

TRAWLING TRIALS AT DORNOCH.

IMPORTANT POINTS ON INTERNATIONAL RIGHTS.

"Grimsby Norwegians" Convicted.

("PEOPLE'S JOURNAL" SPECIAL.)

At Dornoch Sheriff Court on Tuesday evidence was led in charges of alleged illegal trawling in the Moray Firth. Much public interest in the proceedings was manifested, and there was a large attendance in the Court, including a number of fishermen. Sheriff-Principal Guthrie, who presided, was accompanied by Sheriff-Substitute Mackenzie on the bench. The men charged were Emmanuel Mortensen, Thomas Robinson, and A. Lambert, all resident in Grimsby, and described as masters of trawling vessels registered in Norway.

The Indictment.

In the first case the prosecution was conducted by Mr Munro, advocate, Edinburgh, and Mr Stott, solicitor, Aberdeen, appeared on behalf of defenders. The charge was as follows:—"Under the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and the Criminal Procedure (Scotland) Act, 1887, that Emmanuel Mortensen, residing at 24 Montague Street, Grimsby, has been guilty of a contravention of the Sea Fisheries Acts and the Herring Fisheries (Scotland) Acts in so far as on 30th November 1905 he, being the master or person in command of the Norwegian Niobe, SD. 5, of Sandefjord, Norway, did, contrary to the bye-laws and sections of the statutes after mentioned, use the method of fishing known as otter trawling in a part of the Moray Firth, 5 miles or thereby east by north from Lossiemouth, which lies within a line drawn from Duncansbay Head, in Caithness, to Rattray Point, in Aberdeenshire, and is in the area specified by the Bye-Law No. 10 made by the Fishery Board for Scotland, under the powers conferred by the Sea Fisheries (Scotland) Amendment Act, 1885; the Herring Fisheries (Scotland), 1889 (particularly Section 7 (1) thereof); and the Herring Fisheries (Scotland) Amendment Act, 1890, dated said bye-law at Edinburgh on 27th September 1872, confirmed by her late Majesty's Secretary for Scotland on 22d November 1892, and published by the 'Edinburgh Gazette' on 25th November 1892, as amended by Bye-Law No. 14, made by the said Fishery Board under the powers conferred by the Herring Fishery (Scotland) Act, 1889, Section 7 (1), dated said bye-law at Edinburgh on 17th April 1896, confirmed by her late Majesty's Secretary for Scotland on 6th August 1896, and published in the 'Edinburgh Gazette' on 18th August 1896, a copy of which bye-laws herewith; whereby the said Emmanuel Mortensen is, on conviction, liable in terms of the Sea Fisheries Regulation (Scotland) Act, 1895, Section 10 (particularly Sub-Section 4 thereof) to a fine not exceeding one hundred pounds, and, failing immediate payment of the fine, to imprisonment for a period not exceeding sixty days, without prejudice to diligence by pointing or arrestment if no imprisonment has followed on the conviction; and, further, to forfeiture to every net set or attempted to be set by him at the time and place libelled, in contravention of the bye-laws above mentioned; that by virtue of the powers conferred by Section 7 of the Sea Fisheries (Scotland) Act Amendment Act, 1885, the said Fishery Board have declared that the Sheriff Court at Dornoch is the most convenient Court for the trial of the charge above libelled, conform to notice under the hand of the Secretary to said Board, dated 5th January 1906, herewith produced."

Question of Jurisdiction.

At the outset Mr Stott took exception to the relevancy of the complaint on a minor ground affecting the matter of citation and on the question of the jurisdiction of the Court to try the respondent on the complaint.

Accused then tendered a plea of not guilty.

Mr Peters, Procurator-Fiscal, who was the first witness, in reply to a question by Mr Munro, identified a letter which was signed under the hand of the Secretary of the Fishery Board of Scotland, which letter was addressed to him as Procurator-Fiscal, declaring this was the most convenient Court for the trial of this particular case.

Bye-Laws Confirmed.

Mr David Thomas Jones, chief clerk to the Fishery Board of Scotland, said he had held that office since 1892. He had been with the Fishery Board since 1887. Part of his duty was to attend the meetings of the Board and to record the minutes of these meetings and the bye-laws passed by the Board duly entered in the minutes. He was present when the Bye-Laws 10 and 14, dated 24th September 1892, and 17th April 1896, referred to in the complaint, were made by the Fishery Board. He was present in his official capacity. These bye-laws were duly made, and they were confirmed on 22d November 1892 and 6th August 1896 respectively. When confirmed these bye-laws were sent back to the Board in terms of the Act, and thereafter duly advertised in the "Gazette." These bye-laws were still recognised, and were not disqualified by any subsequent bye-laws. The accused in this case was not in any way in the service of the Fishery Board, and had no authority from the Board to trawl within the limits definitely imposed by law.

Reported Every Foreigner.

