

BRITISH COLUMBIA ADMIRALTY DISTRICT.

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 Dec. 7.  
 HER MAJESTY THE QUEEN.....PLAINTIFF;  
 AND  
 THE SHIP "AURORA".....DEFENDANT.

*Maritime law—Behring Sea Award Act, 1894—Circumstances justifying arrest—Burden of proof.*

A vessel had on board, within prohibited waters, certain skins with holes in them which appeared to have been made by bullets.

*Held*, that this was sufficient reason for the arrest of the vessel, and that the burden of showing that fire-arms had not been used was imposed on such vessel.

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

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

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

By the statement of claim it was alleged as follows :

1. The ship *Aurora* is a British vessel registered at the Port of Victoria, in the province of British Columbia.

2. The said ship *Aurora*, Thomas H. Brown, master, was seized by W. H. Roberts, a Captain in the Revenue Cutter Service of the United States, commanding the United States Revenue steamer *Rush* on the 10th day of August, 1896, in the Behring Sea, in latitude 55 degrees 44 min. 30 secs. N., longitude, 172 degrees 11 min. W. from Greenwich.

3. The said ship *Aurora* at the time of her seizure as aforesaid was fully manned and equipped for the purpose of killing, capturing or pursuing seals, and had on board thereof fire-arms and ammunition, loaded cartridges, powder and shot, and ball, and had also on board at the time of her said seizure one hundred and twelve fur seal skins including four fur seal skins

which had been killed in the Behring Sea by the use of fire-arms by some person in such ship.

4. The said ship *Aurora* was continually engaged in fur seal fishing from the first day of August to the tenth day of August, 1896, inclusive of the date of the seizure aforesaid and during all this time had on board guns, rifles, shooting implements and loaded cartridges and empty cartridge cases for use in the said guns and rifles, and also powder and shot and the necessary apparatus for filling cartridges; and during the times between the said first day of August and the said tenth day of August did employ and use the said guns and fire-arms and explosives in the fishing for, and for the purpose of, killing the said fur seals or some or one of them within the waters of the Behring Sea aforesaid.

5. The said ship *Aurora* was sent to Unalaska by the said Captain W. H. Roberts and from thence she was ordered by Ernest Fleet, the Commander of Her Majesty's ship *Icarus*, to proceed to the Port of Victoria and report to the Collector of Customs where she arrived on the fifteenth day of September, 1896.

Algernon H. Hotham, a Lieutenant in Her Majesty's ship *Impérieuse*, claims the condemnation of the said ship *Aurora* and her equipment and all on board of her and the proceeds thereof, on the ground that the said ship at the time of the seizure thereof was in the Behring Sea fully armed and equipped for taking fur seals, and was engaged in fur seal fishing in the Behring Sea from the first day of August, 1896, to the tenth day of August, 1896, (inclusive) continuously and during the whole of the said time had on board the said ship *Aurora* fire-arms and explosives and numerous fur seal skins, and did, during the said time, use the said fire-arms and explosives for the purpose of killing the said fur seals contrary to the provisions of the *Behring Sea Award Act*, 1894.

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The statement of defence and counter-claim were as follows :

1. The defendants admit paragraphs 1, 2, and 6 of the plaintiff's statement of claim.

2. The defendants do not admit so much of paragraph 3 as alleges that at the time of seizure the said ship *Aurora* had on board four fur seal skins which had been killed in the Behring Sea by the use of fire-arms by some person in such ship.

3. The defendants do not admit so much of paragraph 4 as alleges that between the first and tenth days of August the said ship did employ and use the said guns and fire-arms and explosives as therein mentioned in the fishing for, and for the purpose of killing, the said fur seals or some or one of them within the waters of the Behring Sea.

4. The defendants say that at the time of her clearance at the Port of Attu and at the time of her seizure the said schooner had in addition to the guns, implements and explosives mentioned in paragraphs 3 and 4, thirty four spears and seventeen spear poles.

5. The said vessel employed 6 boats for the purpose of killing, capturing and pursuing the said animals known as fur seals.

