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Dec. 7.

BRITISH COLUMBIA ADMIRALTY DISTRICT.

HER MAJESTY THE QUEEN.....PLAINTIFF;

AND

THE SHIP "*BEATRICE*"DEFENDANT.*Maritime law—Behring Sea Award Act, 1894—Infringement—Mistake by master.*

A master takes upon himself the responsibility of his position; and if through error, want of care or inability to ascertain his true position, he drifts within the zone, and seals there, he thereby commits a breach of the *Behring Sea Award Act 1894*.

THIS is an action *in rem* against the ship for condemnation for an alleged infraction of the regulations respecting the taking of seals in Behring Sea.

By the statement of claim it was alleged as follows:

1. The British ship *Beatrice*, A. H. Jones master, was seized by an officer of the United States Ship *Perry* on the 5th day of August, 1896, in latitude 55 deg. 49 min. North, and longitude 170 deg. 31 min. West of Greenwich at a point within the prohibited zone of 60 miles around the Pribilof Islands, as defined in Article one of the first schedule to the *Behring Sea Award Act, 1894*.

2. That the said ship *Beatrice* at the time of the seizure aforesaid was fully equipped for seal hunting and was employed in killing, capturing and pursuing the animals commonly called fur seals within the prohibited zone of 60 miles around the Pribilof Islands, as defined in Article one of the first schedule to the *Behring Sea Award Act, 1894*, and the master, hunters and crew of the said ship did capture and kill fifty-eight of the animals commonly called fur seals within the said prohibited zone on the said 5th day of August, 1896.

3. That the said ship *Beatrice* is a British ship registered at the port of Victoria, in the Province of British Columbia.

4. That the said ship *Beatrice*, with the said A. H. Jones as master, set sail from the port of Victoria, British Columbia, on a sealing voyage on the 20th day of June, 1896.

5. At the time of the seizure aforesaid the said Ship *Beatrice* had thirty-four seal skins on board, and fifty-eight additional seal skins were brought on board the said ship by the ship's hunters during the time that the boarding officer was on board the said vessel.

6. The said ship *Beatrice*, after the seizure as mentioned in paragraph one hereof, was ordered to proceed to Unalaska, whence she was directed by Albert Clinton Allen, the Commander of Her Majesty's Ship *Satellite*, to proceed to the port of Victoria and report to the senior British Naval Officer at Esquimalt. The said vessel arrived at the port of Victoria on the 7th day of September, 1896.

Algernon J. Hotham, a Lieutenant in Her Majesty's Ship *Impérieuse*, claims the condemnation of the said ship *Beatrice* and her equipment and everything on board of her and the proceeds thereof on the ground that the said ship was at the time of the seizure thereof within the prohibited zone of 60 miles around the Pribilof Islands, as defined by Article one of the first schedule to the *Behring Sea Award Act*, 1894, fully manned and equipped for killing, capturing and pursuing the animals commonly known as fur seals, and that the said ship was employed in killing, capturing and pursuing within the prohibited zone aforesaid the animals commonly called fur seals, and did within such prohibited zone capture and kill a number of the animals commonly called fur seals.

The statement of defence was as follows:—

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1. The defendant does not admit paragraphs 1 and 2 of the plaintiff's statement of claim or any of the allegations therein contained.

2. The defendant admits paragraphs 3, 4, 5, and 6 of the plaintiff's statement of claim.

3. The defendant in answer to the whole of the plaintiff's statement of claim says that the said vessel was seized by the said steamer *Perry* on the 5th day of August, A. D. 1896, in latitude 55 deg. 11 min. N. and longitude 170 deg. 39 min. W., a point not within the prohibited zone of 60 miles around the Pribilof Islands, as defined in Article one of the first schedule to the *Behring Sea Award Act*, 1894.

4. The defendant in further answer to the plaintiff's claim says that on the day of the seizure the alleged position given to him by the officer of the United States steamer *Perry* was latitude 55 deg. 46 min. N. and longitude 170 deg. 33 min. W., and that after the said vessel had left for Unalaska as ordered by the said United States steamer *Perry*, the said steamer on the following day overtook the said vessel and gave the alleged position as of the day of seizure as latitude 55 deg. 48 min. N., and longitude 170 deg. 31 min. W.

