

BRITISH COLUMBIA ADMIRALTY DISTRICT.

HER MAJESTY THE QUEEN.....PLAINTIFF;
 AGAINST
 THE SHIP "MINNIE."

1894
 Feb. 7.

Pelagic sealing—Seal Fishery (North Pacific) Act, 1893, (56-57 Vict. [U. K.] c. 23) secs. 1, 3 and 4—Judicial notice of order in council thereunder—Protocol of examination of offending ship by Russian war vessel, sufficiency of—Presence within prohibited zone—Bona fides—Evidence.

By sec. 1 of the *Seal Fishery (North Pacific) Act, 1893*, it is provided that "Her Majesty The Queen may, by order in council, prohibit during the period specified by the order, the catching of seals by British ships in such parts of the seas to which this Act applies as are specified by order."

Held, That the court might take cognizance of such order in council without proof.

2. By subsec. 3 of sec. 1 of the Act in question the provisions of secs. 103 and 104 of *The Merchants Shipping Act, 1854*, giving jurisdiction to colonial Admiralty courts in actions for the condemnation of ships guilty of offences under such Act, are applied to offences against the first mentioned Act.

3. By the 3rd sec. of the Act in question it was provided that "A statement in writing, purporting to be signed by an officer having power in pursuance of this Act to stop and examine a ship, as to the circumstances under which, or grounds on which, he stopped and examined the ship, shall be admissible in any proceedings, civil or criminal, as evidence of the facts or matters therein stated."

Clause 2 of the order in council extended to the "Captain or other officer" in command of any war vessel of His "Imperial Majesty, the Emperor of Russia" all the powers conferred upon officers of the British Navy by subsec. 4 of sec. 1 of the Act, in relation to the examination and detention of an offending British ship.

Held, that where a protocol of the examination of an offending British ship by a Russian vessel did not disclose on its face that the person who signed the same was an officer in command of the examining vessel, or that the vessel was a Russian war vessel, the court, by reason of it being a matter involving international

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- obligations, must apply the *maxim omnia presumuntur rite esse acta* and assume that the person who signed the protocol was an officer properly in command of the examining vessel, and that such vessel was a Russian war vessel within the meaning of the Act.
4. A ship, the master of which had notice of the prohibited zone, was found within the waters thereof fully manned and equipped for sealing, and having on board shooting implements and one seal skin. It, however, did not appear that the seal had been taken within the zone.

*Held*, that under the provisions of the *Seal Fishery (North Pacific) Act, 1893*, the presence of the ship within the prohibited waters required the clearest evidence of *bona fides* to exonerate the master of an intention to infringe the provisions of the Act, and that as his explanation of the circumstances was unsatisfactory, the ship must be condemned.

**ACTION** for condemnation under the *Seal Fishery (North Pacific) Act, 1893* (56-57 Vict. [U.K.] c. 23).

The sections of the Act bearing upon the case are sufficiently stated in the head-note.

The case turned mainly upon two points :

(1) Whether the protocol of the examination of the offending ship satisfied the requirements of section 3 of the Act so as to make it evidence of the facts or matters therein stated ;

(2) Whether the court could take judicial notice of the Imperial order in council provided for in section one of the Act and passed in pursuance thereof.

Copies of such protocol and of such clauses of the order in council as are material to the case are given below.

PROTOCOL OF THE EXAMINATION OF THE SCHOONER  
 " *Minnie.* "

" On this 5/17 day of July, in the year 1893, in latitude 54°, 21' N., and longitude 168° 38' E., at a distance of twenty-two miles from the southern extremity of Copper Island, a schooner under sail was seen at 9 o'clock in the evening, by His Imperial Majesty's Transport *Yakout*, cruising off the Commander Islands.

“ On nearing her, she was ordered by the transport to bring to, which was promptly done. A whale boat at once put off from the schooner to the transport with the mate, who explained that the schooner was English (that she was) from Victoria (that) her name was *Minnie*. For six days she had taken no observations.”

