheries.*

"Department of Fisheries,

"Ottawa, 5th August, 1891.

"NOTE.—As much inconvenience has arisen by the delay on the part of claimants in filing their claims, it is requested that claims be filed as early in the season as is possible, to facilitate the work of examination and scheduling."

"Claims will not be received after the 30th November."

The argument of the special cases took place at Halifax, before THE JUDGE OF THE EXCHEQUER COURT, on 2nd October, 1895.

C. H. Cahan for the plaintiff:

These actions were brought to recover certain fishing bounties paid over to the defendants by the Department of Marine and Fisheries for fishing conducted during the season of 1891. The point at issue, and the sole issue, because we have agreed upon the facts, is as to whether fish caught in boats and wears are entitled to the fishing bounty under the statute and the regulations made thereunder.

The Bounty Act (1) is entitled *An Act to encourage*

(1) R. S. C. c. 96.

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the development of the sea fisheries and the building of fishing vessels. There was an amendment in 1891, which does not affect the issues raised here. By chap. 96 R. S. C. the annual grant for bounty was fixed at $150,000; by the Act of 1891 it was made $160,000, and the Governor-General in Council was authorized to make a grant annually of $160,000 *to aid in the development of the sea fisheries of Canada and the encouragement of the building and fitting out of improved fishing vessels.* The whole tenor of the Act seems to have been to aid in the development of the sea fisheries and in the improvement of fishing vessels. The regulations that were made thereunder were made before the date of the order in council of 21st November, 1891, which provides for the distribution of the annual grant of $160,000, as follows:—

Vessels entitled to receive bounty $1.50 per registered ton, and where the fishing was prosecuted in boats, those who complied with the regulations entitling them to receive bounty were to be paid $3.00 per man and the owners of the boats $1.00 for each boat.

The object of Parliament was thus to encourage the building of fishing vessels and boats. To entitle the fisherman to bounty, then, he must follow fishing either in vessels or boats, and not in purse seines or wears on the shore. The regulations adopted by this order in council were made on 5th August, 1891, and they require that claimants for fishing bounty to be entitled thereto, must have been engaged in "*deep-sea fishing* for fish other than shell-fish, salmon, or shad, or fish taken in rivers or mouths of rivers (these being the exemptions under the Washington Treaty) for at least three months, and have caught not less than 2,500 pounds of sea fish per man."

The contention of the Crown is that claimants must have been engaged in "deep-sea fishing," and

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that "deep-sea fishing" is not "shore fishing;" and as the wears in question are essentially connected with the shore or part of the shore, the shore is absolutely necessary as the basis and support of their operations. Deep-sea fishing is not fishing in mere tidal waters, and therefore these people are not entitled to receive the bounty.

Take mackerel, for instance: these fish spawn up at the head of the Bay of Fundy, and then turn and come down to each little indentation in the coast.

The wears are formed by a brush leader from the shore with a pocket at the end, the fish enter the wear and come down and run into the pocket where they are impounded. They consist entirely of brush and stakes. At lower water the wear is entirely dry; the fish are taken out by the men wading out or in boats at times when the water is higher. With regard to traps there is also a leader from the shore. The pocket is similarly constructed at the end but the trap consists of netting, the netting is spread on poles set on the bottom or attached to the shore. The poles must be set securely so as to withstand the tide. By sec. 14, R. S. C. c. 95 these wears and traps are prohibited along the whole of the coast of the country except under special license. The contention of the Crown is that this being a "shore fishery" which is proscribed except under special license, it was not the intention or policy of the Government that these parties who pay for special privileges should receive the benefit of an Act which was passed to encourage the construction of fishing vessels and the prosecution of the deep-sea fisheries.

With respect to the Province of Nova Scotia before Confederation, these traps and wears were regulated by c. 95, Revised Statutes, 2nd series "Of River Fisheries."

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I simply notice this to show that these fisheries are there dealt with as "River Fisheries."

Chap. 94 of the same series is entitled: *Of the coast and deep-sea Fisheries.* Section 2 of chap. 94 shows that the deep-sea fishery was prosecuted by vessels that went on "voyages." There were other provisions in the Act similar to some of those in *The Merchant Shipping Act.* By the 23rd section it is provided that agreements in writing should be entered into between the master and crew before proceeding upon a "fishing voyage." Our answer to what counsel for defendants will say is that "deep-sea fishing" is fishing beyond the "three-mile limit." I have gone carefully through the arguments before the Halifax Commission, and, I think, it may be fairly stated that by that Commission fisheries within the three mile limit were regarded as "inshore fisheries" and those beyond that called "deep-sea fisheries." But whether we have this view adopted here, or not, we rest primarily on the ground that fishing prosecuted by means of wears constructed on the shore and dry at low tide is not deep-sea fishing.

