

60

GREAT BRITAIN/UNITED STATES

OWNERS OF THE *ARGONAUT* AND THE *COLONEL JONAS H. FRENCH*
(UNITED STATES) *v.* GREAT BRITAIN

(December 2, 1921. Pages 509-514.)

The Government of the United States claims from the Government of His Britannic Majesty, on account of the wrongful seizure and confiscation of some boats and seines of the American vessels *Argonaut* and *Colonel Jonas H. French* and the consequent loss to the owners of such vessels by reason of such seizures and threatened seizure of the vessels, the sum of \$46,655.75 with interest, being \$24,600 on account of the *Argonaut*, and \$22,055.75 on account of the *Colonel Jonas H. French*.

On the 24th of July, 1887, the *Argonaut* and the *Colonel Jonas H. French*, two American schooners, duly registered and licensed at Gloucester, Massachusetts, United States, were fishing for mackerel southward of East Point, Prince Edward Island, Dominion of Canada, in the vicinity of the Canadian Government cutter *Critic* and some other American fishing vessels.

In the afternoon of that day, the *Argonaut* being off the West River, discovered a school of mackerel and sent one of her boats with a seine to catch them.

It is shown by the affidavits sworn on August 5 and 12, 1887, by the owner, the master, and men of the *Argonaut* (United States memorial, exhibits 7, 8, 9), that the seine was set and enclosed the mackerel at a distance of about four miles from shore (United States memorial, exhibit 7), and also that there was at that time an ebb tide running eastward at the rate of about three miles an hour (*ibid.*).

It appears that the seine being fouled, about one hour elapsed before it was pursed up and the fish secured (United States memorial, exhibit 8), and during that time the aforesaid ebb tide set the boat and seine towards the shore quite rapidly (United States memorial, exhibit 7). In order to avoid difficulties with the Canadian cutter, the seine was taken up into the boat and the fish turned out alive.

At that time the Canadian cutter was about a mile away from the boat. The master of the *Argonaut* went to the *Critic* and asked if they considered the seine and boat within three miles of the shore, informing the captain that the tide had swept them from a position fully a mile outside. The captain of the *Critic* replied that the boat and seine were only two miles off shore. Notwithstanding the explanation of the master of the *Argonaut* that if the seine was inside the limit it was entirely without design on his part but the result of the tide taking it in, the seine and boat were seized and twelve men arrested.

About the same time and place, the schooner *Colonel Jonas H. French* was lying about three and a half miles off shore when she saw mackerel outside of her about a mile (United States memorial, exhibit 14). Two boats went with their seines, which were set around the fish, and one of the boats with two men in it was left in charge of the seine with the mackerel enclosed. These men soon found that they were drifting rapidly with the tide along the shore and also toward the shore, and they had no anchor or other means of preventing the

boat and seine from going with the tide (United States memorial, exhibit 15). Finding that they must inevitably drift inside the three-mile limit, they endeavored to take in the seine. and, while doing so, were arrested by the cutter *Critic*. About three-quarters of an hour had elapsed from the time the boat was left as aforesaid until the seizure (United States memorial, exhibit 15).

On July 29, 1887, two brief printed circulars were addressed by the captain of the *Critic* to the United States Consul General at Halifax, Nova Scotia, stating the fact of the seizures "for violation of the statutes in force in Canada, relating to foreign fishing vessels" (United States memorial, exhibit 2).

Immediately after the seizure of their boats and seines and the arrest of their men, the masters of the *Argonaut* and the *Colonel Jonas H. French* abandoned their fishing trip and returned to their home port in the United States. While returning they heard that it was the intention of the Canadian authorities to seize the schooners themselves wherever they could be found outside the territorial waters of the United States (United States memorial, exhibits 3, 4, 10).

On September 19, 1887, proceedings were begun in the Vice-Admiralty Court of Prince Edward Island for the forfeiture of the boats and seines, and on March 6, 1888, two decisions *ex parte* were rendered condemning the same to be forfeited for having been found to be fishing and to have been fishing and preparing to fish in the Canadian waters within three miles of the shore (British answer, annexes 57, 58).

It is shown by the documents that the owners, although opportunity was given to them to make the necessary application to the Vice-Admiralty Court, did not exercise their right to have the cases reopened and to put in their defence before the court (United States memorial, exhibits 25, 26).