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“ The Midshipman, Michaelof Raslovlef, was sent for the examination of the aforesaid schooner, who on his return to the Transport with the schooner's skipper, Julius Mohrhouse, brought with him the log-book and ship's papers, and reported (that) they had on the schooner 12 whale boats, 23 shot-guns and one rifle, and in the hold only a few seal skins and salt.

“ After an inspection of the aforesaid log-book and papers, the ship's Commission, appointed by order of the commander of the Transport, on the 5th of July, in accordance with N. 42 consisting of the President Lieutenant Ginter, and of the members Lieutenant Dedenef and Midshipman Michaelof Raslovlef, found that the schooner *Minnie* (sailing) under the flag of Great Britain, belonging to Victor Jacobson, (and) under the command of Julius Mohrhouse, from Victoria, is sailing for the purpose of sealing by the way (i. e. is engaged in pelagic sealing) and called before her arrest by the Transport, at San Juan, Yakoutat and Sand Point, from which last port she sent the seal skins she had procured to Victoria.

“ The crew on the schooner consisted of 25 men. In accordance with the finding of the whole of the aforesaid Commission, in compliance with the principle, ss. 9 of the instructions to a war cruiser in the year 1893 for the protection of the Russian maritime industries in the Behring Sea, it was decided that after having seized the ship's documents, a temporary certificate be given to skipper Julius Mohrhouse, with an inscription upon it of the number and description of the documents

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seized, and that he be ordered to leave the territorial waters at once and go to Yokohama and there present himself to H. B. M's Consul and inform him that the documents of the schooner *Minnie* would be forwarded to the authorities of Great Britain.

(Members Sgd.)

“ MIDSHIPMAN MICHAEL OF RASLOVLEF.

“ LIEUTENANT DEDENEF.

Sgd. “ PRESIDENT LIEUTENANT GINTER.

“ I confirm this document.

Sgd. “ CAPTAIN (2 Rapa) SCHMELEVSKY.”

The clauses of the order in council bearing upon the case are as follows :—

“ 1. From and after the fourth day of July, one thousand eight hundred and ninety-three, until the first day of January, one thousand eight hundred and ninety-four, the catching of seals by British ships is hereby prohibited within such parts of the seas to which the recited Act applies, as are comprised within the following zones, that is to say (1) a zone of ten marine miles on all the Russian coasts of Behring Sea and the North Pacific Ocean, and (2) a zone of thirty marine miles round the Komandorsky Islands and Tulénew (Robben Island.)

“ 2. The powers which under the recited Act may be exercised by any Commissioned Officer on full pay in the Naval Service of Her Majesty, may be exercised by the Captain or other officer in command of any war vessel of His Imperial Majesty the Emperor of Russia in relation to a British ship, and the equipment and crew and certificate thereof.

The other material facts of the case are stated in the judgment.

January 20 and 22nd, 1894.

The trial took place at Victoria, B. C., before Mr. Justice Crease, Deputy Local Judge for the Admiralty District of British Columbia.

*Pooley*, Q. C., for the plaintiff;

*Belyea*, for the ship.

At the trial Mr. Pooley, on behalf of the plaintiffs, tendered in evidence the Act and the order in council passed thereunder.

[CREASE, D. L. J. :—It is not necessary, Mr. Pooley, to put in evidence, as you now offer, the *Seal Fishery (North Pacific) Act*, 1893, and the order of Her Majesty in Council thereunder, dated July 4th, 1893. The court takes cognizance of them already, and sits now under these enactments.]

The case was then argued upon the evidence.

CREASE, D. L. J. now (February 7th, 1894,) delivered judgment.

