

To the Honourable

The Minister of Marine and Fisheries

For the Dominion of Canada.

I have the honour to report to you that in pursuance of the powers and authority conferred upon me under the Commission accompanying this report and bearing date the 22nd. day of August, 1901, appointing me a Commissioner under Chapter 114 [R.S.O.] to inquire into and report upon the alleged loss and damage sustained by Messrs. J. & C. Noble by reason of the seizure and confiscation of their fishing tugs, boats, nets and gear in 1894, and of the Order in Council bearing date the 18th. day of August, 1901, a copy of which is thereto attached, I did on the 7th. day of September, 1901, at the City of Toronto, commence the said inquiry, and thereafter at the village of Killarney, Province of Ontario, on the 23rd., 24th., 25th., 26th., and 27th. days of September I continued the same, evidence on behalf of Messrs. J. & C. Noble and on behalf of the Government was then and there taken, and further evidence on behalf of the said parties was taken at the City of Toronto on the 18th. 19th. 20th and 21st. days of November, on which last day all the evidence having been given argument of Counsel on behalf of Messrs. J. & C. Noble and on behalf of the Government was by me heard on the 9th. 10th. 11th. 12th. 13th. 14th. and 16th. days of December, when the inquiry closed. I reserved the matters in question for further consideration and having carefully considered the evidence I now beg to report;

By the said Commission and Order in Council the following matters are submitted to me for my opinion and finding:- [a]

[a] Whether in my opinion on the facts proved before me the conviction, seizure and confiscation mentioned in the said Order in Council were justifiable or not; and if I find such conviction, seizure and confiscation were justifiable:

[b] Then, whether there were any and what extenuating circumstances in connection with violations by Messrs. J. & C. Noble and their fishermen of the Fishery laws and regulations, and

[c] Whether in equity and good conscience, having regard to all the circumstances proved the Government of Canada should pay to the said Messrs. J. & S. Noble any damages by reason of such conviction, seizure and consequent disposal of their tugs, boats, gear and nets, and the reason why in my opinion the Government of Canada should pay any and

[d] If I find that damage should be paid by the Government of Canada in equity and good conscience on account of the conviction, seizure and subsequent disposal of such tugs, boats, gear and nets, what amount of damages and the reasons why in my opinion the Government of Canada should pay the amount determined; with further authority to me to recommend to the Minister of Marine and Fisheries as to what disposition of all questions of costs in connection with this Commission and the proceedings had and taken thereon to me shall seem proper.

In my opinion on the facts proved before me, the conviction, seizure and confiscation mentioned in the said Order in Council is justifiable, for the reason that by an Order in Council dated 23 July, 1889, section 7, Fishing by means of nets or other apparatus without leases or licenses from the Minister of Marine and Fisheries under the provisions of Chapter 98 section 4 R.S.O. is prohibited in the Province of Ontario, and by 4th Vic. Chapter 98, section 18 [the Fisheries Act] \* It is provided that every one who violates any provision of this Act or of the regulations under it shall be liable to a penalty not exceeding twenty dollars and costs and in default of payment to imprisonment and by s.s. 5 \* All materials, implements or appliances used and all caught, taken or killed in violation of this Act or any regulation under it shall be confiscated to Her Majesty and may be seized and confiscated on view, by any Fishery Officer, or taken and removed by any person for delivery to any Justice of the Peace and the proceeds arising from the disposal thereof may be applied towards defraying expenses under this Act \* By s.s. 6 \* Persons aggrieved by any such conviction may appeal to the

" restore forfeitures under this Act."

The Messrs. J. & O. Noble, having pleaded guilty to the offence charged and for which they were convicted in 1894, their tugs, boats, gear and nets became liable to seizure and confiscation, and under a strict interpretation of the said s. 5, it was the duty of the Minister of Marine and Fisheries to cause to be seized and confiscated all the materials, implements or appliances used in violation of the Act or of any regulations under it, but by the said s. 6 the Nobles, if they felt themselves aggrieved by such conviction, had a right to appeal by petition to the Minister of Marine and Fisheries who had authority to remit the penalty imposed and to restore the forfeitures, that is to withdraw the seizure the seizure and restore the confiscated fishing plant so seized and confiscated; and in my opinion upon a reasonable case having been presented to the Minister justifying such abandonment of seizure and restoration of the forfeiture such a course should have been pursued and should now be pursued as far as it is possible to do so by the payment of damages as and for compensation, if the facts proved and the circumstances warrant it.