6. The defendants in answer to the whole of the plaintiff's claim say that the said four fur seal skins were killed in the manner as is by the provisions of the *Behring Sea Award Act*, 1894, allowed and not otherwise.

COUNTER-CLAIM.

7. By way of counter-claim the defendants say as follows:—They repeat the several allegations hereinbefore made and say :

1. That the officers making the seizure had no reasonable cause to believe that the said vessel *Aurora*

had been used or employed in contravention of the *Behring Sea Award Act*, 1894, or any of its provisions.

2. That at the time of the said seizure the said schooner was engaged in lawfully pursuing the killing of fur seals, and at no time during the times alleged was the said vessel engaged or employed or used contrary to the said Act.

3. That the said seizure was illegal.

4. That when the said vessel was under seizure at Unalaska one sealing boat was stolen therefrom with a quantity of provisions amounting in value to \$100.

5. That the defendants have suffered damage by reason of the said seizure and detention of the said vessel.

The defendants claim, 1—the restitution of the said vessel *Aurora* and her cargo and everything on board of her as on the day of seizure.

2. Judgment against Her Majesty for the damage occasioned to the defendants by the seizure and detention of the said vessel *Aurora* and for the costs of the action.

3. Payment of the said sum of \$100.

4. To have an account taken of such damage.

5. Interest at the rate of 6 per cent on the amount allowed from the 20th day of September, A. D. 1896, until judgment.

6. Such further and other relief as the nature of the case may require.

Issue joined.

The case came on for trial at Victoria, B.C., on the 3rd December, 1896, before the Honourable M. W. Tyrwhitt Drake, Deputy Local Judge for the Admiralty District of British Columbia.

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

This vessel, a British schooner, had been sealing round Japan and arrived at Attu, in Behring Sea, on the 20th July, 1896. She had arms and ammunition on board. The Captain requested Lieut. Barry, of the United States ship *Grant*, to inspect the arms and ammunition, and a record of all that was then produced was entered in the official log.

They commenced sealing on 1st August in Behring Sea. On 10th August she was boarded by the *Rush*, and the attention of the officer who boarded her was called to four skins which had been put aside as having holes caused by gaffs. He said he did this in pursuance of instructions from Lieut. Berry, of Attu.

The skins were sent on board the *Rush* and after a careful examination by the officers of the *Rush*, the conclusion arrived at was that these seals had been shot.

The guns and ammunition were examined and checked and some small discrepancy was discovered, which was explained afterwards.

This examination was just as ineffective as the first one spoken of because there was no search of the vessel, and no evidence to show that there was not other ammunition on board. The vessel was ordered to Unalaska, and a further count of ammunition made. While there two of the crew deserted and took away one of the ship's boats and some provisions, a claim for which was made against the Crown by way of counter-claim.

From the evidence adduced, the conclusion I have arrived at is that the seals whose skins were in question had been shot. They had also been speared, but the evidence did not in my opinion establish the fact that the seals had been shot by those on board the schooner.

The reason for putting these skins to one side was difficult to appreciate. The Captain said that the United States officer at Attu had asked him to put aside all skins that had shot or gaff holes in them. As it appears that the majority of seals speared have to be brought to the boat by the gaff, it must follow that gaff holes, if carefully searched for, would be apparent in the majority of skins. The Captain denied that these seals were shot; but stated the holes were only gaff holes, and that the holes which were in the skins when taken on board the *Rush*, and which are apparent now, were made by rats. Without discussing the evidence in detail there was in my opinion sufficient reason for the arrest of this vessel, and the burden of showing that fire-arms had not been used was imposed on the vessel.

I therefore dismiss the claim with costs.

With regard to so much of the counter-claim as relates to a boat and provisions being stolen while the schooner was in charge of the authorities at Unalaska, it was shown that the master was in command and had full control of the crew and that two of the crew deserted and stole a boat and some provisions.

The seizure of the vessel, therefore, had nothing to do with the stealing of the boat. I therefore dismiss the counter-claim, without costs.

*Judgment accordingly.*

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