This was an action for condemnation under the Imperial British *Seal Fishery (North Pacific) Act*, 1893, and the order in council thereunder, of July 4th, 1893, of the schooner *Minnie* (Victor Jacobson, owner, and Julius Mohrhouse, master) seized by the Imperial Russian Transport *Yakout* within the forbidden thirty mile zone around Kormandorsky Islands, manned and armed, and having shooting implements and seal skins on board, and otherwise fully equipped for hunting, or attempting to hunt or take seals within the prohibited waters aforesaid, in contravention of the above mentioned enactments.

The seizure took place in Lat. 54, 21° N., and Long. 168°, 38' E., about 22 miles from the southern extremity of Copper Island.

The statement of claim sets forth the above facts, and charges that Victor Jacobson and Julius Mohrhouse had due notice not to enter the prohibited waters of the North Pacific nor to proceed within a zone of thirty miles round the Kormandorsky Islands; that Copper Island is one of the Kormandorsky Islands

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and that at the time of the seizure, the *Minnie* was fully manned and equipped for the purpose of hunting, killing and taking seals, and had on board thereof shooting implements and seal skins; that after the seizure and examination of the said ship and her papers by the official commission of the said *Yakout* it was decided to seize the said papers, and the said Julius Mohrhouse was directed to proceed with the *Minnie* to appear before Her Majesty's Consul at Yokohama, and a provisional certificate was given to the said Julius Mohrhouse; but that he did not proceed to the port of Yokohama, and report to H. B. M.'s Consul there, but sailed for the port of Victoria, where he arrived on the 24th August, 1893.

Whereon Captain Hughes-Hallett, R. N., Captain of H. M. S. *Garnet*, claimed her condemnation and that of her equipment and everything on board for such contravention, as laid, under the said Seal Fishery Act and order in council.

In the statement of defence, the defendant denies that the ship was seized in Lat. 54, 21° N., and Long. 168°, 38' E., as claimed or at any other point within the prohibited zone; alleging that neither he, nor Captain Mohrhouse, had any notice whatever not to enter the prohibited waters in the North Pacific Ocean, nor to proceed within the prohibited thirty mile zone; also, while admitting that the *Minnie* at the time of the seizure was fully manned and equipped for the purposes mentioned in the statement of claim, alleging that she had but one seal skin on board when seized. He also denied that the master of the *Minnie* was directed to proceed with her to Yokohama by the Captain of the *Yakout*; but that officer merely "proposed" to him that he should leave the "said waters and proceed to Yokohama." In the alternative, defendant alleges,

that if it be proved that the *Minnie* was within the thirty mile zone when seized (which he denies), the schooner was not used or employed or intended to be used or employed therein in killing, hunting or attempting to kill, hunt or take seals therein, in contravention of the said *Seal Fishery (North Pacific) Act*, 1893, or otherwise, but that the position of the ship, when seized, was due wholly to stress of weather.

Upon which issue was joined, and the trial took place before me on the 20th and 22nd of January, 1894.

The Hon. Mr. Pooley, Q. C., for the Crown then brought forward the evidence for the plaintiff. The translation into English of the Russian protocol sent by the Captain of the *Yakout*, under the Act for the purposes of the trial, was proved by Mr. Clive Phillips Woolley, a gentleman certified to have passed in the Russian language, by Alexander de la Voye for the Director-General of Military Education, in the College of the Civil Service Commissioners, in the Military Education Division.

He proved the substantial accuracy of the translation, and in reply to questions from defendant's counsel, Mr. Belyea, as to the correctness of the signature of Captain Shemelevsky, the officer in command of the *Yakout*, that the words of confirmation of the protocol were "Oot-versh-doo," in the first person, "I confirm" (meaning this document) and he then adds his title as captain, following a contraction, "2 Rapa," before Shemelevsky, which the interpreter conceived might mean, Captain of the second rank or commander but he was not certain.