Captain J. R. M'Ewan, Commander of the fishery cruiser Minnow was next examined. He had held his present post for five years. On Thursday, 30th November 1905, he was in command of the Minnow. They were cruising along the south shore of the Moray Firth about one o'clock afternoon. He observed that a trawler had worked to within five miles east from Lossiemouth. They steered towards her, and found that her name was Niobe, SD. 5. She had been trawling. It was clear weather. He took her bearings when she was very near Lossiemouth. Witness then marked a chart to show where the trawler was working. He then launched a boat and went on board the Niobe, asking for the master. He found re-

spondent, and asked him whether he was her owner or fishing master. He said he was both.

In reply to Mr Stott, Captain M'Ewan said he had been eight years in the Fishery Board service. He had been a good deal in the Moray Firth cruising. He had reported every foreign trawler he had seen within the Moray Firth and her position for the last five years, which was part of his business with the Fishery Board. He had reported hundreds during that period. He had also captured trawlers within the three-mile limit. He had no orders to charge Nortensen, but he had special orders to report on all vessels to the Fishery Board. To the Court, he said he knew that Nortensen was on the Norwegian register as master.

Mr G. G. Mackenzie, mate of the Niobe, corroborated generally the evidence of Captain M'Ewan in connection with the Niobe on 30th November.

Grimsby Officer's Evidence.

Mr Lampare, Preventive Officer of the Customs, Grimsby, said that on 14th December last he went on board the Niobe at Grimsby. He got on board the names and nationalities of most of the members of the crew. (Shown report)—Witness said it was a correct report. Each man gave his name, and it was written as stated in his (witness's) list. He knew that Nortensen was in command of the Niobe for some time; he was captain of the Niobe when he was on board. (Laughter.)

To Norway for Registration.

Captain Nortensen, the respondent, who was the only witness for the defence, said he was the skipper of the Niobe. He had been skipper for four years. She was registered at Sandefjord, Norway. Yes; it was necessary in the case of Norwegian vessels that the master must be a Norwegian or a Dane. No one had ever said to him it was against the law to fish in the Moray Firth. Captain M'Ewan did not say so when he came alongside.

In reply to Mr Munro, respondent stated that the boat belonged to a Joint-Stock Company. He could not tell who held the shares, as he did not know. He sailed regularly from Grimsby, and was often in the Moray Firth. The Niobe had been in Norway. That was for a very small part of last August.

Speech for the Prosecution.

Mr Munro, addressing the Sheriff, asked for a conviction. There were just two questions his Lordship had to consider. The first was a question of fact, and the second was a question of law. As regarded the facts, they were exceedingly simple, and he did not think they would be disputed. Now, he had in the first place clear proof that the bye-law was duly made, confirmed, and published, and was still in force, in the terms in which No. 10 was amended by 14; and this was a bye-law which his Lordship knew was passed through to give effect to the power conferred on the Fishery Board by the Act of 1889. Any one who left the decision with the facts of the case, apart from the question of law, would say it was clearly proved. They also had a bye-law clearly proved. The only question which could be argued, he said, was the question raised in Olsen's case—that was to say, that he was a Norwegian, not a Dane. So was Olsen, but in point of fact he had lost his register in Norway. By the Act of 1889 and 1895 the Fishery Board got powers to make a certain bye-law, and by that there was a clear case against accused, as the bye-law closing the whole area of the Moray Firth was still in existence. His Lordship was here concerned merely with the interpretation of the statute.

Sheriff Guthrie—Statutes made by the British Parliament are limited to the subject.

Mr Munro said that ordinary criminal and civil statutes must be taken as within the territory of the country. His answer to that was this—Here its expression indicated that the statute was to apply to the adjacent waters, and the statute claimed jurisdiction over the adjacent waters, and was therefore dealing with territory outside Scotland. It seemed to him, however, that so far as his Lordship was concerned—or Courts all over the country—the case had been settled by that of Olsen. He thought his Lordship was bound to convict.

The Ten-Mile Limit.

Mr Stott, in addressing the Sheriff, dealt chiefly with the question of jurisdiction, and held that the statute quoted by Mr Munro in connection with the ten-mile limit applied only to police purposes, and not to the prosecution of peaceful and lawful industry. He held that the application of the Acts referred to only affected British subjects, and not foreigners, and that it was a breach of the international law to go beyond the three-mile limit, beyond which their jurisdiction did not extend. He said that a trawler could be placed within the line between Duncansbay Head and Rattray Point, and still be 30 miles from the nearest point of land on any side.

Verdict for Prosecution.

Sheriff Guthrie then gave his decision in favour of the prosecution. In this case he found the charge proved. One had to consider really nothing except the question of jurisdiction as put by Mr Munro and Mr Stott. It seemed to him that when one took the 1889 statute they had been dealing with for the purposes of this case it was not possible to distinguish between Section 6 of Bye-Law No. 2 and Section 7 of Bye-Law 10. In both cases they had general expressions used. The question came to be whether there was anything in the subject matter or in the locus itself to make it possible to hold that the Court of Justice would not have come to the same conclusion on Section 7 as they did in the case of Peter Olsen. He found the charge proved, and imposed a fine of £50, with the alternative of fifteen days' imprisonment.

The two other cases were called on the resumption of the Court, but Robinson failed to answer, and in the case of A. Lambert, of the trawler Pinewold, was adjourned to 6th March.