5. In the alternative the defendant says that if it be proved that the said vessel when seized was in latitude 55 deg. 49 min. N. and longitude 170 deg. 31 min. W. of Greenwich, as in paragraph one of the plaintiff's statement of claim is alleged, which the defendant does not admit, the master was ignorant of the fact that the said vessel was within the said prohibited zone and that the position of the said vessel was due to the fact that up to the time of seizure and for two days previous thereto the weather prevented the master from taking any observations, in consequence whereof the master of the said vessel *bonâ fide* believed that the said vessel's position was as in paragraph 3 is alleged.

6. The defendant says that none of the said fur skins found on board the said vessel when seized were killed, captured or pursued in contravention of the provisions of the said *Behring Sea Award Act*, 1894.

7. The defendant says that at no time was the said vessel used or employed in contravention of the said Act or of any regulation made thereunder.

Issue joined.

The case came on for trial at Victoria, B.C., on the 1st December, 1896, before the Honourable M. W. Tyrwhitt Drake, Deputy Local Judge for the Admiralty District of British Columbia.

*C. E. Pooley*, Q.C. for the Crown ;

*H. D. Helmcken* Q.C. for the ship.

DRAKE, D. L. J., now (December 7th, 1896) delivered judgment.

This vessel was seized on the 5th August, 1896, by the United States vessel *Perry* in very much the same neighbourhood as the *Ainoko*.

She was seized in latitude 55 deg. 50 min. N., longitude 170 deg. 37 min. W., some seven miles within the zone. While the officer was on board the boats returned with fifty-eight skins.

The defence was the same as the *Ainoko*—no observations after the 2nd of August and a strong S. W. wind until the afternoon of the 4th, the position of the vessel being calculated by dead reckoning ; but as the schooner had no log line by which to determine her speed it rendered the calculation more than usually inexact.

The navigator of the schooner, Captain Pinckney, kept no ship's log but had a memo. book in pencil according to which he had an observation on the 3rd,

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of longitude 172 deg. 8 min. ; and according to him her position on the day of seizure was latitude 55 deg. 11 min. 11 sec., longitude 170 deg. 39 min. W. This was a mere estimate based on his idea of her speed from looking over the side, and his log book shows evident marks of alteration. If the vessel had been properly found with a log line of any description, the error would have been greatly reduced and her position more nearly approximate to what it eventually turned out to be. In his evidence he says that he got his last observation on the 2nd, which differs from his log. A master takes upon himself the responsibility of his position and if through error, want of care or inability to ascertain his true position, he drifts within the zone, and seals there, he thereby commits a breach of the regulations.

There appears to be a discrepancy in the position as given by the cutter *Perry* on the day of seizure and that subsequently given as the correct locality, and it arose in this way: The position as given on first seizing was calculated from the last observation taken that morning, and allowing for dead reckoning up to the time of seizure. This was subsequently corrected after another observation had been taken in the afternoon, but in giving this correction on working over the calculations again a clerical error, which made a difference of some four to five miles, was discovered, and this error was communicated to the schooner, and the official log corrected afterwards. On arriving at Unalaska the *Perry's* chronometer was rated and the exact error ascertained, and the several positions were gone over again and the result was that the exact position at the time of the seizure was latitude 55 deg. 50 min. longitude 170 deg. 37 min. This made the *Beatrice* seven miles within the prohibited limits; the previous calculations made the vessel within the zone, but not

quite so far in,—she was not therefore in any way prejudiced by the corrections made.

It was proved that there was a current running N. which might vary from half a mile to two miles, depending on the wind and swell. The *Beatrice* had not allowed sufficiently for this, but that is not a sufficient excuse. No attempt to take seals should be made unless the master is certain of his position. I, therefore, declare the *Beatrice* and her equipment forfeited but allow her to be redeemed on payment within 30 days of the sum of £400.

Judgment accordingly.

Solicitors for the Crown: *Davie, Pooley & Luxton.*

Solicitors for the ship: *Drake, Jackson & Helmcken.*

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