On being asked what Russian word was used, which had been translated "proposed" in the Russian-English memorandum of the seizure, endorsed by the Russian Officer in the *Minnie's* official log—he stated that it was

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“predpologite”—and was used in the same sense there as one would employ it in “turning a man out—directing him to walk out of the door,” which I take it is equivalent to “ordering,” which was the sense in which Captain Mohrhouse acted upon and showed he so understood it at the time. Also, that the Russian word used in expressing sailing for the purpose of sealing en route—which the interpreter had explained by—(“is engaged in pelagic sealing”) is “doroboo” “by the way.” If the phrase had been left as “sealing on or by the way,” it would, to my mind, have exactly expressed the sense intended, but I have left the interpolation there—that the translation of the protocol might go in entire, but be read with the interpreter’s subsequent explanation, which I have just given.

Mr. Belyea objected on behalf of the ship to the admission of the protocol as evidence on the grounds: That it does not purport to be signed by the proper officer; that there is nothing in it to show it has been signed by the Captain of the *Yakout*,—nothing in the document itself to show who the Captain of the *Yakout* is; and therefore the signature of the Captain is no proper evidence that it is signed by the Captain of this particular vessel, the *Yakout*. True, he argued, the inference may be that it is, but the fact is not proved; and the Act being highly penal, must be construed strictly. The learned counsel moved for a non-suit on these grounds, citing *R. v. Lowe* (1), to show that as it was a penal statute, it should be construed strictly, and *The Queen v. Wallace* (2) where “the copy of the *Dublin Gazette* purporting to be printed by the Queen’s Printers,” being admissible in evidence, “a copy of the *Dublin Gazette* printed at the *Gazette* office, and published by authority,” was declared inadmissible. I noted and over-ruled the objection, and refused to

(1) 15 Cox 286.

(2) 17 I. C. L. R. 206.

order a non-suit on the following grounds : The power of seizing; etc., is under subsec. 5 of sec. 1, of the British *Seal Fishery (North Pacific) Act, 1893*, and sec. 2 of the order in council of 1893, which says: "The captain or any officer in command of any war-ship, may board, search and seize, etc.," and a statement purporting to be signed by such officer," as to the circumstances, etc., "shall be admissible," etc.

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The Russian officers carrying out the Act must be considered in the same light as British officers carrying out the same duty. It is not only a point of law, but a matter of international obligation, to treat them so, and then the principle *omnia presumuntur rite esse acta* applies, and throws the onus of disproving on the other side, and as that, so far, has not been done, the presumption in its favour not being as yet displaced—the court admitted the protocol in evidence, and the trial proceeded.

The copy of the register of the ship was proved by Mr. Alexander R. Milne, the Collector of Customs, at Victoria. (The original was subsequently produced in court.) Mr. Milne, who has been both judicious and active in carrying out his portion of the duty in sealing cases, and has been zealously aided by Captain Hughes-Hallett, R.N., in enclosing and transmitting, through H.M.S. *Garnet*, letters containing warning of the present arrangement between England and Russia, and the continuation of the *modus vivendi* for distribution, warning the masters and owners of all sealers against proceeding within the prohibited waters of the North Pacific and the thirty mile Kormandorsky zone—addressing letters by that conveyance to the different masters, and including in each letter, a copy of the notices of William Smith, Deputy Minister of Marine, of 13th of April, 1893, and Captain Hughes-Hallett's notice of the 22nd May, 1893, among them,

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one such letter containing these notices, addressed to the master of the *Minnie*, no name, no port. This, however, Captain Mohrhouse did not get as it was returned unopened to the post office. He, however, got full notice in another way.

The chief dependence of the master of the *Minnie* in the defence, which was admirably conducted in every respect by his counsel, Mr. Belyea—was on his ship's log, hereinafter called "the log," to distinguish it from the official log, which contained no entry beyond his appointment, at Sand Point, on the 27th June, 1893, as master in the place of Victor Jacobson, the owner, who had been previously acting as master, and the Russian-English memorandum of the ship's papers detained, and of the seizure by the Russians.

A little examination into the mode of making up this log, shows that very little dependence can be placed upon it.

