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Dec. 7.

BRITISH COLUMBIA ADMIRALTY DISTRICT.

HER MAJESTY THE QUEEN.....PLAINTIFF;

AND

THE SHIP "AINOKO".....DEFENDANT.

Maritime law—Behring Sea Award Act, 1894—Contravention—Ignorance of locality on part of master—Effect of.

Under the *Behring Sea Award Act, 1894*, it is the duty of a master to be quite certain of his position before he attempts to seal. If he is found contravening the Act, it is no excuse to say that he could not ascertain his position by reason of the unfavourable condition of the weather.

THIS was an action *in rem* for condemnation of the ship 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 ship *Ainoko*, George Heater, master, was seized by an officer from the United States steamer *Perry* on the 5th day of August, 1896, in latitude 55 deg. 57 min. North, longitude 170 deg. 25 min. West from Greenwich, being a point within the prohibited zone of 60 miles round the Pribilof Islands, as defined by Article One of the first schedule to the *Behring Sea Award Act, 1894*.

2. The master, hunters and crew of the ship did, on the said 5th day of August, 1896, within the prohibited zone of 60 miles around the Pribilof Islands, as defined by Article One of the first schedule of the *Behring Sea Award Act, 1894*, pursue, kill and capture one hundred and eight of the animals commonly called fur seals.

3. The ship *Ainoko* is a British vessel registered at the port of Shanghai.

4. The said ship, with the said George Heater as master, set sail from the port of Victoria, British

Columbia, on a sealing voyage towards the North Pacific Ocean on the 21st day of June, 1896, having on board a seal hunting outfit.

5. The said ship *Ainoko* at the time of the seizure, as set forth in paragraph one hereof, was fully manned and equipped for the purpose of killing, capturing and pursuing the animals commonly called fur seals, and had on board thereof one hundred and thirty-nine fur seal skins and was engaged in pursuing, capturing and killing the animals commonly called fur seals within the said prohibited zone.

6. The said ship *Ainoko* 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 H.M.S. *Satellite*, to proceed to Victoria and report to the Senior British Naval Officer at Esquimalt. The said vessel arrived in the Port of Victoria on the 7th day of September, 1896.

Algernon J. Hotham, a Lieutenant in H.M.S. *Impérieuse*, claims the condemnation of the said ship *Ainoko* 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 of 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 :—

1. The defendant does not admit paragraphs one and two of the plaintiff's statement of claim nor any of the allegations therein contained.

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2. The defendant admits paragraphs three, four and six of the plaintiff's statement of claim.

3. The defendant does not admit so much of paragraph five as alleges that the said vessel at the time of seizure was engaged in pursuing, capturing and killing the animals commonly called fur seals within the said prohibited zone.

4. In answer to the plaintiff's claim, the defendant says that the vessel *Ainoko* was seized by an officer from the United States steamer *Perry*, on the 5th day of August, A.D. 1896, in latitude 55 deg. 34 min. North, longitude 171 deg. 25 min. West, from Greenwich, a point not 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.

5. In the alternative the defendant says that if it be proved that the said vessel was when seized in latitude 55 deg. 57 min. North, longitude 170 deg. 25 min. West, from Greenwich, as alleged in paragraph one of the statement of claim (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, when seized, 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 four hereof is alleged.

6. The defendant further says that none of the said fur seals found on board the said vessel at the time of seizure were killed, captured or pursued in contravention of the provisions of the said *Behring Sea Award Act*, 1894.

7. The defendant further says that the said schooner was at no time 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 30th November, 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 (7th December, 1896) delivered judgment.

This is an application to condemn the above vessel for breach of the provisions of the Behring Sea regulations incorporated in chapter 2 of the Imperial Acts of 1894.

The provision which, it is alleged, has been violated is the 1st Article which forbids the citizens of the United States and Great Britain, respectively, killing or pursuing at any time and in any manner fur seals within a zone of sixty miles around the Pribilof Islands, in Behring Sea.

The vessel in question was seized by the United States vessel *Perry*, on the 5th August, 1896, about 7.40 P.M., land time, in latitude 55 deg. 57 min. N., longitude 170 deg. 30 min. West, a point 14 miles within the zone.

Capt. Heater, the master of the schooner, states that he got no observation after the first of August. On the second of August he was boarded by the United States cruiser *Rush*, and their positions were exchanged and he found his so nearly identical with that of the *Rush* that he was satisfied with the accuracy of his observations. On the 3rd he went South S.E. and then tacked to the Westward, the wind increasing.

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On the fourth there was a strong gale from the South with thick fog and high sea, wind S. by E. On the 5th at midnight it was calm with light airs from S. W.—the boats were off at 5 A.M. and returned at 6 P.M. with 108 seals. At the time the *Ainoko* was first sighted by the *Perry* she was coming southerly and westerly about six miles off. This would bring her out of the zone apparently at the nearest point. The wind was very light according to the log and, according to Captain Heater, he had directed his boats to seal South and West, as he intended to follow in that direction. According to the position given by the United States navigating officer, he must have been some considerable way within the prohibited limit at the time the boats were put over, and they gradually sealed outwards. A fresh killed seal was on the deck when the vessel was seized. I, therefore, find as a fact that the *Ainoko* was sealing and killed seals during this day within the prohibited zone. Captain Heater's defence is that he was unwittingly carried by a northerly current and a South-East gale into the zone and according to his reckoning he was 17 miles outside. He had calculated his course by dead reckoning, allowing two points for lee way.

It is remarkable that the *Perry* was able to take, and get, observations on the 3rd, 4th and 5th of August, but Captain Heater said the fog prevented him.

Captain Heater states that he was not aware of a northerly current setting up towards the islands, but it appears to be generally known to sealers that there was such a current. He had been sealing round the islands before on the North side and had met Northerly currents then, but he says he had not sealed South of the islands.

His remuneration was \$50 a month as master and 50 cents a skin. This inducement to make as large a

catch as possible may possibly have had some effect to do with his inability to take observations.

A good deal of stress was laid on an error in the chronometer both of the *Ainoko* and the *Perry*. This error in no way caused the mistake in the reckoning of the position of the schooner, because no observations were taken after the 1st of August, and the chronometer is not used in estimating dead reckoning.

The error in the case of the *Perry's* chronometer made a difference of five miles but still left the *Ainoko* 14 miles within the prohibited ground; and instead of the seizure taking place in longitude 170 deg. 25 min., it took place in longitude 170 deg. 30 min. West, a difference of 31 miles between the schooner's actual position and the position she thought she was in.

It is the duty of the master to be quite certain of his position before he attempts to seal. It is no excuse to say that the state of the weather was such that he could not ascertain his position. The mere fact of being within the zone is not an offence, it is killing, capturing or pursuing seals in the zone that creates the offence.

If the excuses of inadvertence and inability to obtain an observation are allowed, the regulations could never be enforced. They are passed for the purpose of preventing all sealing within the defined radius, and vessels offending will not be relieved from the penalties imposed by the Act by any such excuses. I therefore declare the *Ainoko* and her equipment forfeited, but in case of payment of the sum of £400 and costs within 30 days she may be discharged.

Judgment accordingly.

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

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

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