

1896

July 28.

BRITISH COLUMBIA ADMIRALTY DISTRICT.

HER MAJESTY THE QUEEN.....PLAINTIFF ;
 AND
 THE SHIP " *BEATRICE* "..... DEFENDANT.

Wrongful arrest of merchant ship by Crown—Damages—Interest.

Where a merchant vessel was seized by one of Her Majesty's ships, acting under powers conferred in that behalf by *The Behring Sea Award Act*, 1894, and such vessel was found to be innocent of any offence against the said Act, the court awarded damages for the wrongful seizure and detention together with interest upon the ascertained amount of such damages.

THIS was an assessment of damages taken pursuant to the judgment delivered on the 18th November, 1895, dismissing the action for condemnation of the ship, and directing a reference as to the damages to which the ship was entitled for her illegal arrest and detention. The main case is reported in *Exchequer Court Reports*, vol. 5, page 9.

Hon. C. E. Pooley, Q.C., appeared for the Crown ;
A. E. M. McPhillips, Esq., (with him *G. H. Bernard*)
 for the owner of the *Beatrice*.

DAVIE, (C. J.) L. J., now (July 28th, 1896) delivered judgment.

This was an assessment of damages arising out of the seizure of the sealing schooner *Beatrice* by the United States revenue steamer *Rush* on the 20th August, 1895. Upon the trial before me of the action for condemnation of the ship for alleged infraction of the *Behring's Sea Award Act*, 1894, I dismissed the action on the ground that the seizure was unlawful, and I directed a reference as to the damages sustained by the owners of the *Beatrice* on account of her unlawful arrest and detention (1).

(1) See 5 Ex. C. R. 9.

The arrest took place on the 20th August, 1895, in latitude 54.54 north and longitude 168.31 west, whilst the vessel was engaged in seal fishing. She had then caught 202 seals, having an outfit of six boats and two canoes and a crew of 18 white men, but no Indians. She had been fishing since the 2nd of August, and under instructions to the master given by the owner would probably have continued fishing until the end of the season, which is shown to be the 20th September, several of the vessels having continued until that date, making good catches up to the last day; for instance, the *Walter Rich* caught 72 skins on the 9th September, and 36 on the 18th; the *Ainoko* 137 on the 9th September, 36 on the 17th and 54 on the 19th; the *Florence M. Smith* took 69 on the 20th September. These vessels were all sealing in Behring Sea the same as the *Beatrice*, and although they had more boats and more men than the *Beatrice* it is useful to refer to their catches as showing that it would have probably been profitable for the *Beatrice* to have continued sealing up to the last day. There were some forty vessels, including the *Beatrice*, sailing out of Victoria engaged in sealing that year, and Mr. Godson, whose duty it was under the Paris award to keep a record of the industry, informs us that the average catch per schooner was 897.95, or of about 70 to each boat or canoe. It has been contended on the part of the Crown that in assessing damages I should proceed upon the average catch per boat, but I think this would afford hardly a fair estimate for the *Beatrice*.

In the first place, Mr. Godson's average includes the catch of the *Beatrice*, which had only just commenced sealing when seized, as also of the *E. B. Marvin*, which was seized on the 2nd September when she had caught only 376 seals. These seizures, therefore, reduce the average which would otherwise be shown. Moreover,

1896

THE
QUEEN
v.
THE SHIP
BEATRICE.

Reasons
for
Judgment.

1896
 THE
 QUEEN
 v.
 THE SHIP
 BEATRICE,
 ———
 Reasons
 for
 Judgment.
 ———

many of the other vessels had quit sealing before the 20th September, whereas the *Beatrice* was provisioned to, and had instructions to continue until, the 20th. The catches are shown to have been heavier after the 20th August than they were before that date. Some of the vessels took as high as one hundred and more to the boat; the *Borealis*, a vessel of only 37 tons register, with twenty-one white men and six boats, taking as high as 123 seals to the boat.

The seizure in this case having been established as wrongful, the defendant is entitled to substantial damages, the criterion of which is the whole injury which he has sustained thereby. In the *Consett Case* (1), where a charter-party was lost in consequence of detention caused by a collision in which the defendant was to blame, the measure of damages was held to extend to the loss of the charter. The defendant's case here stands upon at least as high a footing as that of the *Consett* (1). Here, I think I am bound to allow such an amount as would represent the loss of an ordinary and fair catch if the voyage had been extended until 20th September (2). I think that 90 seals to the boat would have been an ordinary and fair catch for the *Beatrice* to have made; as the *Borealis* with only three more men took 123 seals, it is not unreasonable to presume that the *Beatrice* would have taken at least 90. This, for eight boats, including canoes, would make 720 seals, or 518 more than were taken.

The evidence shows that the agents for the *Beatrice*, R. Ward & Co., who were also the agents for several of the other schooners, sold all of their catches at Victoria, and realized \$10.25 per skin, including the 202 caught by the *Beatrice* before she was seized. I think the same price must be allowed the *Beatrice* for

(1) L.R. 5 P.D. 232.

(2) The *Argentino*, L.R., 14 App. Cas. 519.

her estimated additional catch of 518 seals, or \$5,309.50. From this has to be deducted \$4 per skin, which it was proved would amply cover all expenses of the lay to which the sealers would have been entitled as well as all wages. There will also be deducted \$74 for the tinned goods and two barrels of beef which would probably have been consumed had the *Beatrice* completed her voyage, but which Mr. Doering had restored to him after the vessel was released. The remainder of the provisions were mildewed, eaten by rats and spoiled whilst the vessel was under arrest. There can be no deduction in respect of these. These deductions leave a balance of \$3,163.50 in favour of Mr. Doering, for which sum, together with interest at the rate of 6 per cent per annum from the 20th of September, he is entitled to judgment against Her Majesty, with costs."

1896
 ~~~~~  
 THE  
 QUEEN  
 v.  
 THE SHIP  
 BEATRICE.  
 ———  
 Reasons  
 for  
 Judgment.  
 ———

*Judgment accordingly.*