Usually and properly the log is kept by the first mate, and dictated, checked, or countersigned, as the case may be, by the captain, or *vice versa*; and when there is no mate, then by some able seaman on board; but here, according to Captain Mohrhouse's evidence, whether by design or accident, the log was kept by him, as master and mate alone. His evidence also is that he kept the log according to *nautical time*, in his handwriting alone and unchecked. He says, "I kept the log of the vessel myself and entered merely the position of the vessel and the state of the weather."

The time he has to account for is from the 11th, July to the seizure off Copper Island on the 17th, six days, (during which the protocol says the captain had admitted, he had taken no observation). According to this log, on Monday, the 10th of July, 1893, the *Minnie* was by observation in Lat. 51, 33, N.; Long. 175, 25, E. On Tuesday, 11th July sighted Aggattu

Island, S. E. point bearing N. N. E., distant 2 miles, lat. 52, 18, N. ; long. 173, 23, E.

That gave them their position accurately on the 11th July, 1893, as a point of departure.

On the 12th of July (by dead reckoning) lat. 51, 54, N. ; long. 173, 5, E.

On the 13th, when he spoke the *May Belle* and compared chronometers with her, and found they tallied, the *Minnie* was in lat. 52, 08 ; long. 171, 51.

On the 14th, (by dead reckoning) in lat. 52. 55, N. ; long. 169, 28, E.

On the 15th, she was in lat. 53, 26, N. ; according to this log, and long. 169, 75, E.

Sunday, 16th—In lat. 53, 30, N. ; long. 168, 33, E.

Monday, 17th—In lat. 53, 40, N. ; long. 168, 45 E. (The seizure was on the evening of the 17th, at 9 o'clock.)

The position of the *Minnie* was not marked in the log by the captain on Tuesday at noon, but she was supposed by him to be in the same position as the day before, as he thought she had not made any headway.

In the evening of Tuesday, at 9 p.m., he put her position at 53, 49, N., and long. 168, 41, E.

On reference to the chart in use on the ship, which consisted of three parts, Captain Mohrhouse says : " I marked the position each day with a dot ; most are marked, some are rubbed out," (and some marks rubbed out, I would add, present the appearance of being entirely new, and, being in a different place from some of the dots rubbed out, destroy its authority as a guide to positions marked on the chart at the time.) The seizure was at 9 p.m. (he says) on Monday, the 17th. He was detained until one o'clock a.m. on Tuesday, and then set free.

The weather during all that time that I have been speaking of, viz. : from the 11th of July to the seizure, had been cloudy, overcast and foggy, with occasional

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strong winds, from S. and W., so that no observation could be taken, and no land had been seen since sighting Agattu Island and taking her departure thence. Little, indeed, no allowance was recorded in the calculation in this log, whatever deduction he may have made in sailing, for the current known to the captain by two years previous experience, which there, in strong S. W. winds, goes very strongly to the N. E. with proportionate drifting in that direction—an element in fixing the *Minnie's* position which deserved a special notice. Moreover, Captain Mohrhouse, who claims that he used *nautical (or sea) time*, in compiling his log, diverges all through the log occasionally into *civil time*. Now the difference between the two kinds of time is so great that a short notice of it, becomes unavoidable. The nautical or sea day, begins at noon, or twelve hours before the civil day. It is divided into two parts of twelve hours each, the former being marked p.m. and the latter a.m.

This mode of reckoning arises from the custom of seamen dating their log for the preceeding twenty-four hours, the same as the civil day ; so that occurrences, which happen, for instance, on Monday, 21st, afternoon, are entered in the log, marked Tuesday, the 22nd—in short the noon of the astronomical day and the end of the nautical day, take place at the same moment.