There was another statute, from which chap. 95 of Revised Statutes of Nova Scotia, 2nd series was evidently framed. It was the Consolidated Statutes of Canada c. 62: *An Act respecting Fisheries and Fishing.* At section 52 it reads:—

"The owner or owners of a vessel built in Canada, when employed in the following fisheries, viz.: Seal, codfish, mackerel, herring or whale, for at least three consecutive months, shall be entitled to a bounty of:

"1. Three dollars per ton, for three months consecu-
"tive fishing.

2. "Three dollars and a half per ton for three months
"and a half consecutive fishing;

3. "And four dollars per ton for four months consecu-
" tive fishing. But no vessel shall receive the bounty
" for more than one voyage."

Section 60 reads:—

" No vessel, employed as aforesaid, shall be entitled
" to the allowance granted by this Act, unless the
" master or owner thereof, before he proceeds on any
" fishing voyage, makes an agreement in writing or
" print with every fisherman employed therein."

This is similar to our Nova Scotia Act with reference to deep-sea fishing. It is applicable only to vessels engaged in deep-sea fishing.

Section 63 reads:—

" One third of such bounty shall be distributed bet-
" ween the crew of the fishing vessel in equal propor-
" tions, and the remaining two-thirds to the owner
" thereof—or the bounty may be distributed as agreed
" upon by an instrument or declaration to be made in
" writing by the parties."

Now, if we can succeed in showing that these parties are not entitled to bounty upon fish caught in traps, then we must succeed in all those cases in which trap fishing is called in question. If we can show that these parties fishing in wears are not entitled to bounty, then we must succeed in the special cases where wears are referred to.

We rely then, first, on the Dominion Act itself—which is for the encouragement of the construction of fishing vessels and boats,—the policy of the Act seeming to be the development of the fisheries beyond the three-mile limit of the shores, and to which the shore is not a necessary or material adjunct. We next refer to the regulations made under the Act of 1891, which provides for the payment of bounty to vessels and boats only, and that claimants must have been fishing in boats for at least three months, &c.,—not only must they have fished in

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boats, but they must have been engaged in deep-sea fishing in boats.

Now, as to traps and wears there is one regulation which is applicable to these cases in 'Bligh's Orders in Council,' c. 69, section 15, p. 61. This applies to the County of Digby, in which Sandy Cove, where the fishing was done, lies.

6. "The place and number of all wears or fisheries "on public ground, in the County of Digby, shall be "fixed by the Fishery Overseer for said County, subject "to the approval of the Inspector of Fisheries.

"No wear, net or other contrivance, except wears for "catching eels, shall be placed or set in any river in "the County of Digby visited by salmon, nor nearer "the mouth of any such river or stream than one "fourth of a mile.

10. "Owners of land along any falls in any of the "rivers of the County of Digby shall be allowed one "stand for dipping fish, to be selected by the owners "and pointed out to the Overseer, who shall determine "what claims they are entitled to, and to hold the "same as their fishing privilege."

Even if there is reasonable ground to say that a boat was necessary to carry on this brush-wear fishing, and it is admitted that fish were taken out at very low tide by boats and at other times by carts before the tide was dead low, (and it may be admitted that a boat is absolutely necessary to go out to ascertain whether the fish are young or whether they are suitable for food) our contention is, that while a boat is ancillary to this kind of fishing it is not boat fishing.

Now, under these regulations there is first a restriction as to the kind of fish which can be caught. The claimant must not be engaged in fishing for shell-fish, salmon or shad, or fish "taken in rivers or mouths of rivers." These were exemptions from the

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provisions of the Washington Treaty, and I think it was the intention and policy of the Government to encourage by the bounty the development of just those fisheries which, under the Washington Treaty, were open to the Americans. For instance, a claim for bounty could not be made in respect of gaspereau or sea-trout.

Up to 1889 the word "deep" was not in the regulations. Even if the law has been interpreted somewhat loosely in payment of these bounties, that does not establish the right.

We do not draw any nice distinction between fish caught one-half mile from the shore and those caught one mile, but our real contention is that deep-sea fishing can never include fishing in traps and wears that are attached to the shore.

It must be prosecuted in a boat of a certain length to receive the bounty, in order to encourage the building of larger boats than could be used inshore.

H. McInnes for the defendants:

Directing your lordship's attention to chap. 96 of *The Revised Statutes of Canada*, it will be found that there is nothing there said that the bounty should be paid under any regulations whatever; and I, therefore, say that the regulations printed in the Special Case are not law, and ought not to enter into your consideration of the case. It must have been the intention of the Department that these claims should be paid under the fishing bounty Act. (He quoted sections 4 and 6.)