I have therefore now to determine whether or not there were any and what extenuating circumstances on the facts proved before me which should be taken into consideration in connection with the violations by the said Nobles and their fishermen of the Fishery laws and regulations and whether in equity and good conscience, having regard to all the circumstances proved, the Government should pay to the said Nobles any damages by reason of such conviction, seizure and subsequent disposal of their tugs, boats, gear and nets and my reasons why in my opinion the Government should pay any.

For fifteen years prior to the year 1895, the said Nobles had been engaged in the fishing business in the fishery district in question, and had established a very large, successful and lucrative fishing industry, and were possessed of a large amount of capital invested almost wholly in this business, owning valuable tugs, boats, nets and gear, had formed large business connections and associations, had entered into large and profitable contracts for the supply of fish in the year 1894, and had several fishing stations

the Georgian Bay district. I find that up to the year 1893 it had been the almost invariable practice on the part of the Fishery Overseer for the district and in the Department of Marine and Fisheries when the said Nobles and other fishermen had sent into the said Department through the said Overseer their applications for fishing licenses, with the necessary fees to pay for the same, the said Nobles and others were permitted to fish without having their licenses then issued to them or in their possession, no objection was taken to this practice, it being considered by the said Overseer and by the said Department and so treated that when the application for licenses had been made and the license fees duly paid into the hands of the said Overseer, the licenses would be granted and issued by the said Department and would be forwarded to the said Overseer to be by him either handed out or sent to the respective applicants for licenses.

This practice had grown into a custom amounting almost to an unwritten law with the fishermen until the fall of 1893, when the said Department caused notice to be given that in future fishing would not be permitted until the licenses were issued and the fees paid therefor. The said Nobles in the spring of 1893 went out fishing without having at the time their licenses issued to them, although they had, as in former years, before starting out to fish duly made application for licenses and had paid the necessary license fees to the said Overseer, who had forwarded the same to the said Department. The licenses were shortly afterwards issued by the said Department to the said Nobles and forwarded to the said Overseer, who sent them to the said Nobles, but not until after they had been fishing for some time, and when under the strict interpretation of the Fishery laws and regulations they had made themselves liable to conviction, seizure and confiscation, but I find that the said Nobles in so violating the law and regulations did not wilfully violate the law and were not guilty of anything more than a technical breach. No proceedings were taken or had against them for this offence, and in my opinion no such proceedings could have been justified, having regard to all the facts and circumstances.

circumstances up to that time. The Fishery Overseer was aware of the fact that such a practice had prevailed, and knew also that all fishermen would take advantage of the earliest of navigation and of the earliest opportunity to get to the fishing grounds, because the best catches of fish are to be had as soon as the ice moved and fishing could be commenced. It was therefore all important that the fishermen should be on the fishing grounds, and having sent in their applications and paid their fees, and well believing that the licenses would duly issue to them, the act of the fishermen in so going on the fishing grounds before licenses had issued to them - not wantonly or wilfully or with an intent to evade the law - could at most be treated as a technical offence especially as that practice had for a long time been recognized by the said Department.

In January, 1894, Fishery Overseer Elliott for the division, by instructions from the said Department caused notices to be distributed and posted up in the district notifying the fishermen that "no fishing would be permitted in his division until after licenses had been paid for and issued by the Department of Fisheries, and that every violation of this order would be prosecuted. That applications for licenses must be made to him and the fees must accompany the application." Of this notice the said Nobles had knowledge before sending in application for licenses for 1894. On the 14th. March 1894, the said Nobles made application for licenses for 1894 and sent to him at the same time by letter a cheque for \$280.00, the necessary fees for such licenses, and I find that at that time and until after they had gone out with their tugs, boats, gear and nets to fish and had been for some time fishing, the said Nobles well believed [and they had no reason to believe otherwise] that their licenses duly applied and paid for would not, be duly issued to them. On the 24th. of the same month the said Overseer returned the cheque because the discount \$1.08 had not been included in the amount of the cheque. This was forthwith sent to him.

I find that the said Nobles in good faith and with no willful intent to violate the law, believing and in my opinion having good

reason to believe that the licenses for which they had applied and for which they had paid the proper fees would be issued and forwarded to them in due course, and that on the 28th. day of April, 1894, the said Nobles with other fishermen in that district <sup>did</sup> without having first obtained their fishing licenses, with their tugs, boats, nets and gear go upon the fishing grounds and did fish for, and catch fish contrary to the Fishery laws and regulations, until they, the said Nobles were notified that the licenses for which they had applied would not be granted to them, whereupon Mr. Charles Noble had an interview with the then Minister of Marine and Fisheries, for the purpose of obtaining the licenses for which they had applied, this application was then refused. The said Nobles forthwith ordered their fishermen to desist from fishing, to take up their nets, which was done with all reasonable despatch and promptitude, having regard to the weather and other circumstances, and thereafter the said Nobles desisted from fishing. Subsequently, on instructions from the said Department, the said Nobles were prosecuted, convicted and fined for the offence of fishing without a license and their tugs, boats, gear and nets were seized and confiscated. A petition was presented to the Minister of Marine and Fisheries for and on behalf of the said Nobles for relief from the said conviction, the abandonment of said seizure and restoration of the forfeitures. The then Minister of Marine and Fisheries, on the information and knowledge then in his possession, refused to grant the prayer of his petitioners, though subsequently the tugs were returned on the order of the Minister.