As some of Captain Mohrhouse's observations in his log were made in harbour, (as in the port at Sand Point), it is necessary also to mention that in harbour work (i.e., remarks logged in harbour) the day is estimated according to the civil reckoning, as on shore, that is, from midnight to midnight ; but at sea the day's work being made up at noon, is dated the same as the civil day, so that the day's work marked Monday, began on Sunday, at noon, and ended on Monday, at noon ; hence the day by the ship's reckoning, which is called the nautical day, begins twelve hours before the civil

day, the first twelve being p.m. and the other twelve hours a.m., or before noon. And this difference in calculating time has introduced an additional element of uncertainty into his log, and consequently in even the approximate accuracy of his conclusions and position.

For instance, as a sample of this : On leaving Victoria at noon on the last day of February, the entry is made as on the first day of March.

The boarding of the *Corwin* at noon on the 16th of June, is recorded on the 16th.

Sailing from Yakoutat, a port on the way up North, on the 28th May, although at one p.m., is entered on the 28th.

The arrival at Sand Point on the 17th of June, at 5 p.m., is entered on the log on the 17th.

The meeting with the *Viva* on the morning of the 18th July at eight o'clock, is entered on the log on the 19th, which according to the evidence, is incorrect.

The inference from all these considerations, and from the evidence, I find, is irresistible, that no reliance is to be placed on Captain Mohrhouse's account that, when seized, he was without the thirty mile zone.

Nor does Captain Anderson's clear and manly account of the mode in which he found himself in his schooner the *Viva* a few miles within the zone, and the speed with which he got out of it, and their sighting each other, and subsequent meeting, in the least strengthen Captain Mohrhouse's contention that he was outside when seized. And the inference is reasonable (though not certain, as he lowered his jib,) that when he (Captain Anderson) saw the Russian steamer, they also saw him, and if they did, considered him outside the zone, and so not seizable.

The protocol distinctly states the *Minnie* was 22 miles within the zone, in the latitude and longitude I have set out. The *Yakout* was only three hours out of port and being worked by steam, was independent of wind

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and tide, and its officers presumably, intimately acquainted with the current there, and the inference is that they could not be mistaken in their position; and the hasty memo. of 8 o'clock given by the Russian captain to Mohrhouse, on a tiny slip of paper, was, I think, clearly a mistake for 9 o'clock, and I therefore find that, beyond a doubt, the *Minnie* was taken at that particular spot, 22 miles south of Copper Island, within the zone.

And what was she doing there? Captain Jacobson, the owner, whose evidence was delivered in an eminently untruthful manner, which I think must have surprised the learned counsel who so steadily and earnestly advanced every possible argument for the defence—as it certainly did the court—knew perfectly well of the thirty mile zone, and even, though very roughly, pencilled out a zone of his own on the ship's chart, though not a thirty mile zone, as a thirty mile zone. Moreover, he had been on board the *Triumph* the well-known master of which, Captain Clarence Cox, had been furnished by Captain Hughes-Hallett with one or more copies of Mr. William Smith's and his own public warning to sealers for distribution, and had engaged to communicate the warning to all the sealers he encountered, and presumably must have done so to him; and it is a matter of common knowledge and has been before the court, that in several known cases, and on several occasions, during 1893 he had honourably discharged this obligation, so that it is in the highest degree unlikely that he would have omitted either Captain Jacobson or Captain Mohrhouse, when either came aboard his ship, from this friendly service.

Moreover, Captain Mohrhouse, in his evidence, confesses to knowing the danger of sealing near the thirty mile zone until he could get an observation, a practical admission which speaks for itself.

Yet on the very day of seizure, he puts down all his boats, each with two expert persons in it, for Indian women are as good, if not better, canoeists than the men, under the pretense of washing decks, which to his shame, be it said, he avowed as a reason, had been dirty for some three weeks; and we have only his word for it, that they did not take guns with them, and not a single witness of the twenty-three or twenty-four who were there, was brought forward to corroborate him. It is sworn that Mohrhouse was picked out by the owner to redeem his previous ill-luck in sealing, Captain Jacobson well knowing that he (Captain Mohrhouse) had already brought other sealers into trouble in a similar manner.