So far as my search enables me to advise your lordship, there was no order in council until 21st November, 1891; and this order in council for the first time requires, or makes it part of any claim, that the claimant must have complied with the regulations or instructions to which my learned friend has referred as containing the words "deep-sea fishing"; and in three of

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my cases the claim was made before the 21st day of November, 1891 and before this order in council had the force of law. One claim was made on the 23rd of November, and with the exception of that one case there is nothing to show that these instructions were called to our attention when the claims were made, or hat such information was communicated to claimants when they got the money. So far as any of these claims are concerned there is nothing to show that claimants have read the regulations; but it is admitted that they were posted up at Sandy Cove where these men reside.

I wish to call your lordship's attention to another order in council, subsequent to the one I have just referred to. I refer to the order of 2nd November, 1893, published in the Dominion Statutes for 1894, p. cxx. By clause 2 thereof it is enacted:—

"2. No bounty shall be paid upon fish caught in trap-nets, pound-nets and wears, nor upon the fish caught in gill-nets fished by persons who are pursuing other occupations than fishing, and who devote merely an hour or two daily to fishing these nets, and are not as fishermen, steadily engaged in fishing."

Section 1 reads:

"1. Fishermen who have been engaged in deep-sea fishing for fish other than shell-fish, salmon and shad, or fish taken in rivers or mouths of rivers, for at least three months, and have caught not less than 2,500 pounds of sea-fish, shall be entitled to a bounty; provided always that no bounty shall be paid to men fishing in boats measuring less than 13 feet keel, and not more than three men (the owner included) will be allowed as claimants in boats under 20 feet."

We see here an interpretation put on "deep-sea fishing." For the first time the word "trap-nets" is mentioned. So that in construing the Act we must have

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regard to this last order in council; and insomuch as this order makes an interpretation of the general Act for the first time in November, 1893 and expressly says that fish caught in "trap-nets," "pound-nets" and "wears" shall not be entitled to bounty, I say it must be taken as a limitation of rights theretofore existing, and that fish caught before then in traps and wears were entitled to bounty.

The Act, Chap. 96 of *The Revised Statutes of Canada*, was intended to aid the sea fisheries of Canada and the "encouragement of the building and fitting out of improved fishing vessels and the improvement of the condition of the fishermen." I read this from the 1st clause, and there is nothing to be found in the Act prescribing how and where the fish are to be caught. I say one object of the Act was to encourage the development of the fisheries so that we should have a larger export trade in fish. That being so, then I say the men would be carrying out the object of the Act by fishing in any way unless they are restricted by order in council. The object of the Act was to have as many fish caught as possible. (He cites *Hodgson* v. *Little*) (1).

In this case *Willes* J. says that the word "fishery" "applies to any contrivance which, with little trouble and expense, can be put into a state to be capable of catching fish." Therefore, I say these wears are as much entitled to encouragement as anything by which you catch fish.

Reference has been made to the Washington Treaty, which is to be found in Dominion Acts, 1872, p. cxv. Under this treaty, fishermen were allowed to use nets. I scarcely think that the speeches under the Washington Treaty are applicable to legislation in 1894. Gill-nets are allowed bounty under the order of 1894,—nets

(1) 14 C.B., N.S., 121.

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run out from the shore for the purpose of catching bait. Bait is necessary for deep-sea fishing, and it is the object of the Act to encourage a large export trade. I submit that even if these regulations of 1891 did apply, that the words "deep-sea fishing" have to be construed with reference to the kind of fish caught as much as to the manner in which they are caught. It is a matter of common knowledge that bounties are paid upon fish caught in the harbours of Nova Scotia, like Musquodoboit Harbour, and even in Bedford Basin. Herring, mackerel and codfish are caught in all the harbours along the Atlantic coast, and it has been the custom of the Government to pay bounty on such fish so caught, and there never is any question about where the fish were caught when they file their claims. The Government have always paid bounty upon what was really deep-sea fish rather than in respect of where the men caught the fish.

R. E. Harris, Q.C., in reply :

There are one or two statutes, which govern these cases, I desire to refer to. Chap. 96 R. S. C., provides that bounties shall be paid to boats and vessels engaged in "deep-sea fishing." In the *British North America Act*, 1867, we have "sea-coast and inland fisheries" placed within the exclusive authority of the Dominion Parliament. There is no comma between them.

The word "sea-coast" is synonymous with "territorial jurisdiction." It includes a space or district of three miles off the shore.

From Pope's "Confederation Documents," the words would seem to be properly read "sea-coast and inland fisheries." I wish to say that "sea-coast" used in this Act is intended to cover a district of three miles from the shore of Canada. This seems to me the view

taken by the court in the case of *Mowat* v. *McFee* (1). The place where the fish were taken in that case was more than three miles from the shore of Quebec or New Brunswick, but still the court held that was within the prohibition of the *Fisheries Act* because it was within the waters of Baie des Chaleurs.