In my opinion, if the facts as they have been made to appear before me in the sworn testimony of many witnesses and in the exhibits filed had been present to the mind of the Minister, such severe treatment would not have been dealt out to the said Nobles, the seizure would have been abandoned and the tugs, boats, nets and gear would not have been forfeited and confiscated, but would have been returned to the said Nobles under the powers and wide discretion given to the Minister by said S. 3. 6; and for the said violation of the Fishery laws and regulations, the said Nobles were

upon the facts and circumstances as they now appear, have been fully punished, and the laws and regulations vindicated by a moderate fine with costs.

I find that the said Overseer Elliott acted in bad faith, with malice and with a desire to injure and destroy the business of the said Nobles, that he wilfully made false and misleading reports to the Department of Marine and Fisheries against the said Nobles prior to and subsequent to the said conviction for the purpose of injuring and bringing the said Nobles into bad repute in the said Department, and for the purpose of preventing them from obtaining their fishing licenses in 1894, and for the further purpose of preventing a restoration of the confiscated property. I find that false and misleading information was given by him to Messrs. Wilmot and Prince, Officers in the said Department to prejudice their minds against the said Nobles and that they acting in part on that information reported to the Minister of Marine and Fisheries unfavourably to the said Nobles; and I find that if such misleading information and reports against the said Nobles had not been brought to the attention of the said Minister, <sup>and knowledge</sup> and if the true facts had been represented to him then in equity and good conscience the said seizure would, in my opinion, have been abandoned and the confiscated property would have been returned.

I find further that at and prior to the time the said Nobles began fishing in the spring of 1894 they had no knowledge, information or belief that the said licenses would not be granted to them, but I find that Overseer Elliott then and for some time before believed and had knowledge that led to such belief that said licenses would not be granted to the said Nobles, and that he deliberately withheld from them such knowledge or belief; he also believed they would start out to fish on the first opening of the fishing season and before the licenses could be issued and sent to him from the Department, and I am of the opinion that he desired that the said Nobles would thereby violate the law to enable him to procure their conviction for such violation, and thus cause to be seized

and confiscated their fishing plant and cause them to be put out of that business.

In my opinion the Government are responsible for the acts and conduct of the said Elliott, and to the extent of the wrong and injury sustained by the said Nobles, occasioned by the conduct and acts of the said Elliott and the said Department the Government of Canada should be held accountable and in equity and good conscience should pay fair and reasonable damages to the said Nobles by reason of the said seizure and subsequent disposal of their tugs, boats, gear and nets.

I find that the evidence given before me by the said Elliott was not given with candour or truth and I discredit it when in conflict with the evidence of reputable witnesses.

I find that the Government of Canada, in equity and good conscience on account of the said seizure and subsequent disposal of the said tugs, boats, gear and nets should pay to the said Nobles the sum of Fifteen Thousand Five Hundred and Sixty-three Dollars [\$15,563.00] as and for their damages wrongfully sustained.

By authority given to me in the said Commission and Order in Council, I beg to recommend to the Minister of Marine and Fisheries that the costs and expenses of the said Nobles and to which they have been put to in connection with this Commission and the proceedings had and taken thereunder should be paid by the Government of the Dominion of Canada, in addition to the amount of damages heretofore mentioned. And having arrived at this conclusion I caused Counsel for the said Nobles and for the Government to appear before me with regard to the said costs, and having fully discussed the items of costs produced by Counsel for the said Nobles, I am of opinion that the sum of Three Thousand Dollars [\$3,000.00] would be a fair and reasonable sum for the said Government to pay to the said Nobles as and for their costs and disbursements. It was strongly urged upon me by Counsel for the said Nobles that I should make an allowance for costs and expenses previously incurred by them in connection with and arising out of former investigations or partial investigations, amounting to a sum between Four and Five Thousand Dollars, but having determined that this



come within the scope of my inquiries, I declined to consider the same.

With this report I forward my Commission, copy of Order in Council attached thereto, copy of the evidence taken on oath, the exhibits filed and my account.

All of which is most respectfully submitted.

[signed] William Lount,

Commissioner.

Dated at Toronto this

4th. day of April, 1908.