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It is well known, and is so stated in the negotiations which preceded the passage of the Act, that recent events in Behring Sea had sent a cloud of fleet and daring schooners, some of them making even eleven and twelve knots an hour, admirably manned and commanded, hovering like hawks, and covered with a cloud of canvas, all around the thirty mile zone about the Kormandorsky Islands. And it was necessary to guard against any of them, to whom the risk itself would be an attraction, slipping inside the thirty miles of feeding ground, set aside for the seals which might chance to frequent the Kormandorsky Islands, running the risk of capture, in order to secure a rich but forbidden harvest of seal skins.

The statement of claim alleges that in this instance, the *Minnie* at the time and place of seizure, was fully manned and equipped for the purpose of hunting, killing and taking seals, and it has been proved that, after due notice, she was so found manned and equipped for that purpose, within the thirty mile zone.

Section 6 of the *Seal Fishery (North Pacific) Act*, 1893, above cited, enacts that, "if during the period,"

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(that is between the 4th July, 1893, and 31st Dec., 1893 —here it was the 17th July, 1893) “and within the sea specified by the order in council,” viz.: the thirty mile zone, “a British ship is found, having on board thereof, fishing or shooting implements or seal skins, or bodies of seal, it shall lie on the master or owner of such ship to show that the ship was not used or employed in contravention of this Act.” And that has certainly not been shown to me as a jury by the evidence adduced by the defence. If Captain Mohrhouse had been sincere in his desire to keep outside of the forbidden waters, his vessel’s head would have been put the other way, away from and not towards the island, until he had ascertained his position by observation. If such flimsy excuses as his, supported by such equivocal testimony, were to be allowed to prevail, sealers would only have, in that foggy climate (especially so on the south-west side of Copper Island) to allege stress of weather, to make the Act, framed to repel their intrusion within the zone, a dead letter; and thus render nugatory an honourable understanding between England and a friendly nation, whose officers, so far as we have seen, in carrying out the provisions of this particular Act (and I am guided solely in my consideration and decision by this Act) have treated British subjects with every courtesy and consideration.

As a jury, I find that the presumption which the portion of the Act I have cited raises of the liability of the defendant, has not been displaced.

The lesson which this law teaches has yet to be learned, and the present is a case, wherein from the total absence of *bona fides* in the defendant from first to last, it has become the duty of the court to enforce the provisions of the law.

I do not take into consideration in forming the present judgment, the question of what may be deemed the disobedience of what I consider the order or direction of the Captain of the *Yakout*, that the master of the *Minnie* should report himself to H. B. M's. Consul at Yokohama, where there is a good and competent court to deal with the case, as no penalty therefor is sought to be enforced.

I pronounce, therefore, in favour of the Crown, and decree the condemnation of the ship *Minnie* 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 waters of Behring Sea or the North Pacific Ocean, that is to say, within a zone of thirty marine miles around the Kormandorsky Islands, as defined by the order in council, dated the 4th day of July, 1893, made by Her Majesty the Queen in pursuance of the *Seal Fishery (North Pacific) Act, 1893*, fully manned and equipped for killing, taking and hunting seals, and had on board shooting implements and one seal skin, and that the said ship was used and employed in taking, killing, or hunting, or attempting to kill or take seals within the prohibited waters aforesaid. The proportion in which the proceeds are to be distributed, I reserve for further consideration. No costs on either side.

*Judgment accordingly.**

Solicitors for plaintiff: *C. E. Pooley.*

Solicitor for ship: *A. L. Belyea.*

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 THE SHIP
 MINNIE.
 ———
 Reasons
 for
 Judgment.
 ———

* REPORTER'S NOTE: On appeal to the Supreme Court of Canada [*Present, Strong, C.J., Fournier, Taschereau, Sedgewick and King, J.J.*] by the owner of the condemned ship, this judgment was affirmed and the appeal dismissed, with costs.