The reason I mention it is that the case is an authority for my proposition that the word "sea-coast" in the *British North America Act* gives jurisdiction to the Parliament of Canada within the three-mile limit. But coming down more particularly to the facts in question here, we have statutes where the words "sea-coast and inland fisheries" are expressly mentioned. Chap. 17 of 55-56 Vict. sec. 3 (see schedule to sec. 8, item 23) gives the Minister of Marine and Fisheries jurisdiction over "sea-coast and inland fisheries." Chap. 25 R. S. C. sec. 4 does the same, and *Bligh's Orders in Council*, p. 615 makes it pretty clear that the Minister of Marine and Fisheries has the right to regulate the "deep-sea fisheries."

Now, wear fishing cannot be called "deep-sea fishing" or even "sea fishing." Can it be said that catching fish in wears dry at low water is sea fishing in any sense under the statutes cited?

[PER CUR.: – You think no bounty should be paid unless the fishing is done outside the three-mile limit?]

I think a good argument can be made out for that contention. (He cites the Halifax Fishery Commission Report, pp. 69, 70, 76, 86, 96, 128, 259, 330).

It does not make any difference to us whether the term used is "deep-sea fishing" or "sea fishing," because the Act was passed to encourage the "sea fishery," and the regulations provide for payment of bounty only in respect of "deep-sea fisheries." Under the Washington Treaty the Americans had no right to fish in wears or traps on the shore; and as the regula-

(1) 5 Can. S. C. R. 66.

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tions which the Government has made refer to the very same kinds of fisheries as were the subject of the Washington Treaty, I would submit that the fisheries being so specified in the regulations and the bounty payable out of the interest on the fund derived from the commission under the Washington Treaty, the bounty should only be paid in respect of the deep-sea fisheries. I think there is a good argument that the intention of the legislature was to give the bounty to those fisheries from which the principal of this fund must be said to have been derived. The Americans could not fish with wears and traps, and therefore the intention of Parliament was to exclude wears and traps from the benefit derived from such fund. I direct your lordship's attention to Art. 18 of the Washington Treaty in the Acts of 1872, which provides as follows: "It is understood that the above-mentioned liberty applies solely to the sea fishing, and that the salmon and shad fisheries, and all other fisheries in wears or the mouths of rivers, are hereby reserved exclusively for British fishermen." I think it is a fair and proper conclusion to arrive at that Parliament, in prescribing the bounty, intended to distribute it amongst those people who were brought into competition with the American fishermen under the Washington Treaty.

THE JUDGE OF THE EXCHEQUER COURT now (November 23rd, 1895) delivered judgment.

These cases were argued together, the facts being similar in each case. The only question to be determined is, whether under *The Revised Statutes of Canada*, c. 95, intituled "An Act to encourage the development of the sea fisheries and the building of fishing vessels," and the regulations made thereunder by the Governor-General in Council, and the instructions issued by the Minister of Marine and Fisheries,

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the defendants were entitled to fishing bounty upon mackerel caught in brush-wears or fish-traps. The brush-wears were, it appears, formed by brush leaders from the shore with a pound at the extreme end. At low water the wears were dry, and at neap-tides there would be some four feet of water therein. The traps in question were of the kind ordinarily used on the coast, and were constructed by means of a leader from the shore and a pound at the end formed by netting stretched on poles or stakes set upright in the bed or bottom of the water.

By the instructions issued by the Minister of Marine and Fisheries in the year 1891, it was provided that claimants for fishing bounty, to be entitled thereto, must have been engaged in "deep-sea fishing for fish other than shell-fish, salmon, or shad, or fish taken in rivers or mouths of rivers (these being the exemptions under the Washington Treaty) for at least three months, and have caught not less than 2,500 pounds of sea-fish per man." It is also provided that no bounty should be paid to boats measuring less than 13 feet keel.

In prosecuting the fishery by means of brush-wears and traps, boats are sometimes, but not always used; and what the defendants have been paid in each case, is, under the regulations, $1.00 for a boat, and $3.00 for a man. The question to be determined, as I have said, is: Whether persons engaged in taking mackerel in brush-wears or traps, such as those described, are entitled to the bounty, that is, can they be said to be engaged in deep-sea fishing for fish other than shell-fish, salmon or shad? I think it is very clear that the contention of counsel for the Crown that they cannot be said to be engaged in "deep-sea fishing" must prevail. Consequently, the defendants were not entitled to the bounty for which they made claim, and which was paid to them.

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Reasons for Judgment.

The question submitted in each Special Case is answered in the negative, and there will be judgment for the plaintiff in each case for the sum of four dollars ($4.00) with interest, and costs to be taxed, as agreed upon in the Special Cases.

Judgment accordingly.

Solicitors for plaintiff: *Harris, Henry & Cahan.*

Solicitors for defendant: *Drysdale & McInnes.*