It does not appear that there was any diplomatic correspondence relating to these cases before they were submitted to this arbitration.

In law :

By article I of the Treaty concluded at London, October 20, 1818, between the United States and Great Britain, it was stipulated that, except in certain localities, without interest in this case, the United States renounced:

"... forever, any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America not included within the above-mentioned limits; Provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever".

By the Imperial Statute 59 George III, chapter 38 (1819), article II, it is prohibited to any foreigner in a foreign vessel to fish for or to take any fish within the three-mile limit of the Canadian coast, and by the Revised Statutes of Canada, 1856, chapter 94, sections 1, 2, 3, and 7, certain penalties and the forfeiture of the vessel and the legal prosecutions are provided for in case contravention.

It is a universally recognized principle of international law that a State has jurisdiction over sea-fishing within its territorial waters, and to apply thereto its municipal law, and to impose in respect thereof such prohibitions as it may think fit. The Treaty of 1818 did not make any exception in regard to the inhabitants of the United States in these waters.

The only question then to be decided in this case is whether or not the boats and seines of the *Argonaut* and the *French* were within the three-mile limit.

It is to be noted that, though the Canadian regulations required them to be made (see *David J. Adams* case, United States memorial, p. 358), no official

statement of the circumstances of the alleged offences or of the legal provisions alleged to be contravened, no document drawn up by the officers who carried out the seizures proving the alleged illegal position of the boats and seines, or reporting any bearings or soundings taken at the time are presented by the British Government in justification of the action of their naval authorities. The log book of the cutter *Critic* is not even produced. The only documents presented are the two brief reports, above referred to, stating the fact of the seizures for violation of the statutes in force in Canada, relating to foreign fishing vessels. This is insufficient proof of the legality of the seizures.

However, according to article 5, paragraph 4, of the Special Agreement, this Tribunal is to decide all claims submitted upon such evidence or information as may be furnished by either Government.

In regard to the *Argonaut*, it results from the affidavits of the owner, master and men, produced by the United States (United States memorial, exhibits 7, 8) and above referred to, that, first, the boat and seine were set at four miles off shore; second, that they remained out for about one hour and were drifting shoreward with the tide, and third, that the tide was running to the eastward at from two and a half to three miles an hour.

In his protest, the owner does not contest so much the position of the boat and seine within the three-mile limit as the alleged act of fishing to which the Canadian law was applied; nor does the United States Consul General, when reporting to the Assistant Secretary of State on August 7, 1887, the statements of the men, deny that the boats were seized within the three-mile limit (United States memorial, exhibit 2).

In regard to the boat and seine of the *Colonel Jonas H. French*, the sworn affidavits of the owner, master and men, produced by the United States (United States memorial, exhibits 14 and 15) show, first, that the vessel was three and a half miles from the shore; second, that the mackerel were one mile outside the vessel, so that the boat and seine were four and a half miles from the shore when the seine was set out, and third, that they delayed about three-quarters of an hour, being swept shoreward by the ebb tide, when they were seized.

It must be observed that though the intention was to fish quite near the three-mile limit and though with the exercise of a very small amount of prudence it could have been foreseen that there would be a strong tide setting shorewards, there was on board the boat no anchor or any other means of preventing its drifting within the prohibited zone.

On all the facts presented in these cases, this Tribunal finds that the boats and seines of both vessels were less than three miles from the shore when seized.

The boats and seines of the two vessels being inside the territorial waters, were, from the international law point of view, undoubtedly subject to the municipal law and the jurisdiction of Canada, and the question whether or not, under the circumstances of these cases, taking into consideration the good faith of the fishermen and the exact character of their acts, a proper interpretation and application of the Canadian law was made by the Canadian court is a question of municipal law and not a question of international law to be decided by this Tribunal, so far as these cases stand.

In regard to the contended intention of the Canadian authorities, to seize the two schooners themselves, that mere intention, even if any such existed, cannot by itself be the basis for indemnity unless it was actually manifested by some wrongful act, and, in that respect, no sufficient evidence is offered to establish any order of seizure given, or any other measure of execution taken against the two vessels.

For these reasons

This Tribunal decides that the claims be dismissed.
